

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

TRICIDA, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 23-10024 (JTD)

Docket Ref. Nos. 328, 416 & 435

**NOTICE OF FILING OF REVISED EXHIBITS TO THE PLAN SUPPLEMENT**

**PLEASE TAKE NOTICE** that, on March 27, 2023, the above-captioned debtor and debtor in possession (the “Debtor”) filed the *Third Amended Chapter 11 Plan of Liquidation for Tricida, Inc.* [Docket No. 328] (as may be amended, supplemented, or modified from time to time, the “Plan”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that, on April 28, 2023, the Debtor filed the *Notice of Filing of Plan Supplement* [Docket No. 416] (the “Plan Supplement”). The Debtor reserved its right to amend, revise, or supplement the Plan Supplement.

**PLEASE TAKE FURTHER NOTICE** that on May 5, 2023, the Debtor filed the *Notice of Filing of Exhibits to the Plan Supplement* [Docket No. 435], which attached Exhibits E and H to the Plan Supplement (the Contingent Payments Trust Agreement and Contingent Payments Holding Trust Agreement, respectively).

**PLEASE TAKE FURTHER NOTICE** that the Debtor hereby submits a revised Liquidating Trust Agreement, Contingent Payments Trust Agreement, and Contingent Payments Holding Trust Agreement, which are Exhibits B, E and H to the Plan Supplement, and attached hereto as **Exhibits A, B and C**, respectively.<sup>3</sup>

**PLEASE TAKE FURTHER NOTICE** that copies of the Plan and the Plan Supplement may be obtained upon request of the undersigned counsel for the Debtor at the address specified below, and are on file with the Clerk of the Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, where they are available for review between the hours of 8:00 a.m. to 4:00 p.m. (ET). The Plan and the Plan Supplement are also available for inspection on the Bankruptcy Court’s website at <https://pacer.uscourts.gov>, or free of charge on the website of the

<sup>1</sup> The Debtor in this chapter 11 case, together with the last four digits of the Debtor’s federal tax identification number, is Tricida, Inc. (2526). The Debtor’s service address is 2108 N Street, Suite 4935, Sacramento, CA 95816.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

<sup>3</sup> For the convenience of the Court and parties in interest, attached as **Exhibits D, E and F** are blacklines reflecting the changes made to the revised trust agreements.



Debtor's claims and noticing agent, Kurtzman Carson Consultants LLC, dedicated to these chapter 11 cases, [www.kccllc.net/tricida](http://www.kccllc.net/tricida).

**PLEASE TAKE FURTHER NOTICE** that subject to the terms and conditions of the Plan, the Debtor reserves all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

Dated: May 12, 2023  
Wilmington, Delaware

*/s/ Allison S. Mielke*

---

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

Sean M. Beach (No. 4070)  
Allison S. Mielke (No. 5934)  
Andrew A. Mark (No. 6861)  
Carol E. Cox (No. 6936)

Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253  
Emails: [sbeach@ycst.com](mailto:sbeach@ycst.com)  
[amielke@ycst.com](mailto:amielke@ycst.com)  
[amark@ycst.com](mailto:amark@ycst.com)  
[ccox@ycst.com](mailto:ccox@ycst.com)

**SIDLEY AUSTIN LLP**

Samuel A. Newman (admitted *pro hac vice*)  
555 West Fifth Street  
Los Angeles, California 90013  
Telephone: (213) 896-6000  
Facsimile: (213) 896-6600  
Email: [sam.newman@sidley.com](mailto:sam.newman@sidley.com)

Charles M. Persons (admitted *pro hac vice*)  
Jeri Leigh Miller (admitted *pro hac vice*)  
Chelsea McManus (admitted *pro hac vice*)  
2021 McKinney Avenue, Suite 2000  
Dallas, Texas 75201  
Telephone: (214) 981-3300  
Facsimile: (213) 981-3400  
Email: [cpersons@sidley.com](mailto:cpersons@sidley.com)  
[jeri.miller@sidley.com](mailto:jeri.miller@sidley.com)  
[cmcmanus@sidley.com](mailto:cmcmanus@sidley.com)

Michael Sabino (admitted *pro hac vice*)  
787 7th Avenue  
New York, New York 10019  
Telephone: (212) 839-5300  
Facsimile: (212) 839-5599  
Email: [msabino@sidley.com](mailto:msabino@sidley.com)

*Counsel to the Debtor, Tricida, Inc.*

**EXHIBIT A**

**Revised Liquidating Trust Agreement**

**LIQUIDATING TRUST AGREEMENT OF**

**TRICIDA LIQUIDATING TRUST**

**DATED AS OF [•], 2023**

**BY AND AMONG**

**[•] AS LIQUIDATING TRUSTEE,**

**[•] AS RESIDENT TRUSTEE,**

**and**

**THE DEBTOR HERETO**

**TABLE OF CONTENTS**

---

PAGE

ARTICLE I

DECLARATION OF TRUST

1.1. Creation of Trust.....	2
1.2. Purpose of Liquidating Trust .....	2
1.3. Transfer of Liquidating Trust Assets .....	3
1.4. Appointment and Acceptance of Liquidating Trustee .....	5
1.5. Liquidation of Liquidating Trust Assets .....	6
1.6. Wind-Down Budget.....	6
1.7. Reversionary Interests.....	6
1.8. Incidents of Ownership.....	6
1.9. Privileges .....	7

ARTICLE II

LIQUIDATING TRUST BENEFICIARIES

2.1. Conflicting Claims.....	7
2.2. Rights of Liquidating Trust Beneficiaries .....	7
2.3. Evidence of Liquidating Trust Interest .....	8
2.4. Transfers of Liquidating Trust Interests .....	8
2.5. Exemption from Registration.....	9
2.6. Limited Liability.....	9

ARTICLE III

DURATION AND TERMINATION OF LIQUIDATING TRUST

3.1. Dissolution of the Liquidating Trust.....	9
3.2. Continuance of Liquidating Trust for Winding Up .....	10

ARTICLE IV

ADMINISTRATION OF THE LIQUIDATING TRUST

4.1. Payment of Claims, Expenses, and Liabilities.....	10
4.2. Procedures for Resolving Unliquidated and Disputed Claims .....	11
4.3. Distributions.....	13
4.4. Compliance with Laws .....	16
4.5. Fiscal Year .....	16
4.6. Books and Records .....	16
4.7. Liquidating Trust Insurance.....	17
4.8. Reports .....	17

ARTICLE V

TAX MATTERS

5.1. Liquidating Trustee’s Tax Power for Debtor.....	18
--	----

5.2. Treatment of Trust for Tax Purposes .....18  
5.3. Tax Reporting .....19  
5.4. Tax Withholdings by Liquidating Trustee.....20  
5.5. IRS Forms .....20

ARTICLE VI

POWERS OF AND LIMITATIONS ON THE LIQUIDATING TRUSTEE

6.1. Term of the Liquidating Trustee .....21  
6.2. Responsibilities and Authority of the Liquidating Trustee.....21  
6.3. Actions Taken by the Liquidating Trustee .....22  
6.4. Limitations on Liquidating Trustee .....23  
6.5. Compensation and Expenses of the Liquidating Trustee.....24  
6.6. Agents, Employees, and Professionals .....25  
6.7. Investment of Liquidating Trust Monies .....25  
6.8. Resident Trustee .....26  
6.9. Fiduciary and Other Duties .....28

ARTICLE VII

SUCCESSOR LIQUIDATING TRUSTEE

7.1. Resignation .....28  
7.2. Removal .....29  
7.3. Effect of Resignation or Removal .....29  
7.4. Appointment of Successor .....29  
7.5. Acceptance of Appointment by Successor Liquidating Trustee.....29

ARTICLE VIII

LIQUIDATING TRUST ADVISORY BOARD

8.1. Liquidating Trust Advisory Board.....30

ARTICLE IX

RELIANCE, LIABILITY AND INDEMNIFICATION

9.1. Reliance by the Liquidating Trustee and the Members of the Liquidating Trust  
Advisory Board.....31  
9.2. Liability to Third Persons .....32  
9.3. Nonliability of Liquidating Trustee and Liquidating Trust Advisory Board for  
Acts of Others .....32  
9.4. Exculpation .....33  
9.5. Limitation of Liability .....33  
9.6. Indemnity .....33

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1. Governing Law .....34  
10.2. Jurisdiction.....34  
10.3. Severability .....34

10.4. Notices .....	34
10.5. Headings .....	35
10.6. Controlling Document .....	35
10.7. Entire Trust Agreement .....	35
10.8. Cooperation.....	35
10.9. Amendment and Waiver .....	36
10.10. Confidentiality .....	36
10.11. Meanings of Other Terms .....	36
10.12. Counterparts.....	37
10.13. Intention of Parties to Establish Liquidating Trust.....	37

## LIQUIDATING TRUST AGREEMENT OF TRICIDA LIQUIDATING TRUST

THIS LIQUIDATING TRUST AGREEMENT OF TRICIDA LIQUIDATING TRUST, dated as of [●], 2023 (this “**Trust Agreement**”), is by and among Tricida, Inc. (the “**Debtor**”), as debtor, [●], as liquidating trustee (together with any successor or additional trustee appointed under the terms of this Trust Agreement, including Section 6.1 of this Trust Agreement, the “**Liquidating Trustee**”), and [●] as the Delaware resident trustee (together with any successor Delaware resident trustee appointed under the terms of this Trust Agreement, the “**Resident Trustee**”), for the purpose of forming a statutory trust under and pursuant to the provisions of 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, the “**Trust Act**”) as contemplated by the Plan (the “**Liquidating Trust**”).<sup>1</sup>

### BACKGROUND

A. On January 11, 2023 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Case**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”);

B. On February 22, 2023, the Bankruptcy Court approved the sale of various subsets of the Debtor’s Assets to the Purchasers pursuant to section 363 of the Bankruptcy Code by entry of the Sale Order, as defined in the Plan;

C. On March 27, 2023, the Debtor filed the *Fourth Amended Disclosure Statement for Chapter 11 Plan of Liquidation for Tricida, Inc.* [D.I. 329];

D. On May [●], 2023, the Debtor filed the *Fourth Amended Chapter 11 Plan of Liquidation for Tricida, Inc.* [D.I. ●];

E. On [●], 2023, the Bankruptcy Court entered an order confirming the Plan [D. I. [●]] (the “**Confirmation Order**”), which became effective on [●], 2023 (the “**Effective Date**”);

F. The Plan provides for, among other things, the creation of a liquidating trust on the Effective Date for the purpose of liquidating and administering the Liquidating Trust Assets and making distributions on account thereof in accordance with section 301.7701-4(d) of the regulations promulgated under the Internal Revenue Code of 1986, as amended (the “**IRC**,” and such regulations, the “**Treasury Regulations**”), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating

---

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the *Chapter 11 Plan of Liquidation for Tricida, Inc.*, as confirmed by the Confirmation Order (as defined below) (including all exhibits thereto, as the same may be further amended, modified, or supplemented from time to time, the “**Plan**”).

Trust, as provided for under the Plan and this Trust Agreement. The Liquidating Trust is established and is effective for the benefit of the Liquidating Trust Beneficiaries; and

G. The duties and powers of the Liquidating Trustee shall include all powers necessary to administer the Liquidating Trust Assets, including, without limitation, the duties and powers listed in the Plan.

## **AGREEMENT**

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

## **ARTICLE I**

### **DECLARATION OF TRUST**

1.1. Creation of Trust. The Debtor, the Liquidating Trustee, and the Resident Trustee, pursuant to the Plan and the Confirmation Order, and in accordance with the applicable provisions of chapter 11 of the Bankruptcy Code, hereby create the Liquidating Trust, which shall bear the name “Tricida Liquidating Trust.” In connection with the exercise of the Liquidating Trustee’s power hereunder, the Liquidating Trustee may use this name or such variation thereof as the Liquidating Trustee sees fit. On the Effective Date, the Liquidating Trust shall be established pursuant to this Trust Agreement.

1.2. Purpose of Liquidating Trust. The Liquidating Trust shall be established for the purpose of (a) receiving and holding the Liquidating Trust Assets; (b) administering, disputing, objecting to, compromising, or otherwise resolving all General Unsecured Claims; (c) making distributions to the Liquidating Trust Beneficiaries in accordance with the Liquidating Trust Waterfall; (d) maximizing recoveries for the benefit of the Liquidating Trust Beneficiaries; and (e) commencing and pursuing the Retained Causes of Action and Transferred Causes of Action, along with all other Causes of Action that are not otherwise subject to release or exculpation pursuant to the Plan, and managing and administering any proceeds thereof, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust, in accordance with Treasury Regulations section 301.7701-4(d). Subject to the DOF Election described in Article IV.C.6(g) of the Plan and Section 5.2 of this Trust Agreement, the Liquidating Trust shall qualify as a “grantor trust” for U.S. federal income tax purposes and, to the extent permitted by applicable law, for state and local income tax purposes, with the Liquidating Trust Beneficiaries treated as grantors and owners of the Liquidating Trust. To the extent permitted by applicable law, all parties, including the Liquidating Trustee and any Liquidating Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes. From and after the Effective Date, the Liquidating Trustee shall act as the exclusive representative of the Estate for all purposes other than as set forth in Article IV.D.2(b) and IV.D.3(b) of the Plan.

1.3. Transfer of Liquidating Trust Assets.

(a) Pursuant to the Plan and the Confirmation Order, on the Effective Date, all right, title, and interest in and to the Liquidating Trust Assets shall be deemed to have been irrevocably transferred, assigned, conveyed and delivered by the Debtor to the Liquidating Trust free and clear of all encumbrances, liens and Claims of any Person, in trust for the benefit of the Liquidating Trust Beneficiaries for the uses and purposes stated therein and herein. The Liquidating Trust hereby accepts all such Liquidating Trust Assets free and clear of any and all liens and claims and agrees to hold and administer the Liquidating Trust Assets and the remainder of the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries, subject to the terms and conditions of this Trust Agreement. For the avoidance of doubt, upon the transfer of the Liquidating Trust Assets, the Liquidating Trust shall succeed to all of the Debtor's right, title, and interest in and to the Liquidating Trust Assets, and the Debtor will have no further interest in or with respect to the Liquidating Trust Assets or the Liquidating Trust. The Liquidating Trust Assets shall include, for the avoidance of doubt, (i) any Causes of Action not otherwise subject to release or exculpation pursuant to the Plan, including all Retained Causes of Action and Transferred Causes of Action, (ii) the remaining Cash of the Debtor or the Estate after (A) paying the Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, Allowed Other Priority Claims, and Allowed *De Minimis* Unsecured Claims as set forth in Article III.B of the Plan, (B) adequately funding the Professional Fee Reserve and the Wind-Down Budget (which, for the avoidance of doubt, shall include Cash to be distributed to the Contingent Payments Holding Trust and/or the Contingent Payments Trust for the administration thereof), and (C) making the Noteholder Effective Date Distribution and Patheon Effective Date Distribution and the GUC Effective Date Distribution all of which shall be deemed transferred to the Liquidating Trust without any further action of the Debtor or any managers, employees, officers, directors, members, partners, shareholders, agents, advisors, or representatives of the Debtor. For the avoidance of doubt, the Contingent Payments Trust Assets and the Contingent Payments Trust Interest do not constitute Liquidating Trust Assets and shall not be deemed transferred to the Liquidating Trust. Pursuant to section 1141(b) and 1141(c) of the Bankruptcy Code, all transfers to the Liquidating Trust shall be made free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as may be otherwise provided in the Plan. For all U.S. federal income tax purposes, and, to the extent permitted by applicable law, for state and local income tax purposes, and subject to the DOF Election described at Article IV.C.6(g) of the Plan and Section 5.2 of this Trust Agreement, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust in accordance with the terms herein as a transfer to the Liquidating Trust Beneficiaries, followed by a transfer by such Liquidating Trust Beneficiaries to the Liquidating Trust, and the Liquidating Trust Beneficiaries will be treated as the grantors and owners thereof.

(b) On the Effective Date, or at such other time as is reasonably convenient to the Liquidating Trustee and the Debtor, the Debtor shall provide to the Liquidating Trust timely access to all of the books and records of the Debtor in the Debtor's possession. The Debtor shall also instruct any third parties or professionals possessing

such books and records (including computer generated or computer maintained books, records, and data) to permit access to such books and records as may be reasonably requested by the Liquidating Trustee; *provided*, that the Liquidating Trustee shall be responsible for the out-of-pocket costs and expenses of providing access and/or maintaining such books and records with the third parties following the Effective Date, such cost and expense to be provided for in the Wind-Down Account; *provided, further* that the Liquidating Trustee may, without Bankruptcy Court approval, destroy any documents that it believes are no longer required to effectuate the terms and conditions of the Plan, excepting only the Potentially Relevant Books and Records to the Pardi Litigation, which shall be maintained as set forth in Article XII.I of the Plan.

(c) Upon delivery of the Liquidating Trust Assets to the Liquidating Trust, the Debtor and its predecessors, successors, and assigns shall be released from all liability with respect to the delivery thereof and shall have no reversionary or further interest in or with respect to the Liquidating Trust Assets or the Liquidating Trust. Notwithstanding the foregoing, for purposes of section 553 of the Bankruptcy Code, the transfer of the Liquidating Trust Assets to the Liquidating Trust shall not affect the mutuality of obligations that otherwise may have existed prior to the effectuation of such transfer.

(d) Nothing in this Trust Agreement alters the rights and obligations of the Debtor (and its Estate) and the Debtor's insurers (and third-party claims administrators) under the Insurance Policies or modifies the coverage or benefits provided thereunder or the terms and conditions thereof or diminishes or impairs the enforceability of the Insurance Policies. All of the Debtor's rights and its Estate's rights under any Insurance Policy to which the Debtor and/or the Debtor's Estate may be beneficiaries shall vest with the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries and all of the beneficiaries of such policies. The Debtor shall be deemed to have assumed only the D&O Policies, and any Insurance Policy other than a D&O Policy shall be deemed terminated on the Effective Date. Except as otherwise provided in the Plan, proceeds payable under any Insurance Policy shall be in accordance with the provisions of the applicable Insurance Policy. Except as set forth in Article IX of the Plan, nothing in the Plan or this Trust Agreement shall constitute or be deemed a waiver of any Cause of Action (including, for the avoidance of doubt, any Retained Cause of Action) that the Debtor or any Entity, including the Liquidating Trust, may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained in the Plan or this Trust Agreement be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

(e) Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan and this Trust Agreement, including, without limitation, the transfer of the Liquidating Trust Assets to the Liquidating Trust, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation all such instruments or other

documents governing or evidencing such transfers without the payment of any such tax, recordation fee, or governmental assessment.

(f) The Liquidating Trust Assets and all other property held from time to time by the Liquidating Trust under this Trust Agreement and any earnings, including interest, on any of the foregoing shall be held and be applied by the Liquidating Trustee in accordance with the terms of this Trust Agreement, the Plan and the Confirmation Order for the benefit of the Liquidating Trust Beneficiaries, and for no other party, subject to the further covenants, conditions and terms set forth in this Trust Agreement, the Plan and the Confirmation Order.

(g) The Debtor, the Liquidating Trustee and the Liquidating Trust Advisory Board, and any party under the control of such parties, hereby agree to execute any documents or other instruments and shall take all other steps as necessary to cause title to the Liquidating Trust Assets to be transferred to the Liquidating Trust in accordance with this Trust Agreement, the Plan and the Confirmation Order.

1.4. Appointment and Acceptance of Liquidating Trustee.

(a) The Liquidating Trustee has been selected by the Majority Consenting Noteholders in consultation with the Official Committee of Unsecured Creditors appointed in the Tricida, Inc, bankruptcy case. On the Effective Date, the Liquidating Trustee shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to serve as the trustee and administrator of the Liquidating Trust established pursuant to Article IV.C. of the Plan and this Trust Agreement. The Liquidating Trustee shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan and this Trust Agreement. The Debtor shall file a notice prior to the Confirmation Hearing designating the Person selected as the Liquidating Trustee. The appointment of the Liquidating Trustee shall be approved in the Confirmation Order and such appointment shall be effective in accordance with the terms of Article IV.A of the Plan. The Liquidating Trustee shall serve in such capacity, pursuant to the terms of this Trust Agreement and the Plan, until the resignation or discharge of such trustee and the appointment of a successor Liquidating Trustee in accordance with the terms of this Trust Agreement and the Plan.

(b) The Liquidating Trustee accepts the Liquidating Trust created by this Trust Agreement in accordance with the terms of the Plan, the Confirmation Order and this Trust Agreement and the grant, assignment, transfer, conveyance and delivery to the Liquidating Trust, on behalf, and for the benefit, of the Liquidating Trust Beneficiaries, by the Debtor of all of its respective rights, titles and interests in the Liquidating Trust Assets, upon and subject to the terms and conditions set forth herein, in the Plan and in the Confirmation Order. The Liquidating Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purpose of the Liquidating Trust and not otherwise. The Liquidating Trustee shall have the authority to bind the Liquidating Trust in accordance with, and within the limitations set forth in this Trust Agreement, but shall for all purposes hereunder be acting in the capacity as Liquidating Trustee, and not individually.

1.5. Liquidation of Liquidating Trust Assets. The Liquidating Trustee shall, in an expeditious but commercially reasonable manner and subject to the provisions of the Plan, the Confirmation Order and the other provisions of this Trust Agreement, liquidate and convert to Cash the Liquidating Trust Assets, make timely distributions in accordance with the terms of this Trust Agreement, the Plan and the Confirmation Order and not unduly prolong the existence of the Liquidating Trust. The Liquidating Trustee shall liquidate the Liquidating Trust Assets in an effort to maximize net recoveries, and the Liquidating Trustee shall be entitled to take into consideration the risks, timing, and costs of potential actions in making determinations as to the maximization of recoveries; *provided*, that the determinations and actions of the Liquidating Trustee shall in all cases be subject to the limitations provided in this Trust Agreement. Subject to the terms of this Trust Agreement, such liquidations may be accomplished through the prosecution, compromise and settlement, abandonment or dismissal of any Claims, Causes of Action, Retained Causes of Action, or Transferred Causes of Action that are not otherwise subject to release or exculpation pursuant to the Plan, or through the sale or other disposition of the Liquidating Trust Assets (in whole or in combination, and including the sale of the Causes of Action, Retained Causes of Action, or Transferred Causes of Action that are not otherwise subject to release or exculpation pursuant to the Plan). The Liquidating Trustee may incur any reasonable and necessary expenses in connection with the liquidation and conversion of the Liquidating Trust Assets into Cash or in connection with the administration of the Liquidating Trust.

1.6. Wind-Down Budget. On the Effective Date, pursuant to the Wind-Down Budget, the Debtor shall transfer funds into an account held by the Liquidating Trust (the “**Wind-Down Account**”), which funds shall be used for all reasonable activities and expenses to be incurred in winding down the Chapter 11 Case and administering the Liquidating Trust, including but not limited to the fees and expenses of the Liquidating Trust Professionals, the post-Effective Date professional fees and expenses of the Retained Professionals, the Consenting Noteholder Fees and Expenses, and the Statutory Fees. From time to time, the Liquidating Trustee shall determine whether the Cash in the Wind-Down Budget exceeds the amount of Cash needed to fund the Wind-Down Budget and may distribute any such excess Cash in accordance with the Liquidating Trust Waterfall.

1.7. Reversionary Interests. In no event shall any part of the Liquidating Trust Assets revert to or be distributed to the Debtor. The Liquidating Trust shall have a reversionary interest in any Cash remaining in the Professional Fee Reserve after payment in full of all Allowed Professional Fee Claims and all Consenting Noteholder Fees and Expenses without any further notice, action, or order of the Bankruptcy Court.

1.8. Incidents of Ownership. The Liquidating Trust Beneficiaries shall be the sole beneficiaries of the Liquidating Trust and the Liquidating Trust Assets, and the Liquidating Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein, in the Plan and in the Confirmation Order, including those powers set forth in Section 6.2 of this Trust Agreement.

1.9. Privileges.

(a) In connection with the vesting and transfer of the Liquidating Trust Assets, the Liquidating Trustee shall stand in the same position as the Debtor with respect to any claim the Debtor and/or its Estate may have as to an attorney-client privilege, work-product doctrine, or any other privilege or confidentiality protections attaching to any documents or communications (whether written or oral) relating to the Liquidating Trust Assets, and the Liquidating Trustee shall succeed to all rights of the Debtor and/or its Estate to hold, preserve, assert, be the beneficiary of or waive any such privilege or protection (collectively, “**Privileges**”). As of the Effective Date, all Privileges of the Debtor relating to the Liquidating Trust Assets shall be deemed transferred, assigned, and delivered by the Debtor to the Liquidating Trust, without waiver or release, and shall vest with the Liquidating Trust. No such Privilege shall be waived by disclosures to the Liquidating Trustee of the Debtor’s documents, information, or communication subject to attorney-client privilege, work product protections, or other immunities (including those related to common interest or joint defense with third parties), or protections from disclosure held by the Debtor. The Debtor’s Privileges relating to the Liquidating Trust Assets will remain subject to the rights of third parties under applicable law, including any rights arising from the common interest doctrine, the joint defense doctrine, joint attorney-client representation, or any agreement; *provided*, that prior to waiving such privilege, the Liquidating Trustee shall provide such third party with any written notice to the extent required by any joint defense or common interest agreements as of the Petition Date. Any and all work product created by or on behalf of the Liquidating Trustee, the Liquidating Trust Professionals, and their respective agents, representatives, and employees shall be deemed confidential to the extent that such work product is not protected by the attorney-client privilege, attorney work-product doctrine, or any other applicable privilege. In addition, any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 or any other law, rule, or order held by the Debtor prior to the Effective Date with respect to the Liquidating Trust Assets shall vest in the Liquidating Trust from the Effective Date through the date of dissolution of the Liquidating Trust.

## ARTICLE II

### LIQUIDATING TRUST BENEFICIARIES

2.1. Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to the beneficial interest of a Liquidating Trust Beneficiary under this Trust Agreement, or if there is any disagreement between the assignees, transferees, heirs, representatives, or legatees succeeding to all or a part of such an interest resulting in adverse claims or demands being made in connection with such interest, then, in any of such events, the Liquidating Trustee shall be entitled, in its sole discretion, to refuse to comply with any such conflicting claims or demands.

2.2. Rights of Liquidating Trust Beneficiaries. “**Liquidating Trust Interests**” means a non-certified beneficial interest in the Liquidating Trust granted to Holders of a Noteholder Claim, a Patheon Rejection Claim, or an Allowed General Unsecured Claim, which shall entitle such Holders to distributions from the Liquidating

Trust in accordance with the Plan and the Liquidating Trust Waterfall. Each Liquidating Trust Beneficiary shall be entitled to participate in the rights and benefits due to a Liquidating Trust Beneficiary hereunder. The Liquidating Trust Interests are hereby declared and shall be in all respects personal property. No surviving spouse, heir or devisee of any deceased Liquidating Trust Beneficiary shall have any right of dower, homestead or inheritance, or of partition, or any other right, statutory or otherwise, in the Liquidating Trust Assets, but the whole title to the Liquidating Trust Assets shall be vested in the Liquidating Trust and the sole interest of the Liquidating Trust Beneficiaries shall be the rights and benefits given to such person under this Trust Agreement, the Confirmation Order and the Plan. For the avoidance of doubt, the Liquidating Trust (with the assistance of the Disbursing Agent(s) (as defined herein) as necessary) shall make Distributions to the Liquidating Trust Beneficiaries only in accordance with the Liquidating Trust Waterfall.

2.3. Evidence of Liquidating Trust Interest. The Liquidating Trust shall maintain at all times a register of the names, distribution addresses and amounts of Allowed Claims (as of the Effective Date, or as may be Allowed thereafter pursuant to the Plan and this Liquidating Trust Agreement) of the Liquidating Trust Beneficiaries (the “**Register**”). The initial Register shall be delivered to the Liquidating Trustee by the Debtor and shall be based on the list of Holders of Claims maintained by the Notice and Claims Agent as of the Effective Date and prepared in accordance with the provisions of the Plan and the Confirmation Order. All references in this Trust Agreement to Liquidating Trust Beneficiaries shall be read to mean holders of record as set forth in the Register maintained by the Liquidating Trustee and shall include Holders of Noteholder Claims who are beneficial holders of Claims in Class 3, who hold their position through a broker, bank, or other nominee. The Liquidating Trustee shall cause the Register to be kept at its office or at such other place or places as may be designated by the Liquidating Trustee from time to time. The Liquidating Trustee shall, upon the written request of a Liquidating Trust Beneficiary, provide reasonably adequate documentary evidence of such Liquidating Trust Beneficiary’s Liquidating Trust Interest, as indicated in the Register. For the avoidance of doubt, ownership of a Liquidating Trust Interest will not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except the book entry system.

2.4. Transfers of Liquidating Trust Interests. Subject to Section 2.5, Liquidating Trust Interests (which, for the avoidance of doubt, entitles such Liquidating Trust Beneficiary the right to distribution from the Liquidating Trust in accordance with the Plan and the Liquidating Trust Waterfall) shall be fully transferable. Following the recognition of any such transfer as provided in this Section 2.4, any such Transferee shall (to the extent of the Liquidating Trust Interests transferred) succeed to the rights and benefits of such Transferor under this Trust Agreement, the Confirmation Order and the Plan. The Liquidating Trust shall recognize any such transfer of Liquidating Trust Interests occurring after the Effective Date; *provided*, that (i) any such transferor and transferee must provide written notice, in the form attached hereto as Exhibit A, to the Liquidating Trustee within five (5) business date of such transfer, and (ii) any transfer or assignment of a Liquidating Trust Interest by will, intestate succession or otherwise by operation of law shall not be effective against or binding upon the Liquidating Trust unless and until such transfer or assignment is recorded in the Register, which shall be completed as soon as

practicable. The entries in the Register shall be conclusive absent manifest error, and the Liquidating Trust and the Liquidating Trustee shall treat each person whose name is recorded in the Register pursuant to the terms of this Trust Agreement as the owner of Liquidating Trust Interests indicated therein for all purposes of this Trust Agreement, notwithstanding notice to the contrary.

2.5. Exemption from Registration. The Liquidating Trust Interests have not been registered pursuant to the Securities Act of 1933, as amended (the “Securities Act”), or any state securities law, and shall not be listed for public trading on any securities exchange. The parties hereto intend that the rights of the holders of Liquidating Trust Interests shall not be “securities” under applicable laws, but none of the parties hereto represents or warrants that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemption from registration provided by Section 1145 of the Bankruptcy Code and by other applicable law to apply to their issuance under the Plan. The Liquidating Trust shall not be required to file reports with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on account of any transfer. No transfer of a Liquidating Trust Interests that causes the Liquidating Trust to be required to file reports with the Securities and Exchange Commission pursuant to Sections 13 or 15(d) of the Exchange Act shall be permitted and any such transfer shall be void *ab initio*. In order to prevent the Liquidating Trust from becoming subject to such reporting requirements, the Liquidating Trustee may impose certain transfer restrictions designed to maintain the Liquidating Trust as non-reporting entity, and the Liquidating Trust Agreement may be amended pursuant to Section 10.9 to make such changes as are deemed necessary or appropriate to ensure that the Liquidating Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the Trust Indenture Act of 1939, as amended, or the Investment Company Act of 1940, as amended.

2.6. Limited Liability. No provision of this Trust Agreement, the Plan or the Confirmation Order, and no mere enumeration herein of the rights or privileges of any Liquidating Trust Beneficiary, shall give rise to any liability of such Liquidating Trust Beneficiary solely in its capacity as such, whether such liability is asserted by the Debtor, creditors, successors, representatives, employees, or equity interest holders of the Debtor, or by any other person. Liquidating Trust Beneficiaries are deemed to receive the Distributions of Liquidating Trust Assets in accordance with the provisions of this Trust Agreement, the Plan, and the Confirmation Order in exchange for their Allowed Claims without further obligation or liability of any kind, but subject to the provisions of this Trust Agreement.

### ARTICLE III

#### DURATION AND TERMINATION OF LIQUIDATING TRUST

3.1. Dissolution of the Liquidating Trust. The Liquidating Trust shall be dissolved upon the earlier of (a) the distribution of all of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries; and (b) the fifth anniversary of the creation of the

Liquidating Trust; *provided* that, if warranted by the facts and circumstances involved in resolving or monetizing any Liquidating Trust Assets, upon application to, and if approved by, the Bankruptcy Court upon a finding that such extension is necessary or appropriate for purposes of resolving or monetizing such Liquidating Trust Assets and distributing the proceeds to Liquidating Trust Beneficiaries, the term of the Liquidating Trust may be extended by the Liquidating Trustee for a specified term; *provided*, that in no event shall the Liquidating Trust be dissolved later than five years from the creation of such Liquidating Trust unless the Bankruptcy Court, upon motion within the six-month period prior to the fifth anniversary of such creation (or within the six-month period prior to the end of any extension period), determines that a fixed period extension (not to exceed three years, together with any prior extensions, without a favorable private letter ruling from the Internal Revenue Service (the “IRS”) or an opinion of counsel satisfactory to the Liquidating Trustee that any further extension would not adversely affect the status of the trust as a liquidating trust for U.S. federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets.

3.2. Continuance of Liquidating Trust for Winding Up. After the termination of the Liquidating Trust and for the purpose of liquidation and winding up the affairs of the Liquidating Trust, the Liquidating Trustee shall continue to act as such until its duties have been fully performed, including such post-distribution tasks as necessary to wind up the affairs of the Liquidating Trust. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the Liquidating Trust and final distribution of the Liquidating Trust Assets, the Liquidating Trustee and the Liquidating Trust Advisory Board shall have no further duties or obligations hereunder and this Trust Agreement shall terminate other than the provisions that expressly survive termination.

## ARTICLE IV

### ADMINISTRATION OF THE LIQUIDATING TRUST

4.1. Payment of Claims, Expenses, and Liabilities. The Liquidating Trustee shall use the funds in the Wind-Down Account to administer the Plan and wind-down the Debtor’s affairs pursuant to the Wind-Down Budget, including, but not limited to, the costs of holding and liquidating the Liquidating Trust Assets, objecting to Claims, paying the fees and expenses of the Liquidating Trust Professionals, making distributions on Allowed Claims, making distributions to Retained Professionals for Allowed Professional Fee Claims and to Consenting Noteholder Professionals for Consenting Noteholder Fees and Expenses, including from the Professional Fee Reserve, paying any post-Effective Date U.S. Trustee Statutory Fees, prosecuting Retained Causes of Action, Transferred Causes of Action, and any other Causes of Action held by the Estate against third parties that are not released, waived, exculpated, or transferred pursuant to the Plan (including pursuant to Article IX of the Plan) or otherwise, defending or estimating Claims or costs against the Estate, paying taxes, filing tax returns, winding down the Debtor’s 401(k) retirement plan, providing for the purchase of errors and omissions insurance and/or other forms of indemnification for the Liquidating Trustee, in each case, to the extent applicable, and for all such items and other costs of administering the Plan and the Estate.

The Liquidating Trustee may establish and administer any other necessary reserves that may be required under the Plan or this Trust Agreement. Notwithstanding anything to the contrary contained in the Plan or this Trust Agreement, the Liquidating Trustee may make transfers of Cash between the accounts and reserves established under the Plan to satisfy Claims and other obligations in accordance with the Plan and the Wind-Down Budget.

4.2. Procedures for Resolving Unliquidated and Disputed Claims.

(a) Allowance of Claims. After the Effective Date, the Liquidating Trustee shall have and retain any and all rights and defenses that the Debtor had with respect to any Claim immediately prior to the Effective Date, including all legal and equitable defenses to or setoffs or recoupments against any Claims.

(b) Claims Administration Responsibilities. Except as otherwise specifically provided in the Plan, after the Effective Date, the Liquidating Trustee shall have the authority to: (1) File, withdraw, or litigate to judgment, objections to Claims, including, without limitation, the power to seek subordination or recharacterization of Claims by objection, motion, or adversary proceeding, as applicable; (2) settle or compromise any Disputed Claim, without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

(c) Estimation of Claims. The Liquidating Trustee may (but is not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to Section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. Notwithstanding any provision otherwise herein, a Claim that has been expunged or disallowed from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars (\$0.00) unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the Liquidating Trustee may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

(d) Disputed Claims Reserve.

(i) On or after the Effective Date, the Liquidating Trustee shall establish, fund with Cash, and manage a Disputed Claims Reserve, which shall be administered by the Liquidating Trustee. The amount of the Disputed Claims Reserve shall be determined by the Bankruptcy Court.

- (ii) The Liquidating Trustee shall hold Liquidating Trust Assets in the Disputed Claims Reserve in trust for the benefit of (i) Holders of Disputed General Unsecured Claims to the extent such Claims are subsequently Allowed and entitled to distributions from the Liquidating Trust pursuant to the Liquidating Trust Waterfall and (ii) Holders of Notes Claims, Patheon Rejection Claims and Allowed General Unsecured Claims to the extent that Disputed General Unsecured Claims are subsequently Disallowed.
- (iii) The Liquidating Trustee may adjust the Disputed Claims Reserve to reflect all earnings thereon (net of any expenses relating thereto, such expenses including any taxes imposed thereon or otherwise payable by the reserve), to be distributed pursuant to the Plan and this Trust Agreement.
- (e) Adjustment to Claims Without Objection. Any Claim that has been paid, satisfied, or assumed by Purchasers in the Sale, or any Claim that has been amended or superseded, may be adjusted or expunged on the Register by the Liquidating Trustee without an objection to such Claim having to be Filed following notice filed on the docket in the Bankruptcy Court of such adjustment or expungement.
- (f) Time to File Objections to Claims. Except as otherwise provided herein, any objections to Claims shall be Filed on or before the Claims Objection Bar Date (as such date may be extended upon presentment of an order to the Bankruptcy Court by the Liquidating Trustee).
- (g) Amendment to Claims. Except as provided herein, on or after the Effective Date, without the prior authorization of the Bankruptcy Court or the Liquidating Trustee, a Claim may not be Filed or amended and any such new or amended Claim Filed shall be deemed disallowed in full and expunged without any further notice to or action, order or approval of the Bankruptcy Court.
- (h) No Distribution Pending Allowance. If an objection to a Claim, Proof of Claim, or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim, Proof of Claim, or portion thereof unless and until the Disputed Claim becomes an Allowed Claim.
- (i) Distributions after Allowance of all Disputed Claims. The Liquidating Trustee shall file a notice with the Bankruptcy Court when all Disputed Claims have been resolved and shall promptly file an application for entry by the Bankruptcy Court of a final decree closing the Chapter 11 Case. If all Disputed Claims have not been resolved on or before Trust Election Date, the Liquidating Trustee shall file a general status notice as to the expected tax treatment of the Liquidating Trust. Upon the resolution of all Disputed Claims, the Liquidating Trustee shall make a *pro rata* distribution of any remaining assets to the Liquidating Trust Beneficiaries in accordance with the Liquidating Trust Waterfall. Distributions made after the Effective Date to Holders of Disputed Claims that are not Allowed Claims as of the Effective Date but which later become Allowed Claims shall be deemed to have been made on the Effective Date (other than for tax purposes, which shall be treated as described in Section 5.2 of this Trust Agreement).

#### 4.3. Distributions.

(a) Generally. The Liquidating Trust (with the assistance of the Disbursing Agent(s) as necessary) shall make annual distributions to the Liquidating Trust Beneficiaries on account of their Liquidating Trust Interests pursuant to the Liquidating Trust Waterfall and only in accordance with the terms of the Plan, the Confirmation Order and this Trust Agreement and the Wind Down Budget, and only to the extent that the Liquidating Trust has sufficient Liquidating Trust Assets (or income and/or proceeds realized from Liquidating Trust Assets) to make such payments in accordance with and to the extent provided for in the Plan, the Confirmation Order and this Trust Agreement. The Liquidating Trustee, in consultation with the Liquidating Trust Advisory Board, shall make a determination of the amount of Cash available for distribution, which shall include the amount of unrestricted Cash then on hand (including any Cash received from the Debtor on the Effective Date, and treating any permissible investment as Cash for purposes of this Section 4.3 of this Trust Agreement), reduced by any such amounts that (i) are reasonably necessary to meet contingent liabilities and to maintain the value of the Liquidating Trust Assets pending their liquidation during the term of the Liquidating Trust, (ii) are determined to be necessary to pay or reserve for reasonably incurred or anticipated expenses (including, but not limited to, any Taxes imposed on or payable by the Debtor or the Liquidating Trust or in respect of the Liquidating Trust Assets), or (iii) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Liquidating Trust in accordance with the Plan and this Trust Agreement. The Liquidating Trustee shall then distribute available Cash, if any, to the holders of Liquidating Trust Interests in accordance with Liquidating Trust Waterfall.

(b) Date of Distributions. The Liquidating Trustee shall make distributions to Liquidating Trust Beneficiaries entitled to distributions from the Liquidating Trust as provided in the Plan and this Trust Agreement on such dates as it chooses, in consultation with the Liquidating Trust Advisory Board; *provided*, however, that all such distributions shall be made in an expeditious and orderly manner.

#### (c) Delivery of Distributions.

(i) If any dispute arises as to the identity of a Liquidating Trust Beneficiary that is entitled to receive a distribution pursuant to the Plan, the Disbursing Agent may, in lieu of making such distribution to such person, make the distribution into an escrow account until the disposition thereof is determined by written agreement among the interested parties to such dispute.

#### (d) Disbursing Agent.

(i) Except as otherwise provided herein, the Disbursing Agent shall make distributions to Liquidating Trust Beneficiaries to the address set forth in the Register, which shall be (a) the addresses set forth on the respective proofs of Claim filed by such Liquidating Trust Beneficiaries, if applicable; (b) the addresses set forth on any written notices of address changes delivered to the Notice and Claims Agent or the Liquidating Trust, as applicable after the date of any related proof of

Claim; or (c) at the address reflected in the Schedules or, if not reflected in the Schedules, then in the other records of the Debtor if no proof of Claim is filed and the Liquidating Trustee or the Debtor have not received a written notice of a change of address. The Liquidating Trustee shall have the absolute and unconditional right to rely on the information provided by the Debtor for purposes of notices and distributions under this Trust Agreement; *provided*, however, that the manner of such distributions shall be determined at the discretion of the Liquidating Trustee.

(ii) Distributions to Liquidating Trust Beneficiaries on account of Noteholder Claims. Liquidating Trust Beneficiaries that hold Liquidating Trust Interests on account of Noteholder Claims shall receive a distribution in accordance with the customary procedures of DTC. Distributions to such Liquidating Trust Beneficiaries shall be deemed completed when made to (or at the direction of) the Indenture Trustee, which shall hold or direct such distributions for the benefit of such Liquidating Trust Beneficiaries. The Indenture Trustee may transfer or direct the transfer of such distributions directly through the facilities of DTC (whether by means of book-entry exchange, free delivery, or otherwise) and will be entitled to recognize and deal for all purposes under the Plan and this Liquidating Trust Agreement with Liquidating Trust Beneficiaries that hold Liquidating Trust Interests on account of Noteholder Claims, to the extent consistent with the customary practices of DTC. The Indenture Trustee shall not incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct. If the Indenture Trustee is unable to make, or consents to the Liquidating Trustee making such distributions, then the Liquidating Trustee, with the Indenture Trustee's cooperation, shall make such distributions. The Indenture Trustee shall have no duties, obligations, or responsibilities with respect to any form of distribution to Liquidating Trust Beneficiaries that hold Liquidating Trust Interests on account of Noteholder Claims that is not DTC eligible, and the Liquidating Trustee shall make such distributions. For the avoidance of doubt, all such distributions referenced in this paragraph shall be subject to the Trustee Charging Lien.

(iii) Exculpation of Disbursing Agent. From and after the Effective Date, the Disbursing Agent, solely in its capacity as Disbursing Agent, shall be exculpated by all Entities, including Holders of Claims against the Debtor, Liquidating Trust Beneficiaries, and other parties in interest, from any and all Claims, Causes of Action, and other assertions of liability arising out of the discharge of the powers and duties conferred upon such Disbursing Agent by the Plan or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or applicable law, except for actions or omissions to act arising out of the gross negligence or willful misconduct, fraud, malpractice, criminal conduct, or *ultra vires* acts of such Disbursing Agent.

(iv) Rights and Powers of Disbursing Agent. The Disbursing Agent may (a) effect all actions and execute all agreements, instruments, and other documents necessary to carry out the provisions of the Plan; (b) make all distributions

contemplated hereby; and (c) perform such other duties as may be required of the Disbursing Agent pursuant to the Plan.

(v) Expenses of Disbursing Agent. Except as otherwise ordered by the Bankruptcy Court, any reasonable and documented fees and expenses incurred by the Disbursing Agent acting in such capacity (including reasonable documented attorneys' fees and expenses) on or after the Effective Date shall be paid in accordance with the Wind-Down Budget from the Wind-Down Account in the ordinary course of business. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties. If the Disbursing Agent is otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Liquidating Trust.

(e) Undeliverable or Non-Negotiated Distributions. If any distribution to a Liquidating Trust Beneficiary (1) is returned as undeliverable for lack of a current address or otherwise; or (2) is not cashed or otherwise presented for collection by the Liquidating Trust Beneficiary within ninety (90) calendar days after the mailing of such distribution, the Liquidating Trustee shall file with the Bankruptcy Court the name and last known address of the Liquidating Trust Beneficiary of undeliverable distribution or uncashed distribution, as applicable. If, after the passage of thirty (30) calendar days after such Filing, the payment or distribution on the Allowed Claim still cannot be made, then (1) the Liquidating Trust Beneficiary shall cease to be entitled to the undeliverable distribution or uncashed distribution, which will revert to the Liquidating Trust; and (2) the Allowed Claim of such Holder shall be deemed disallowed and expunged for purposes of further distributions under the Plan and this Trust Agreement. Nothing contained in the Plan or this Trust Agreement shall require the Debtor, the Liquidating Trustee, or any Disbursing Agent to attempt to locate any Liquidating Trust Beneficiary.

(f) Manner of Payment under Plan. Any distributions to be made by or on behalf of the Debtor or the Liquidating Trustee (as applicable) pursuant to the Plan or this Trust Agreement shall be made by checks drawn on accounts maintained by the Liquidating Trustee or by wire transfer if circumstances justify, at the option of the Liquidating Trustee.

(g) Foreign Currency Exchange Rate. As of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal*, on the Petition Date.

(h) Fractional Dollars. Notwithstanding any other provision of the Plan, the Disbursing Agent shall not be required to make distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment shall reflect a rounding of such fraction down to the nearest whole dollar.

(i) Satisfaction of Claims. Except as otherwise specifically provided in the Plan, distributions and deliveries to be made on account of Allowed Claims under the

Plan shall be in complete and final satisfaction, settlement, and discharge of and exchange for such Allowed Claims.

(j) Minimum Distributions. No payment of Cash in an amount of less than one hundred U.S. dollars (\$100.00) shall be required to be made on account of any Allowed Claim. Such undistributed amount may instead be used in accordance with the Plan and this Trust Agreement. If the Cash available for the final distribution is less than the cost to distribute such funds, the Liquidating Trustee may donate such funds to a charitable organization that is (a) described in section 501(c)(3) of the IRC, (b) exempt from U.S. federal income tax under section 501(a) of the IRC, (c) not a “private foundation,” as defined in section 509(a) of the IRC, and (d) that is unrelated to the Liquidating Trust and any insider of the Liquidating Trustee.

(k) Allocation of Distributions between Principal and Interest. To the extent that any Allowed Claim entitled to a distribution under the Plan is based upon any obligation or instrument that is treated for U.S. federal income tax purposes as indebtedness of the Debtor and accrued but unpaid interest thereon, such distribution shall be allocated first to the principal amount of the Allowed Claim (as determined for U.S. federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Allowed Claim, to accrued but unpaid interest.

(l) Distributions Free and Clear. Except as otherwise provided in the Plan, any distribution or transfer made under this Trust Agreement, including distributions to any Liquidating Trust Beneficiary, shall be free and clear of any Liens, Claims, encumbrances, charges, and other interests, and no other entity shall have any interest, whether legal, beneficial, or otherwise, in property distributed or transferred pursuant to the Plan.

4.4. Compliance with Laws. Any and all distributions of the Liquidating Trust Assets shall be in compliance with applicable laws, including applicable federal and state tax and securities laws.

4.5. Fiscal Year. Except for the first and last years of the term of the Liquidating Trust, the fiscal year of the Liquidating Trust shall be the calendar year. For the first and last years of the term of the Liquidating Trust, the fiscal year of the Liquidating Trust shall be such portion of the calendar year that the Liquidating Trust is in existence.

4.6. Books and Records. The Liquidating Trust shall retain and preserve the Debtor’s books, records, and files that shall have been delivered to or created by the Liquidating Trust, in such detail and for such period of time as may be necessary to enable it to make full and proper reports in respect thereof in accordance with the provisions of this Trust Agreement and applicable provisions of law, including applicable tax, securities and other federal and state laws. The Liquidating Trust Advisory Board shall have the right upon five (5) business days’ notice to the Liquidating Trustee to inspect such books and records, subject to the Liquidating Trustee’s right to deny access in a reasonable effort to preserve privileged or confidential information. Except as otherwise provided herein or in the Plan, nothing in this Trust Agreement requires the Liquidating Trustee to file any

accounting or seek approval of any court with respect to the administration of the Liquidating Trust, or as a condition for making any payment or Distribution out of the Liquidating Trust Assets.

4.7. Liquidating Trust Insurance. The Liquidating Trustee is hereby authorized, but not required, to obtain all reasonable insurance coverage for itself, the Liquidating Trust Advisory Board, and their agents, representatives, employees or independent contractors, including coverage with respect to the liabilities, duties and obligations of the Liquidating Trustee, the Liquidating Trust Advisory Board, and their agents, representatives, employees or independent contractors under this Trust Agreement and the Plan (“**Insurance Coverages**”). The cost of any such Insurance Coverage shall be an expense of the Liquidating Trust and paid out of the Wind-Down Account in accordance with the Wind-Down Budget.

4.8. Reports.

(a) The Liquidating Trustee shall, as soon as reasonably practicable and no later than 45 days following the end of each fiscal quarter during the term of the Liquidating Trust, deliver by electronic communication (including e-mail and Internet or intranet websites) to the Liquidating Trust Advisory Board, and to each Liquidating Trust Beneficiary who has so requested from the Liquidating Trustee in writing, the following information: (i) the status of any Claims, Causes of Action, Retained Causes of Action, Transferred Causes of Action, and litigation involving the Liquidating Trust or the Liquidating Trust Assets, (ii) the costs and expenses of the Liquidating Trust that are incurred (including any taxes imposed on the Liquidating Trust or actual reasonable out-of-pocket fees and expenses incurred by Liquidating Trust Professionals in connection with the administration and liquidation of the Liquidating Trust Assets and preservation of books and records as provided in Section 4.6 of this Trust Agreement) during the preceding fiscal quarter and the remaining amount (if any) of the Wind-Down Account, (iii) the amounts listed in clause (ii) incurred since the Effective Date, (iv) the amount of Cash and other assets received by the Liquidating Trust during the prior fiscal quarter, (v) the aggregate amount of Cash and other assets received by the Liquidating Trust since the Effective Date and (vi) the aggregate amount of distributions from the Liquidating Trust to the Liquidating Trust Beneficiaries since the Effective Date. The Liquidating Trustee shall also timely prepare, file, and distribute such additional statements, reports, and submissions as may be necessary to cause the Liquidating Trust and the Liquidating Trustee to be in compliance with applicable law. The Liquidating Trustee shall also provide the U.S. Trustee and the Bankruptcy Court the information and reports they may reasonably request concerning Trust administration.

## ARTICLE V

### TAX MATTERS

#### 5.1. Liquidating Trustee's Tax Power for Debtor.

(a) For all taxable periods ended on or before the dissolution of the Debtor, the Liquidating Trustee shall have the same authority and responsibility in respect of all taxes of the Debtor (including as the common parent or other agent of any consolidated, combined, or unitary tax group of which the Debtor was the agent) and, to the same extent, as if the Liquidating Trustee was the Debtor.

(b) In furtherance of the transfer of the Liquidating Trust Assets to the Liquidating Trust on the Effective Date, the Liquidating Trust shall be entitled to all tax refunds of the Debtor (and the Liquidating Trust shall bear responsibility for all tax liabilities of the Debtor for taxable periods ended on or before the dissolution of the Debtor, to the extent not discharged by the Plan or provided for payment or otherwise satisfied in the Plan).

5.2. Treatment of Trust for Tax Purposes. The U.S. federal income tax classification of the Liquidating Trust shall be determined pursuant to subsections (a) or (b) below, as applicable.

(a) Disputed Claims Resolved Before Trust Election Date: If all Disputed Claims are resolved prior to the Trust Election Date, the Liquidating Trust shall be classified as a liquidating trust described in Treasury Regulations section 301.7701-4(d) that is treated as a "grantor trust" for U.S. federal income tax purposes. On the Effective Date, the Debtor shall be deemed to have distributed to the Holders of Allowed Class 3, 4 and 5 Claims an undivided interest in the Liquidating Trust Assets and such Holders shall be deemed to have contributed such Liquidating Trust Assets to the Liquidating Trust in exchange for beneficial interests in the Liquidating Trust.

(b) Disputed Claims Unresolved Prior to Trust Election Date: If all Disputed Claims have not been resolved prior to the Trust Election Date, then the Liquidating Trustee shall make the DOF Election and elect to treat the Disputed Claims Reserve as a "disputed ownership fund" as described in Treasury Regulations section 1.468B-9. The Liquidating Trustee shall file all income tax returns with respect to any income attributable to the disputed ownership fund and shall pay the U.S. federal, state, and local income taxes attributable to such disputed ownership fund based on the items of income, deduction, credit, or loss allocable thereto. Any taxes imposed on the disputed ownership fund or its assets shall be paid out of the assets of the disputed ownership fund (including any assets of the Disputed Claims Reserve) and any subsequent distributions in respect of the allowance or disallowance of such claims shall be reduced accordingly. In the event, and to the extent, that any Cash in any disputed ownership fund is insufficient to pay the portion of any taxes attributable to taxable income arising from assets of the disputed ownership fund, assets of the disputed ownership fund (including those otherwise distributable) may be sold to pay such taxes. The undisputed portion of the Liquidating

Trust Assets shall be treated as held in a grantor trust, with deemed distribution to and contribution from the Holders of Allowed Claims in Classes 3, 4, and 5 as described in the immediately preceding paragraph.

5.3. Tax Reporting.

(a) To the extent permitted by applicable law, all parties, including the Liquidating Trustee and any Liquidating Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes. The Debtor will provide information to the Liquidating Trustee as to its valuation determinations with respect to the Retained Causes of Action and Transferred Causes of Action on the Effective Date to facilitate consistent tax reporting by the Liquidating Trust. Any valuation shall be for tax reporting purposes only and shall not require the Debtor to undergo a separate analysis not already completed as of the filing date of the Plan.

(b) The Liquidating Trustee shall be responsible for payment, out of the Wind-Down Account, of any taxes imposed on the Liquidating Trust or its assets, including the Disputed Claims Reserve.

(c) As soon as reasonably practicable after the Liquidating Trust Assets are transferred to the Liquidating Trust, but in no event later than one hundred and twenty (120) days thereafter, the Liquidating Trust shall make a good faith valuation of the Liquidating Trust Assets, which may be based on the Debtor's valuation of the Liquidating Trust Assets if the Liquidating Trust determines in its sole discretion that the Debtor's valuation is materially accurate, and such valuation shall be used consistently by all parties for all U.S. federal income tax purposes. The Liquidating Trust shall also file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any Governmental Unit. In connection with the preparation of the valuation contemplated hereby and by the Plan, the Liquidating Trust shall be entitled to retain such professionals and advisors as the Liquidating Trust shall determine to be appropriate or necessary, and the Liquidating Trustee shall take such other actions in connection therewith as it determines to be appropriate or necessary. Such valuation shall be used consistently by such parties for all U.S. federal income tax purposes.

(d) As of the Effective Date, the Liquidating Trustee will be responsible for preparing and filing any tax forms or returns on behalf of the Debtor's Estate and the Liquidating Trust (to the extent not the responsibility of the Purchasers); *provided*, however, that the Liquidating Trustee shall not be responsible for preparing or filing any tax forms for Holders of Interests in the Debtor (which Interests shall be cancelled pursuant to the Plan), but shall provide such Holders with any information reasonably required to prepare such forms. The Debtor and the Liquidating Trustee shall have the right to request an expedited determination of any tax liability pursuant to section 505 of the Bankruptcy Code, including on any unpaid liability of the Debtor's Estate or the Liquidating Trust for any tax incurred during the administration of the Chapter 11 Case.

(e) The Liquidating Trustee also shall annually send to each Liquidating Trust Beneficiary a separate statement and/or Schedule K-1, as applicable, regarding the

information necessary for tax reporting purposes and shall instruct all such beneficiaries to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such beneficiary's underlying beneficial owners with instructions to utilize such information in preparing their U.S. federal income tax returns. The Liquidating Trustee shall also file (or cause to be filed) any other statement, return or disclosure relating to the Liquidating Trust that is required by any governmental unit.

5.4. Tax Withholdings by Liquidating Trustee.

(a) The Liquidating Trustee shall (1) withhold, deduct, and pay over to the appropriate governmental authority any amount required to be withheld under U.S. federal, state, local, or foreign tax laws with respect to any distribution pursuant to this Trust Agreement and (2) comply with any reporting requirements imposed by any U.S. federal, state, local, or foreign taxing authority. The Liquidating Trustee may withhold all or the appropriate portion of any distribution due to any Liquidating Trust Beneficiary until such time as such Liquidating Trust Beneficiary provides the necessary information to comply with any withholding requirements of any governmental authority. Any tax withheld shall be treated as distributed and received by the applicable Liquidating Trust Beneficiary for all purposes of this Trust Agreement and the Plan. If a Liquidating Trust Beneficiary fails to provide the information necessary to comply with any withholding requirements of any governmental authority on or before the day that is one year after the Effective Date of the Plan, then such beneficiary's distribution may be treated as unclaimed property in accordance with this Trust Agreement.

5.5. IRS Forms.

(a) In connection with the Plan, to the extent applicable and not an obligation of the Purchasers under the Sale Documents, the Liquidating Trustee shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Liquidating Trustee shall be authorized to take all actions necessary to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms it believes are reasonable and appropriate. The Liquidating Trustee reserves the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances.

(b) As a condition precedent to receiving any distribution under this Plan, each Liquidating Trust Beneficiary that is entitled to a distribution under the Plan and this Trust Agreement must provide the Liquidating Trustee with the applicable executed IRS Form. An Allowed Claim of a Holder that fails to provide the applicable executed IRS Form or provide any other required information to effectuate a distribution within sixty (60) days after service (by first class mail) of a formal request for the same by the

Liquidating Trustee shall be deemed disallowed and expunged for purposes of distributions under the Plan.

## ARTICLE VI

### POWERS OF AND LIMITATIONS ON THE LIQUIDATING TRUSTEE

#### 6.1. Term of the Liquidating Trustee.

(a) The Liquidating Trustee will serve on and after the Effective Date in accordance with this Trust Agreement and the Plan, reporting to the Liquidating Trust Advisory Board to the extent required by this Trust Agreement and the Plan. Subject to Article VII of this Trust Agreement and Article IV of the Plan, the Liquidating Trustee shall hold office until the earlier to occur of (i) the termination of the Liquidating Trust in accordance with the terms set forth in this Trust Agreement and the Plan or (ii) the Liquidating Trustee's death, resignation, dissolution, incapacity or removal pursuant to this Trust Agreement. The duties, responsibilities and powers of the Liquidating Trustee shall terminate on the date the Liquidating Trust is wound up and dissolved in accordance with Delaware law pursuant to Section 3.1 of this Trust Agreement; *provided*, that Section 3.2 of this Trust Agreement, Section 9.2 of this Trust Agreement, Section 9.4 of this Trust Agreement, Section 9.5 of this Trust Agreement and Section 9.6 of this Trust Agreement shall survive such termination, dissolution and entry. References herein to the Liquidating Trustee shall refer to the individual or individuals serving as the Liquidating Trustee solely in its or their capacity as trustees hereunder.

#### 6.2. Responsibilities and Authority of the Liquidating Trustee.

(a) The responsibilities and authority of the Liquidating Trustee shall include the following rights and responsibilities, which shall be the exclusive rights and responsibilities of the Liquidating Trustee: (i) preserving and liquidating the Liquidating Trust Assets; (ii) administering and paying taxes, including, among other things, (1) filing tax returns (to the extent not the obligation of any Purchaser), and (2) representing the interest and account of the Liquidating Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding, or audit; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Liquidating Trustee's performance of its duties under the Plan and this Trust Agreement; (iv) distributing information statements as required for U.S. federal income tax and other applicable tax purposes; (v) Filing an application for entry by the Bankruptcy Court of a final decree closing the Chapter 11 Case; (vi) making distributions to Retained Professionals for Allowed Professional Fee Claims and to Consenting Noteholder Professionals for Consenting Noteholder Fees and Expenses, including from the Professional Fee Reserve; (vii) making distributions to the Liquidating Trust Beneficiaries in accordance with the Plan and this Trust Agreement; and (viii) such other responsibilities as may be vested in the Liquidating Trustee pursuant to the Plan, this Trust Agreement, or an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of the Plan.

6.3. Actions Taken by the Liquidating Trustee.

(a) The Liquidating Trustee may take any and all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan and this Trust Agreement, without the need for Bankruptcy Court approval (unless otherwise indicated) subject to and in accordance with the terms of the Plan and this Trust Agreement, including, but not limited to:

(i) the execution and delivery of appropriate agreements or other documents of consolidation, conversion, disposition, transfer, or dissolution containing terms that are consistent with the terms of the Plan and this Trust Agreement and that satisfy the requirements of applicable law;

(ii) the power to invest funds of the Liquidating Trust, and withdraw, make distributions, and pay taxes and other obligations owed by the Liquidating Trust from such funds in accordance with the Plan and this Trust Agreement;

(iii) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Liquidating Trustee with respect to its responsibilities. For the avoidance of doubt, a law firm shall not be disqualified from serving as counsel to the Liquidating Trustee solely because of that law firm's prior retention by the Debtor, the Creditors' Committee, or a member of the Creditors' Committee, the Indenture Trustee, or the Consenting Noteholders;

(iv) the execution and delivery of any appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, duty, or obligation on terms consistent with the Plan and this Trust Agreement;

(v) the power to act on behalf of the Debtor, the Debtor's Estate or the Liquidating Trust in commencing, prosecuting, compromising, settling, or defending any litigation or rights (whether legal or equitable) pertaining to the Liquidating Trust Assets, including the Retained Causes of Action and Transferred Causes of Action, without notice to or approval from the Bankruptcy Court;

(vi) the ability to appear and have standing in the Bankruptcy Court (or any other court having jurisdiction over the Liquidating Trust Assets) to be heard with regard to Claim Objections and other matters that may affect or relate to the Liquidating Trust Assets;

(vii) file, prosecute, compromise or settle Claim Objections to Disputed Claims in accordance with the Plan without further approval of or application to the Bankruptcy Court (except to the extent required by this Trust Agreement, the Plan, or the Confirmation Order);

(viii) the filing of appropriate documents with the appropriate governmental authorities pursuant to applicable law;

(ix) the ability to protect and enforce the rights to the Liquidating Trust Assets vested in the Liquidating Trust by this Trust Agreement;

(x) the ability to oversee compliance with the Liquidating Trust's accounting, finance, and reporting obligations;

(xi) the powers set forth in Section 4.2(b) of this Trust Agreement;

(xii) the power to take any action as shall be necessary to administer the Chapter 11 Case (including, but not limited to, the winddown of the Debtor's 401(k) retirement plan);

(xiii) the power to pay any and all expenses and make all other payments in connection with administering the Liquidating Trust without further order of the Bankruptcy Court;

(xiv) the ability to open and maintain bank accounts in the name of the Liquidating Trust, draw checks and drafts thereon on the sole signature of the Liquidating Trustee, and terminate such accounts as the Liquidating Trustee deems appropriate;

(xv) in the event that the Liquidating Trustee determines that the Liquidating Trust Beneficiaries or the Liquidating Trust may, will, or have become subject to adverse tax consequences, in the Liquidating Trustee's sole discretion, the power to take such actions that will, or are intended to, alleviate such adverse tax consequences;

(xvi) make Distributions to holders of Allowed Claims and deliver Distributions on account of the Liquidating Trust Interests or such other Distributions as may be authorized by Final Order of the Bankruptcy Court, this Trust Agreement, or the Plan to the Liquidating Trust Beneficiaries in accordance with this Trust Agreement; and

(xvii) any and all other actions that the Liquidating Trustee determines is necessary or appropriate to effectuate the Plan and this Trust Agreement, including, but not limited to, the exercise of the Debtor's rights to conduct discovery and oral examination of any Person under Rule 2004 of the Federal Rules of Bankruptcy Procedure.

#### 6.4. Limitations on Liquidating Trustee.

(a) The Liquidating Trustee shall, on behalf of the Liquidating Trust, hold the Liquidating Trust out as a trust in the process of liquidation and not as an investment company. The authority of the Liquidating Trustee shall be restricted to the liquidation of the Liquidating Trust Assets on behalf, and for the benefit, of the Liquidating Trust Beneficiaries and the distribution and application of the Liquidating Trust Assets for the purposes set forth in, and the conservation and protection of the Liquidating Trust Assets and the administration thereof in accordance with, the provisions of this Trust

Agreement, the Plan and the Confirmation Order, and shall not take any action that would jeopardize (i) treatment of the Liquidating Trust as a “liquidating trust” that is a grantor trust for U.S. federal income tax purposes and (ii) if the DOF Election is made, treatment of the Disputed Claims Reserve as a “disputed ownership fund” for U.S. federal income tax purposes. The Liquidating Trustee shall not at any time, on behalf of the Liquidating Trust or the Liquidating Trust Beneficiaries, (i) enter into or engage in any trade or business, or (ii) take any actions that are not related, directly or indirectly, to the purposes of this Trust Agreement and the Liquidating Trust or the administration or implementation of the terms hereof.

(b) Notwithstanding anything in this Trust Agreement to the contrary, the Liquidating Trustee shall provide reasonable notice to the Liquidating Trust Advisory Board with respect to the following matters (the “**Material Matters**”):

(i) any incurrence of any cost, expense or fee in excess of \$[50,000] (covering services to be rendered or products utilized by the Liquidating Trustee within a one-month period);

(ii) determination of the timing of any Distribution to the Liquidating Trust Beneficiaries;

(iii) any determination to pursue or settle any Retained Causes of Action or Transferred Causes of Action;

(iv) the allowance or objection to any Claim more than \$100,000; and

(v) the dissolution of the Liquidating Trust.

In the event that the Liquidating Trust Advisory Board objects to the Liquidating Trustee’s proposed course of action with respect to any Material Matter, the Liquidating Trust Advisory Board shall submit such matter to the Liquidating Trust Beneficiaries, and the Liquidating Trustee shall not pursue such proposed course of action if, within twenty (20) days following the submission of such matter to the Liquidating Trust Beneficiaries, the Majority Liquidating Trust Beneficiaries have not objected to the proposed course of action.

6.5. Compensation and Expenses of the Liquidating Trustee.

(a) The Liquidating Trustee shall be entitled to receive reasonable compensation in connection with its performance of its duties plus the reimbursement of reasonable out-of-pocket expenses. All reasonable and documented costs, expenses, and obligations, including filing fees, incurred by the Liquidating Trustee or the Liquidating Trust Professionals shall be paid from the Wind-Down Account, prior to any distribution to the Liquidating Trust Beneficiaries and without further Bankruptcy Court approval or order (subject to the limitations set forth in this Trust Agreement and the Plan).

6.6. Agents, Employees, and Professionals.

(a) The Liquidating Trustee, in consultation with the Liquidating Trust Advisory Board, shall have the right, without Court approval, to retain the services of attorneys, accountants, and other professionals and agents (the “**Liquidating Trust Professionals**”), to assist and advise the Liquidating Trustee in the performance of its duties, and to compensate and reimburse expenses of such professionals in accordance with the this Trust Agreement; *provided*, however, that it is understood that the Liquidating Trust intends to initially engage [•] as Primary Trust Counsel. None of the professionals that represented parties in interest in the Chapter 11 Case shall be precluded from being engaged by the Liquidating Trust solely on account of their service as a professional for such parties-in-interest prior to the Effective Date. The Liquidating Trustee may remove any Liquidating Trust Professional with or without Cause.

(b) The Primary Trust Counsel that is appointed in accordance with the terms of the Plan shall be considered a Liquidating Trust Professional for the purposes of this Trust Agreement and the Plan. Notwithstanding Section 6.7(a) of this Trust Agreement, in the event of the resignation, removal, bankruptcy or insolvency of the Primary Trust Counsel, a vacancy shall be deemed to exist, and a successor shall be appointed by the Liquidating Trustee in consultation with the Liquidating Trust Advisory Board.

(c) After the Effective Date, Liquidating Trust Professionals shall be required to submit reasonably detailed invoices on a monthly basis to the Liquidating Trustee and the Liquidating Trust Advisory Board, including in such invoices a description of the work performed, who performed such work, and if billing on an hourly basis, the hourly rate of such person, plus an itemized statement of expenses. In the event of any dispute concerning the entitlement to, or the reasonableness of any compensation and/or expenses of any Liquidating Trust Professionals, either the Liquidating Trustee or the affected party may ask the Bankruptcy Court to resolve the dispute. The Liquidating Trustee is authorized to pay compensation for services rendered or reimbursement of expenses incurred after the Effective Date in the ordinary course and without the need for Bankruptcy Court approval.

6.7. Investment of Liquidating Trust Monies. The Liquidating Trustee may, in consultation with the Liquidating Trust Advisory Board, invest Cash (including any earnings thereon or proceeds therefrom); *provided*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulations section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities. All monies and other assets received by the Liquidating Trustee as Liquidating Trust Assets (including the proceeds thereof as a result of investment in accordance with this Section 6.6 of this Trust Agreement) shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Liquidating Trust Beneficiaries, and shall not be segregated from other Liquidating Trust Assets, unless and to the extent required by the Plan.

6.8. Resident Trustee.

(a) The Resident Trustee has been appointed and hereby agrees to serve as the trustee of the Liquidating Trust solely for the purpose of complying with the requirement of Section 3807(a) of the Trust Act that the Liquidating Trust have one trustee, which, in the case of a natural person, is a resident of the State of Delaware, or which in all other cases, has its principal place of business in the State of Delaware. The duties and responsibilities of the Resident Trustee shall be limited solely to (i) accepting legal process served on the Liquidating Trust in the State of Delaware, (ii) the execution of any certificates required to be filed with the office of the Delaware Secretary of State that the Resident Trustee is required to execute under section 3811 of the Trust Act, and (iii) any other duties specifically allocated to the Resident Trustee in this Trust Agreement. Except as provided in the foregoing sentence, the Resident Trustee shall have no management responsibilities or owe any fiduciary duties to the Liquidating Trust, the Liquidating Trustee, the Liquidating Trust Advisory Board, or the Liquidating Trust Beneficiaries.

(b) By execution of this Trust Agreement, the Resident Trustee accepts the Liquidating Trust created herein. Except as otherwise expressly required by Section 6.7(a) of this Trust Agreement, the Resident Trustee shall not have any duty or liability with respect to the administration of the Liquidating Trust, the investment of the Liquidating Trust Assets or the Distribution of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries, and no such duties shall be implied. The Resident Trustee shall not be liable for the acts or omissions of the Liquidating Trustee or the Liquidating Trust Advisory Board, nor shall the Resident Trustee be liable for supervising or monitoring the performance of the duties and obligations of the Liquidating Trustee or the Liquidating Trust Advisory Board under this Trust Agreement, except as expressly required by Section 6.7(a) of this Trust Agreement. The Resident Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder. The Resident Trustee shall not be personally liable under any circumstances, except for its own willful misconduct, bad faith, or gross negligence. Without limiting the foregoing:

(i) the Resident 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;

(ii) no provision of this Trust Agreement shall require the Resident 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 Resident 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;

(iii) the Resident Trustee shall not be personally liable for the validity or sufficiency of this Trust Agreement or for the due execution of this Trust Agreement by the other parties to this Trust Agreement;

(iv) the Resident 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;

(v) the Resident Trustee may request the Liquidating 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 Resident Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(vi) in the exercise or administration of the Liquidating Trust hereunder, the Resident Trustee (A) may act directly or through agents or attorneys pursuant to agreements entered into with any of them and (B) may consult with nationally recognized counsel selected by it in good faith and with due care 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; and

(vii) the Resident Trustee acts solely as Resident Trustee hereunder and not in its individual capacity, and all persons having any claim against the Resident Trustee by reason of the transactions contemplated by this Trust Agreement shall look only to the Liquidating Trust Assets for payment or satisfaction thereof.

(c) The Resident Trustee shall be entitled to receive compensation out of the Wind-Down Account in accordance with the Wind-Down Budget for the services that the Resident Trustee performs in accordance with this Trust Agreement in accordance with such fee schedules as shall be agreed from time to time by the Resident Trustee and the Liquidating Trustee. The Resident Trustee may also consult with counsel (who may be counsel for the Liquidating Trust, counsel for the Resident Trustee, or counsel for both the Liquidating Trust and the Resident Trustee) with respect to those matters that relate to the Resident Trustee's role as the Delaware resident trustee of the Liquidating Trust, and the reasonable legal fees incurred in connection with such consultation shall be reimbursed out of the Wind-Down Budget to the Resident Trustee pursuant to this Section 6.7(c) of this Trust Agreement on terms reasonably acceptable to the Liquidating Trust Advisory Board; *provided* that no such fees shall be reimbursed to the extent that they are incurred as a result of the Resident Trustee's gross negligence, bad faith or willful misconduct.

(d) The Resident Trustee shall serve for the duration of the Liquidating Trust or until the earlier of (i) the effective date of the Resident Trustee's resignation, or (ii) the effective date of the removal of the Resident Trustee. The Resident Trustee may resign at any time by giving 30 days' written notice to the Liquidating Trustee and the Liquidating Trust Advisory Board; *provided*, however, that such resignation shall not be effective until such time as a successor Resident Trustee has accepted appointment. The Resident Trustee may be removed at any time by the Liquidating Trustee or the Liquidating Trust Advisory Board, by providing 30 days' written notice to the Resident Trustee; *provided*, however, such removal shall not be effective until such time as a successor Resident Trustee has accepted appointment. Upon the resignation or removal of the

Resident Trustee, the Liquidating Trustee shall appoint a successor Resident Trustee. If no successor Resident Trustee shall have been appointed and shall have accepted such appointment within 45 days after the giving of such notice of resignation or removal, the Resident Trustee may petition the Bankruptcy Court for the appointment of a successor Resident Trustee. Any successor Resident Trustee appointed pursuant to this Section 6.7(d) of this Trust Agreement shall be eligible to act in such capacity in accordance with this Trust Agreement and, following compliance with this Section 6.7(d) of this Trust Agreement, shall become fully vested with the rights, powers, duties, and obligations of its predecessor under this Trust Agreement, with like effect as if originally named as Resident Trustee. Any such successor Resident Trustee shall notify the Resident Trustee of its appointment by providing written notice to the Resident Trustee, and upon receipt of such notice, the Resident Trustee shall be discharged of its duties herein.

6.9. Fiduciary and Other Duties. Notwithstanding anything in the Plan or this Trust Agreement to the contrary, the Liquidating Trustee and the members of the Liquidating Trust Advisory Board shall always act in the best interests of the Liquidating Trust Beneficiaries and in furtherance of the purpose of the Liquidating Trust as set forth in Article IV.C of the Plan; *provided*, however, that the Liquidating Trustee and the members of the Liquidating Trust Advisory Board shall not owe fiduciary obligations to (i) any defendants or potential defendants of Causes of Action, Retained Causes of Action, or Transferred Causes of Action in their capacities as such or (ii) any Holder of an Unliquidated or Disputed Claim, in their capacities as such, it being the intent of such fiduciary duties to ensure that the obligations of the Liquidating Trustee and the members of the Liquidating Trust Advisory Board are to maximize the value of the Liquidating Trust Assets, including the Causes of Action, Retained Causes of Action, and Transferred Causes of Action. Except for obligations expressly imposed on the Liquidating Trustee and the Liquidating Trust Advisory Board by this Trust Agreement, to the extent that, at law or in equity, the Liquidating Trustee or the Liquidating Trust Advisory Board has duties (including fiduciary duties) to the Liquidating Trust Beneficiaries or to any other person that is a party to or is otherwise bound by this Trust Agreement, such duties are hereby eliminated by this Trust Agreement to the fullest extent permitted by applicable law; *provided*, however, that this Trust Agreement does not eliminate the implied contractual covenant of good faith and fair dealing.

## ARTICLE VII

### SUCCESSOR LIQUIDATING TRUSTEE

7.1. Resignation. The Liquidating Trustee may resign from the Liquidating Trust by giving prior written notice thereof to the Liquidating Trust Advisory Board or, in the event the Liquidating Trust Advisory Board is no longer in existence, the Liquidating Trust Beneficiaries, and, prior to the entry of a final decree closing the Chapter 11 Case, to the U.S. Trustee and Bankruptcy Court. Such resignation shall become effective on the earlier to occur of (a) the date specified in such written notice and (b) the effective date of the appointment of a successor Liquidating Trustee in accordance with

Section 7.4 of this Trust Agreement and such successor's acceptance of such appointment in accordance with Section 7.5 of this Trust Agreement.

7.2. Removal. The Liquidating Trustee may be removed with or without cause at any time by the Majority Liquidating Trust Beneficiaries. Removal of the Liquidating Trustee shall be effective on the date specified in the resolution. Notwithstanding the removal of the Liquidating Trustee pursuant to this Section 7.2, the rights of the resigning Liquidating Trustee under this Trust Agreement with respect to acts or omissions occurring prior to the effectiveness of such removal will continue for the benefit of such resigning Liquidating Trustee following the effectiveness of such resignation. For the purposes of this Trust Agreement, "Majority Liquidating Trust Beneficiaries" means the Liquidating Trust Beneficiaries holding a majority of the aggregate amount of Allowed Claims of all Liquidating Trust Beneficiaries.

7.3. Effect of Resignation or Removal. The resignation, removal, incompetency, bankruptcy, or insolvency of the Liquidating Trustee shall not operate to terminate the Liquidating Trust or to revoke any existing agency created pursuant to the terms of this Trust Agreement, the Plan, or the Confirmation Order or invalidate any action theretofore taken by the Liquidating Trustee. All fees and expenses properly incurred by the Liquidating Trustee prior to the resignation, incompetency or removal of the Liquidating Trustee shall be paid from the Wind-Down Account pursuant to the Wind-Down Budget, unless such fees and expenses are disputed by the Liquidating Trust Advisory Board, in which case the Bankruptcy Court shall resolve the dispute and any disputed fees and expenses of the predecessor Liquidating Trustee that are subsequently allowed by the Bankruptcy Court shall be paid from the Liquidating Trust Assets. In the event of the resignation or removal of the Liquidating Trustee, such Liquidating Trustee shall (a) promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the Liquidating Trust Advisory Board or the successor Liquidating Trustee or directed by the Bankruptcy Court to effect the termination of such Liquidating Trustee's capacity under this Trust Agreement, (b) promptly deliver to the Liquidating Trust Advisory Board and the successor Liquidating Trustee all documents, instruments, records and other writings related to the Liquidating Trust as may be in the possession of such Liquidating Trustee, and (c) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Liquidating Trustee.

7.4. Appointment of Successor. Upon the death, resignation, dissolution, incapacity or removal of a Liquidating Trustee, the Majority Liquidating Trust Beneficiaries, in consultation with the Liquidating Trust Advisory Board, shall have the authority to designate a successor Liquidating Trustee, with the consent of the Majority Liquidating Trust Beneficiaries.

7.5. Acceptance of Appointment by Successor Liquidating Trustee. Any successor Liquidating Trustee so appointed shall consent to and accept in writing the terms of this Trust Agreement and agrees that the provisions of this Trust Agreement shall be binding upon and inure to the benefit of the successor Liquidating Trustee. Upon acceptance in writing, such successor Liquidating Trustee shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion and privileges

of its predecessor in the Liquidating Trust with like effect as if originally named Liquidating Trustee and shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

## ARTICLE VIII

### LIQUIDATING TRUST ADVISORY BOARD

#### 8.1. Liquidating Trust Advisory Board.

(a) There is hereby established and created a special advisory board (the “**Liquidating Trust Advisory Board**”) to monitor and oversee the Liquidating Trustee and other activities required in connection with the management and distribution of the Liquidating Trust Assets, including the performance of the Liquidating Trustee’s obligations under the Plan and this Trust Agreement.

(b) As of the Effective Date, the members of the Liquidating Trust Advisory Board shall be [•], [•] and [•]. Any or all members of the Liquidating Trust Advisory Board may resign from the Liquidating Trust Advisory Board at any time by written notice of resignation to the Liquidating Trustee. A member of the Liquidating Trust Advisory Board (i) shall be deemed to be immediately removed as a member of the Liquidating Trust Advisory Board in the event that a Liquidating Trust Advisory Board member (i) dies, resigns, or becomes incapacitated, or (ii) otherwise fails or refuses to serve and is removed pursuant to the terms of this Liquidating Trust Agreement. In the event of a Liquidating Trust Advisory Board member’s resignation or removal, the Liquidating Trust Advisory Board, in consultation with the Liquidating Trustee, may, but is not required to, elect a replacement member. There shall be no minimum number of members of the Liquidating Trust Advisory Board to retain its function; provided, however, if there shall have been no Liquidating Trust Advisory Board for a period of thirty (30) consecutive days, then the Liquidating Trustee may, during such vacancy, and thereafter, ignore any reference in the Plan, this Trust Agreement, or the Confirmation Order to the Liquidating Trust Advisory Board, and all such references in the Plan, this Trust Agreement or the Confirmation Order shall be null and void. Any deadlock in a vote by the members of the Liquidating Trust Advisory Board may be broken by a vote cast by the Liquidating Trustee.

(c) The Liquidating Trustee shall provide the Liquidating Trust Advisory Board with such reports as set forth in Section 4.8. Each member of the Liquidating Trust Advisory Board shall be reimbursed by the Liquidating Trust from the Liquidating Trust Assets for its actual, reasonable, and documented out-of-pocket expenses incurred for serving on the Liquidating Trust Advisory Board; *provided* that each member of the Liquidating Trust Advisory Board shall not receive any reimbursement for the services of any attorney, accountant, and other professional and agent. Except as provided for in this Section 8.1(c) of this Trust Agreement, the members of the Liquidating Trust Advisory Board shall not be entitled to receive any other form of compensation for their services provided as such members. The Liquidating Trust Advisory Board may, but shall not be required to, adopt by-laws addressing the conduct of the Liquidating Trust Advisory Board.

(d) The Liquidating Trust Advisory Board, may, at any time, provide notice to the Liquidating Trust Beneficiaries that the Liquidating Trust Advisory Board recommends removal of the Liquidating Trustee by the Liquidating Trust Beneficiaries. Within ten (10) business days of providing such notice, the Liquidating Trust Beneficiaries shall vote on such matter, and the Liquidating Trustee shall be removed upon the vote in favor of removal by the Majority Liquidating Trust Beneficiaries pursuant to Section 7.2 of this Trust Agreement.

(e) The Liquidating Trust Advisory Board, any of the Liquidating Trust Advisory Board's members or designees, attorneys, accountants, or other professionals, any duly designated agent or representative of the Liquidating Trust Advisory Board, and the respective employees of any of the foregoing, shall not be liable for any act or omission of any other member, designee, agent, or representative of the Liquidating Trust Advisory Board, nor shall any member be liable for any act or omission taken or to be taken in that member's capacity as a member of the Liquidating Trust Advisory Board, other than acts resulting from such member's intentional misconduct, willful misconduct, or gross negligence. The Liquidating Trust Advisory Board may, in connection with the performance of the Liquidating Trust Advisory Board's functions, and in the Liquidating Trust Advisory Board's sole and absolute discretion, consult with counsel, accountants, and any other professionals, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such counsel, accountants, or other professionals, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, the Liquidating Trust Advisory Board shall be under no obligation to consult with counsel, accountants or other professionals, and the Liquidating Trust Advisory Board's determinations to not do so shall not result in the imposition of liability on the Liquidating Trust Advisory Board or the Liquidating Trust Advisory Board's members or designees, unless such determination is based on intentional misconduct, willful misconduct, or gross negligence.

(f) In the event there is an act required to be taken pursuant to the terms of this Trust Agreement, the Plan or the Confirmation Order by the Liquidating Trust Advisory Board and the Liquidating Trust Advisory Board cannot act because of a voting deadlock, the deadlock shall be broken by the vote of the Liquidating Trustee. If the Liquidating Trustee determines not to vote, the matter shall be decided by the Bankruptcy Court by submission of a motion on proper notice.

## ARTICLE IX

### RELIANCE, LIABILITY AND INDEMNIFICATION

9.1. Reliance by the Liquidating Trustee and the Members of the Liquidating Trust Advisory Board. Except as otherwise provided in this Trust Agreement, the Plan or the Confirmation Order, the Liquidating Trustee, the members of the Liquidating Trust Advisory Board and the Resident Trustee may rely and shall be protected in acting upon the advice of any Liquidating Trust Professional and/or upon any resolution, statement, instrument, opinion, report, notice, request, consent, order or other paper or document reasonably believed by the Liquidating Trustee, the Liquidating Trust Advisory

Board and the Resident Trustee to be genuine and to have been signed or presented by the proper party or parties.

9.2. Liability to Third Persons. No Liquidating Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Liquidating Trust Assets or the affairs of the Liquidating Trustee. The Liquidating Trustee, the members of the Liquidating Trust Advisory Board, the Resident Trustee and the Liquidating Trust Professionals shall not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person (including, in the case of the Liquidating Trustee and members of the Liquidating Trust Advisory Board, to any Liquidating Trust Professionals retained by the Liquidating Trustee in accordance with this Trust Agreement) in connection with the Liquidating Trust Assets or the affairs of the Liquidating Trust and shall not be liable with respect to any action taken or omitted to be taken in good faith, except for actions and omissions determined by a final order of the Bankruptcy Court to be due to their respective bad faith, gross negligence, intentional fraud, criminal conduct or willful misconduct, and all such persons shall look solely to the Liquidating Trust Assets for satisfaction of claims of any nature arising in connection with affairs of the Liquidating Trust. Other than as set forth in the Plan or in the Confirmation Order, nothing in this Section 9.2 of this Trust Agreement shall be deemed to release any Liquidating Trust Beneficiary from any actions or omissions occurring prior to the Effective Date.

9.3. Nonliability of Liquidating Trustee and Liquidating Trust Advisory Board for Acts of Others. Except as provided herein, nothing contained in this Trust Agreement, the Plan or the Confirmation Order shall be deemed to be an assumption by the Liquidating Trustee, the Liquidating Trust Advisory Board (or its members), the Resident Trustee or the Liquidating Trust Professionals of any of the liabilities, obligations or duties of the Debtor or shall be deemed to be or contain a covenant or agreement by the Liquidating Trustee to assume or accept any such liability, obligation or duty. Any successor Liquidating Trustee, Liquidating Trust Advisory Board member or Resident Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Liquidating Trustee hereunder, and any statement or representation made as to the assets comprising the Liquidating Trust Assets or as to any other fact bearing upon the prior administration of the Liquidating Trust, so long as it has a good faith basis to do so. The Liquidating Trustee, the Liquidating Trust Advisory Board members, and the Resident Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. The Liquidating Trustee or any successor Liquidating Trustee and the Liquidating Trust Advisory Board members shall not be liable for any act or omission of any predecessor Liquidating Trustee or Liquidating Trust Advisory Board member. No provision of this Trust Agreement shall require the Liquidating Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of his rights or powers hereunder if the Liquidating 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.

9.4. Exculpation. No Holder of a Claim or Interest, Liquidating Trust Beneficiary, or any other party in interest will have, or otherwise pursue, any claim or Cause of Action against the Liquidating Trustee, the members of the Liquidating Trust Advisory Board, the Resident Trustee, the Liquidating Trust, or the Liquidating Trust Professionals (for each of the foregoing, solely in the performance of their duties) for making payments and distributions in accordance with the Plan and this Trust Agreement or for fulfilling any functions incidental to implementing the provisions of the Plan or the this Trust Agreement, except for actions or omissions to act that are determined by final order of the Bankruptcy Court to have arisen out of their own respective intentional fraud, criminal conduct, gross negligence or willful misconduct. Any action taken or omitted to be taken with the express approval of the Bankruptcy Court shall conclusively be deemed not to constitute gross negligence or willful misconduct.

9.5. Limitation of Liability. The Liquidating Trustee, the members of the Liquidating Trust Advisory Board, the Resident Trustee and the Liquidating Trust Professionals will not be liable for punitive, exemplary, consequential, special, or other damages for a breach of this Trust Agreement under any circumstances.

9.6. Indemnity. The Liquidating Trust shall indemnify and hold harmless (a) the Liquidating Trustee (solely in its capacity as such and in its capacity as officer and director of the Debtor), (b) members of the Liquidating Trust Advisory Board, (c) the Resident Trustee and (d) the Liquidating Trust Professionals ((a), (b), (c) and (d) collectively, the “**Indemnified Parties**”), from and against and with respect to any and all liabilities, losses, damages, claims, costs, and expenses, including, but not limited to, attorneys’ fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, other than actions or omissions resulting from such Indemnified Party’s bad faith, willful misconduct (including, without limitation, actual fraud), or gross negligence, or the implementation or administration of the Plan or this Trust Agreement. To the extent that an Indemnified Party asserts a claim for indemnification as provided above, (y) any payment on account of such claim shall be paid solely from the Wind-Down Account and shall be entitled to a priority distribution therefrom, superior to any other rights (other than those rights of the Liquidating Trust Professionals) to receive a distribution from the Wind-Down Account, including the Liquidating Trust Beneficiaries and (z) the legal fees and related costs incurred by counsel to the Liquidating Trustee in monitoring and participating in the defense of such claims giving rise to the asserted right of indemnification shall be advanced to such Indemnified Party (and such Indemnified Party undertakes to repay such amounts if it ultimately shall be determined that such Indemnified Party is not entitled to be indemnified therefore) out of the Wind-Down Account or any insurance purchased using the Wind-Down Account, and paid with priority over distributions to Liquidating Trust Beneficiaries. This indemnification provision shall remain available to, and be binding upon, any former Liquidating Trustee or Resident Trustee or member of the Liquidating Trust Advisory Board, or the estate of any decedent of the Liquidating Trustee or Resident Trustee or member of the Liquidating Trust Advisory Board, and shall survive the termination of this Trust Agreement.

## ARTICLE X

### MISCELLANEOUS PROVISIONS

10.1. Governing Law. Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent that any document to be entered into in connection herewith provides otherwise, the rights, duties, and obligations arising under this Trust Agreement shall be governed by, and construed and enforced in accordance with, the Bankruptcy Code and, to the extent not inconsistent therewith, the laws of the State of Delaware, without giving effect to principles of conflicts of laws.

10.2. Jurisdiction. Subject to the proviso below, prior to the entry of a final decree closing the Chapter 11 Case, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction over the Liquidating Trust, the Liquidating Trustee and the Liquidating Trust Advisory Board, including the administration and activities of the Liquidating Trust, the Liquidating Trustee and the Liquidating Trust Advisory Board, and, pursuant to the Plan, the Bankruptcy Court has retained such jurisdiction; *provided*, however, that notwithstanding the foregoing, the Liquidating Trustee shall have power and authority to bring any action in any court of competent jurisdiction (including the Bankruptcy Court) to prosecute any Causes of Action, Retained Causes of Action, or Transferred Causes of Action assigned to the Liquidating Trust that are not otherwise subject to release or exculpation pursuant to the Plan.

10.3. Severability. In the event any provision of this Trust Agreement or the application thereof to any person or circumstances shall be determined by a final, non-appealable judgment or order to be invalid or unenforceable to any extent, the remainder of this Trust 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 Trust Agreement shall be valid and enforceable to the full extent permitted by law.

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

(a) if to the Liquidating Trust, to:

[•]

with a copy to:

[•]

(b) if to the Liquidating Trust Advisory Board, to each of:

[•]

[•]

[•]

(c) if to the Resident Trustee, to:

[•]

(d) if to any Liquidating Trust Beneficiary, to the name and distribution address set forth in the Register with respect to such Liquidating Trust Beneficiary.

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

10.6. Controlling Document. In the event of any conflict between the terms and provisions in the Plan and the terms and provisions in the Disclosure Statement, the Plan Supplement, any other instrument or document created or executed pursuant to the Plan, or any order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), the Plan shall govern and control; *provided* that, in the event of a conflict between this Trust Agreement, on the one hand, and any of the Plan, the Plan Supplement or the Definitive Documents, on the other hand, this Trust Agreement shall govern and control in all respects relating to the operation and/or administration of the Liquidating Trust and/or indemnification of the Liquidating Trustee.

10.7. Entire Trust Agreement. This Trust Agreement (including the recitals and annex hereto), the Plan, and the Confirmation Order constitute the entire agreement by and among the parties and supersede all prior and contemporaneous agreements or understandings by and among the parties with respect to the subject matter of this Trust Agreement.

10.8. Cooperation. On the Effective Date, the Debtor shall promptly upon the request of the Liquidating Trustee (a) turn over or otherwise make available to the Liquidating Trust at no cost to the Liquidating Trust or the Liquidating Trustee, any books and records of the Debtor held by such professionals, and (b) subject to payment of reasonable and documented fees and expenses incurred by such professionals (i) make

available information, including electronic records or documents, reasonably required by the Liquidating Trust to carry out its duties hereunder and (ii) otherwise reasonably cooperate with the Liquidating Trust in carrying out its duties hereunder, subject, in the case of (a) and (b), to the confidentiality provisions herein to preserve the confidential nature of the Debtor's books and records.

10.9. Amendment and Waiver. This Trust Agreement may from time to time be amended, supplemented or modified by the Liquidating Trustee, but only with (i) the approval of the Bankruptcy Court or (ii) the written consent of the Majority Liquidating Trust Beneficiaries; *provided* that any such amendment which alters the duties or liabilities of the Liquidating Trust Advisory Board shall also require the consent of the Liquidating Trust Advisory Board; *provided further* that any such amendment which alters the duties or liabilities of the Resident Trustee shall also require the consent of the Resident Trustee. The Liquidating Trustee shall provide the Liquidating Trust Advisory Board notice of any proposed amendment, supplement or modification to this Trust Agreement at least five (5) business day prior to the effective date of such amendment, supplement or modification; *provided, however*, that the Liquidating Trust Advisory Board may waive the notice period. Notwithstanding this Section 10.9 of this Trust Agreement, any amendment to this Trust Agreement shall not be inconsistent with the Plan and the Confirmation Order and shall be consistent with the purpose and intention of the Liquidating Trust to liquidate in an expeditious but orderly manner the Liquidating Trust Assets in accordance with Treasury Regulations section 301.7701-4(d) and Section 1.2 of this Trust Agreement.

10.10. Confidentiality. The Liquidating Trustee, each member of the Liquidating Trust Advisory Board and each of their respective employees, members, agents, professionals and advisors, including the Liquidating Trust Professionals (each a "**Confidential Party**" and, collectively, the "**Confidential 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 Confidential Party, of or pertaining to any Debtor to which any of the Liquidating Trust Assets relates; *provided*, however, that such information may be disclosed if (a) it is now or in the future becomes generally available to the public other than as a result of a disclosure by the Confidential Parties or (b) such disclosure is required of the Confidential Parties pursuant to legal process including subpoena or other court order or other applicable laws or regulations. In the event that any Confidential Party is requested to divulge confidential information pursuant to this clause (b), such Confidential Party shall promptly, in advance of making such disclosure, provide reasonable notice of such required disclosure to the Liquidating Trustee (or the Liquidating Trust Advisory Board in case the Liquidating Trustee or the Resident Trustee is the disclosing party) to allow sufficient time to object to or prevent such disclosure through judicial or other means and shall cooperate reasonably with the Liquidating Trustee (or the Liquidating Trust Advisory Board, as applicable) in making any such objection, including appearing in any judicial or administrative proceeding in support of any objection to such disclosure.

10.11. Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, 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. The words herein and words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section, or subdivision of this Trust Agreement. The term “including” shall mean “including, without limitation.”

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

10.13. Intention of Parties to Establish Liquidating Trust. This Trust Agreement is intended to create a liquidating trust within the meaning of Treasury Regulations section 301.7701-4(d) for U.S. federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Trust Agreement may be amended to comply with such U.S. federal income tax laws, which amendments may apply retroactively.

[Signature Page Follows]

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

**TRICIDA, INC.**

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

**LIQUIDATING TRUSTEE**

By: \_\_\_\_\_  
Name: [•]

**RESIDENT TRUSTEE**

[•], not in its individual capacity, but solely  
as Resident Trustee

By: \_\_\_\_\_  
Name: [•]

**EXHIBIT A**

**Notice of Transfer**

The undersigned Liquidating Trust Beneficiary (the “**Transferor**”) has agreed to transfer the Liquidating Trust Interests set forth below to the undersigned transferee (the “**Transferee**”).

Transferor Name:

Date Executed:

Amount and Type of Liquidating Trust Interests Transferred:

Notes Claim:

General Unsecured Claim (Allowed / Asserted):

Patheon Rejection Claim:

Transferee Name:

Transferee Address:

Transferee e-mail address:

**EXHIBIT B**

**Revised Contingent Payments Trust Agreement**

**CONTINGENT PAYMENTS TRUST AGREEMENT OF**

**TRICIDA CONTINGENT PAYMENTS TRUST**

**DATED AS OF [•], 2023**

**BY AND AMONG**

**[•] AS CONTINGENT PAYMENTS TRUSTEE,**

**[•] AS RESIDENT TRUSTEE,**

**and**

**THE DEBTOR HERETO**

**TABLE OF CONTENTS**

---

PAGE

ARTICLE I

DECLARATION OF TRUST

1.1. Creation of Trust .....	2
1.2. Purpose of Contingent Payments Trust.....	2
1.3. Transfer of Contingent Payments Trust Assets .....	3
1.4. Appointment and Acceptance of Contingent Payments Trustee .....	5
1.5. Administration of the Contingent Payments Trust Assets.....	5
1.6. Wind-Down Budget .....	6
1.7. Reversionary Interests.....	6
1.8. Incidents of Ownership .....	6
1.9. Privileges.....	6

ARTICLE II

CONTINGENT PAYMENTS TRUST BENEFICIARIES

2.1. Conflicting Claims .....	7
2.2. Rights of Contingent Payments Trust Beneficiaries .....	7
2.3. Evidence of Contingent Payments Trust Interests .....	7
2.4. Transfer of Contingent Payments Trust Interests .....	8
2.5. Exemption from Registration.....	8
2.6. Limited Liability .....	9

ARTICLE III

DURATION AND TERMINATION OF CONTINGENT PAYMENTS TRUST

3.1. Dissolution of the Contingent Payments Trust .....	9
---	---

ARTICLE IV

ADMINISTRATION OF THE CONTINGENT PAYMENTS TRUST

4.1. Payment of Claims, Expenses, and Liabilities.....	9
4.2. Distributions.....	10
4.3. Compliance with Laws .....	13
4.4. Fiscal Year .....	13
4.5. Books and Records .....	14
4.6. Contingent Payments Trust Insurance .....	14
4.7. Reports .....	14

ARTICLE V

TAX MATTERS

5.1. Treatment of Trust for Tax Purposes .....15  
5.2. Tax Reporting .....15  
5.3. Tax Withholdings by Contingent Payments Trustee .....16  
5.4. IRS Forms .....16

ARTICLE VI

POWERS OF AND LIMITATIONS ON THE CONTINGENT PAYMENTS TRUSTEE

6.1. Term of the Contingent Payments Trustee .....17  
6.2. Responsibilities and Authority of the Contingent Payments Trustee .....17  
6.3. Actions Taken by the Contingent Payments Trustee .....18  
6.4. Limitations on Contingent Payments Trustee .....19  
6.5. Compensation and Expenses of the Contingent Payments Trustee .....20  
6.6. Agents, Employees, and Professionals .....20  
6.7. Investment of Contingent Payments Trust Monies .....21  
6.8. Resident Trustee .....21  
6.9. Fiduciary and Other Duties .....23

ARTICLE VII

SUCCESSOR CONTINGENT PAYMENTS TRUSTEE

7.1. Resignation .....24  
7.2. Removal .....24  
7.3. Effect of Resignation or Removal .....24  
7.4. Appointment of Successor .....25  
7.5. Acceptance of Appointment by Successor Contingent Payments Trustee .....25

ARTICLE VIII

CONTINGENT PAYMENTS TRUST ADVISORY BOARD

8.1. Contingent Payments Trust Advisory Board .....25

ARTICLE IX

RELIANCE, LIABILITY AND INDEMNIFICATION

9.1. Reliance by the Contingent Payments Trustee and the Members of the  
Contingent Payments Trust Advisory Board .....27  
9.2. Liability to Third Persons .....27  
9.3. Nonliability of Contingent Payments Trustee and Contingent Payments Trust  
Advisory Board for Acts of Others .....28

9.4. Exculpation .....28  
9.5. Limitation of Liability.....29  
9.6. Indemnity .....29

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1. Governing Law .....29  
10.2. Jurisdiction.....30  
10.3. Severability .....30  
10.4. Notices .....30  
10.5. Headings .....31  
10.6. Controlling Document .....31  
10.7. Entire Trust Agreement.....31  
10.8. Cooperation.....31  
10.9. Amendment and Waiver .....31  
10.10. Confidentiality .....32  
10.11. Meanings of Other Terms .....32  
10.12. Counterparts.....33  
10.13. Intention of Parties to Establish Grantor Trust .....33

## CONTINGENT PAYMENTS TRUST AGREEMENT OF TRICIDA CONTINGENT PAYMENTS TRUST

THIS CONTINGENT PAYMENTS TRUST AGREEMENT OF TRICIDA CONTINGENT PAYMENTS TRUST, dated as of [●], 2023 (this “**Trust Agreement**”), is by and among Tricida, Inc. (the “**Debtor**”), as debtor, [●], as trustee (together with any successor or additional trustee appointed under the terms of this Trust Agreement, including Section 6.1 of this Trust Agreement, the “**Contingent Payments Trustee**”), and [●] as the Delaware resident trustee (together with any successor Delaware resident trustee appointed under the terms of this Trust Agreement, the “**Resident Trustee**”), for the purpose of forming a statutory trust under and pursuant to the provisions of 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, the “**Trust Act**”) as contemplated by the Plan (the “**Contingent Payments Trust**”).<sup>1</sup>

### BACKGROUND

A. On January 11, 2023 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Case**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”);

B. On February 22, 2023, the Bankruptcy Court approved the sale of various subsets of the Debtor’s Assets to the Purchasers pursuant to section 363 of the Bankruptcy Code by entry of the Sale Order, as defined in the Plan;

C. On March 27, 2023, the Debtor filed the *Third Amended Chapter 11 Plan of Liquidation for Tricida, Inc.* [D.I. 328] and the *Fourth Amended Disclosure Statement for Chapter 11 Plan of Liquidation for Tricida, Inc.* [D.I. 329];

D. On [●], 2023, the Bankruptcy Court entered an order confirming the Plan [D. I. [●]] (the “**Confirmation Order**”), which became effective on [●], 2023 (the “**Effective Date**”);

E. The Plan provides for, among other things, the creation of an investment trust on the Effective Date for the purpose of facilitating direct investment in the Contingent Payments Trust Assets in accordance with section 301.7701-4(c) of the regulations promulgated under the Internal Revenue Code of 1986, as amended (the “**IRC**,” and such regulations, the “**Treasury Regulations**”). The Contingent Payments Trust is established and is effective for the benefit of either (i) the Contingent Payments Holding Trust or (ii) Holders of Noteholder Claims, Allowed Patheon Rejection Claims and

---

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the *Chapter 11 Plan of Liquidation for Tricida, Inc.*, as confirmed by the Confirmation Order (as defined below) (including all exhibits thereto, as the same may be further amended, modified, or supplemented from time to time, the “**Plan**”).

Allowed General Unsecured Claims (as applicable, the “**Contingent Payments Trust Beneficiaries**”); and

F. The duties and powers of the Contingent Payments Trustee shall include all powers necessary to administer the Contingent Payments Trust Assets, including, without limitation, the duties and powers listed in the Plan.

## AGREEMENT

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

## ARTICLE I

### DECLARATION OF TRUST

1.1. Creation of Trust. The Debtor, the Contingent Payments Trustee, and the Resident Trustee, pursuant to the Plan and the Confirmation Order, and in accordance with the applicable provisions of chapter 11 of the Bankruptcy Code, hereby create the Contingent Payments Trust, which shall bear the name “Tricida Contingent Payments Trust.” In connection with the exercise of the Contingent Payments Trustee’s power hereunder, the Contingent Payments Trustee may use this name or such variation thereof as the Contingent Payments Trustee sees fit. On the Effective Date, the Contingent Payments Trust shall be established pursuant to this Trust Agreement.

1.2. Purpose of Contingent Payments Trust.

(a) The Contingent Payments Trust shall be established for the purpose of: (i) preserving and administering the assets of the Contingent Payments Trust; (ii) administering and paying taxes, including, among other things, (1) filing tax returns, and (2) representing the interest and account of the Contingent Payments Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding, or audit; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Contingent Payments Trustee’s performance of its duties under the Plan and this Trust Agreement; (iv) making distributions to the Contingent Payments Trust Beneficiaries in accordance with the terms of the Plan and this Trust Agreement; and (v) such other responsibilities or powers as may be vested in or assumed by the Contingent Payments Trustee pursuant to the Plan, this Trust Agreement, or by an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of this Plan, with no objective to continue or engage in the conduct of a trade or business, except, in each case, if such action would be prohibited by Section 1.2(b) or any other provision of this Trust Agreement. The Contingent Payments Trust shall be classified as an investment trust described in Treasury Regulations section 301.7701-4(c) that is also treated a grantor trust for U.S. federal income tax purposes, as described in Article IV.E.1. of the Plan and Section 5.1 herein, and, to the extent permitted by applicable law, for state and local income tax purposes. To the extent permitted by applicable law, all parties, including the Contingent

Payments Trustee and any Contingent Payments Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes. From and after the Effective Date, the Contingent Payments Trustee shall act as the exclusive representative of the Estate for all purposes set forth in Article IV.D.3 of the Plan.

(b) The Contingent Payments Trust shall not take any action that could cause the Contingent Payments Trust to be treated other than as a grantor trust for U.S. federal income tax purposes. Without limiting the generality of the foregoing, nothing in this Trust Agreement (including, for the avoidance of doubt, Section 1.2(a) shall be construed to give the Trustee the power to vary the investment of the Contingent Payments Trust Beneficiaries within the meaning of Treasury Regulations section 301.7701-4(c) or similar provisions of the Treasury Regulations, nor shall the Trustee take any action that would vary the investment of the Contingent Payments Trust Beneficiaries.

1.3. Transfer of Contingent Payments Trust Assets.

(a) Pursuant to the Plan and the Confirmation Order, on the Effective Date, all right, title, and interest in and to the Contingent Payments Trust Assets shall be deemed to have been irrevocably transferred, assigned, conveyed and delivered by the Debtor to the Contingent Payments Trust free and clear of all encumbrances, liens and Claims of any Person, in trust for the benefit of the Contingent Payments Trust Beneficiaries for the uses and purposes stated therein and herein. The Contingent Payments Trust hereby accepts all such Contingent Payments Trust Assets free and clear of any and all liens and claims and agrees to hold and administer the Contingent Payments Trust Assets and the remainder of the Contingent Payments Trust for the benefit of the Contingent Payments Trust Beneficiaries, subject to the terms and conditions of this Trust Agreement. For the avoidance of doubt, upon the transfer of the Contingent Payments Trust Assets, the Contingent Payments Trust shall succeed to all of the Debtor's right, title, and interest in and to the Contingent Payments Trust Assets, and the Debtor will have no further interest in or with respect to the Contingent Payments Trust Assets or the Contingent Payments Trust. The Contingent Payments Trust Assets shall include, for the avoidance of doubt, (i) the Debtor's right to receive the Contingent Payments and (ii) Cash in an amount as set forth in the Wind-Down Budget to fund the Wind-Down Account (as defined herein), shall be deemed transferred to the Contingent Payments Trust without any further action of the Debtor or any managers, employees, officers, directors, members, partners, shareholders, agents, advisors, or representatives of the Debtor. Pursuant to section 1141(b) and 1141(c) of the Bankruptcy Code, all transfers to the Contingent Payments Trust shall be made free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as may be otherwise provided in the Plan. For all U.S. federal income tax purposes, and, to the extent permitted by applicable law, for state and local income tax purposes, all parties (including, without limitation, the Debtor, the Contingent Payments Trustee, and the Contingent Payments Trust Beneficiaries) shall treat the transfer of the Contingent Payments Trust Assets to the Contingent Payments Trust in accordance with the terms herein as described in Section 5.1 of this Trust Agreement.

(b) Upon transfer of the Contingent Payments Trust Assets to the Contingent Payments Trust, the Debtor and its predecessors, successors, and assigns shall

be released from all liability with respect to the delivery thereof and shall have no reversionary or further interest in or with respect to the Contingent Payments Trust Assets or the Contingent Payments Trust. Notwithstanding the foregoing, for purposes of section 553 of the Bankruptcy Code, the transfer of the Contingent Payments Trust Assets to the Contingent Payments Trust shall not affect the mutuality of obligations that otherwise may have existed prior to the effectuation of such transfer.

(c) Nothing in this Trust Agreement alters the rights and obligations of the Debtor (and its Estate) and the Debtor's insurers (and third-party claims administrators) under the Insurance Policies or modifies the coverage or benefits provided thereunder or the terms and conditions thereof or diminishes or impairs the enforceability of the Insurance Policies. The Debtor shall be deemed to have assumed only the D&O Policies, and any Insurance Policy other than a D&O Policy shall be deemed terminated on the Effective Date. Except as otherwise provided in the Plan, proceeds payable under any Insurance Policy shall be in accordance with the provisions of the applicable Insurance Policy. Except as set forth in Article IX of the Plan, nothing in the Plan or this Trust Agreement shall constitute or be deemed a waiver of any Cause of Action (including, for the avoidance of doubt, any Retained Cause of Action) that the Debtor or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained in the Plan or this Trust Agreement be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

(d) Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan and this Trust Agreement, including, without limitation, the transfer of the Contingent Payments Trust Assets to the Contingent Payments Trust, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation all such instruments or other documents governing or evidencing such transfers without the payment of any such tax, recordation fee, or governmental assessment.

(e) The Contingent Payments Trust Assets and all other property held from time to time by the Contingent Payments Trust under this Trust Agreement and any earnings, including interest, on any of the foregoing shall be held and be applied by the Contingent Payments Trustee in accordance with the terms of this Trust Agreement, the Plan and the Confirmation Order for the benefit of the Contingent Payments Trust Beneficiaries, and for no other party, subject to the further covenants, conditions and terms set forth in this Trust Agreement, the Plan and the Confirmation Order.

(f) The Debtor, the Contingent Payments Trustee and the Contingent Payments Trust Advisory Board, and any party under the control of such parties, hereby agree to execute any documents or other instruments and shall take all other steps as necessary to cause title to the Contingent Payments Trust Assets to be transferred to the Contingent Payments Trust in accordance with this Trust Agreement, the Plan and the Confirmation Order.

1.4. Appointment and Acceptance of Contingent Payments Trustee.

(a) The Contingent Payments Trustee has been selected by the Majority Consenting Noteholders in consultation with the Official Committee of Unsecured Creditors appointed in the Tricida, Inc, bankruptcy case. On the Effective Date, the Contingent Payments Trustee shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to serve as the trustee and administrator of the Contingent Payments Trust established pursuant to Article IV.D of the Plan and this Trust Agreement. The Contingent Payments Trustee shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan and this Trust Agreement. The Debtor shall file a notice prior to the Confirmation Hearing designating the Person or Entity selected as the Contingent Payments Trustee. The appointment of the Contingent Payments Trustee shall be approved in the Confirmation Order and such appointment shall be effective in accordance with the terms of Article IV.D.3(a) of the Plan. The Contingent Payments Trustee shall serve in such capacity, pursuant to the terms of this Trust Agreement and the Plan, until the resignation or discharge of such trustee and the appointment of a successor Contingent Payments Trustee in accordance with the terms of this Trust Agreement and the Plan.

(b) The Contingent Payments Trustee accepts the Contingent Payments Trust created by this Trust Agreement in accordance with the terms of the Plan, the Confirmation Order and this Trust Agreement and the grant, assignment, transfer, conveyance and delivery to the Contingent Payments Trust, on behalf, and for the benefit, of the Contingent Payments Trust Beneficiaries, by the Debtor of all of its respective rights, titles and interests in the Contingent Payments Trust Assets, upon and subject to the terms and conditions set forth herein, in the Plan and in the Confirmation Order. The Contingent Payments Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purpose of the Contingent Payments Trust and not otherwise. The Contingent Payments Trustee shall have the authority to bind the Contingent Payments Trust in accordance with, and within the limitations set forth in this Trust Agreement, but shall for all purposes hereunder be acting in the capacity as Contingent Payments Trustee, and not individually.

1.5. Administration of the Contingent Payments Trust Assets. The Contingent Payments Trustee shall administer the Contingent Payments Trust and shall make timely distributions of all proceeds received in respect of the Contingent Payments Trust Assets in accordance with the terms of this Trust Agreement, the Plan and the Confirmation Order. The Contingent Payments Trustee shall preserve and administer the Contingent Payments Trust Assets in an effort to maximize net recoveries, and the Contingent Payments Trustee shall be entitled to take into consideration the risks, timing, and costs of potential actions in making determinations as to the maximization of recoveries; *provided*, that the determinations and actions of the Contingent Payments Trustee shall in all cases be subject to the limitations provided in Treasury Regulations section 301.7701-4(c) and this Trust Agreement. The Contingent Payments Trustee may incur any reasonable and necessary expenses in connection with the liquidation and conversion of the Contingent Payments Trust Assets into Cash or in connection with the administration of the Contingent Payments Trust.

1.6. Wind-Down Budget. On the Effective Date, pursuant to the Wind-Down Budget, the Debtor shall transfer funds into an account held by the Contingent Payments Trust (the “**Wind-Down Account**”), which funds shall be used for all reasonable activities and expenses to be incurred in administering the Contingent Payments Trust, including but not limited to the fees and expenses of the Contingent Payments Trust Professionals, as defined in Section 6.5 below. From time to time, the Contingent Payments Trustee shall determine whether the Cash in the Wind-Down Budget exceeds the amount of Cash needed to fund the Wind-Down Budget and may distribute any such excess Cash in accordance with the terms of the Plan and this Trust Agreement.

1.7. Reversionary Interests. In no event shall any of the Contingent Payments Trust Assets revert to or be distributed to the Debtor.

1.8. Incidents of Ownership. The Contingent Payments Trust Beneficiaries shall be the sole beneficiaries of the Contingent Payments Trust, and the Contingent Payments Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein, in the Plan and in the Confirmation Order, including those powers set forth in Section 6.2 of this Trust Agreement.

1.9. Privileges.

(a) In connection with the vesting and transfer of the Contingent Payments Trust Assets, the Contingent Payments Trustee shall stand in the same position as the Debtor with respect to any claim the Debtor and/or its Estate may have as to an attorney-client privilege, work-product doctrine, or any other privilege or confidentiality protections attaching to any documents or communications (whether written or oral) relating to the Contingent Payments Trust Assets, and the Contingent Payments Trustee shall succeed to all rights of the Debtor and/or its Estate to hold, preserve, assert, be the beneficiary of or waive any such privilege or protection (collectively, “**Privileges**”). As of the Effective Date, all Privileges of the Debtor relating to the Contingent Payments Trust Assets shall be deemed transferred, assigned, and delivered by the Debtor to the Contingent Payments Trust, without waiver or release, and shall vest with the Contingent Payments Trust. No such Privilege shall be waived by disclosures to the Contingent Payments Trustee of the Debtor’s documents, information, or communication subject to attorney-client privilege, work product protections, or other immunities (including those related to common interest or joint defense with third parties), or protections from disclosure held by the Debtor. The Debtor’s Privileges relating to the Contingent Payments Trust Assets will remain subject to the rights of third parties under applicable law, including any rights arising from the common interest doctrine, the joint defense doctrine, joint attorney-client representation, or any agreement; *provided*, that prior to waiving such privilege, the Contingent Payments Trustee shall provide such third party with any written notice to the extent required by any joint defense or common interest agreements as of the Petition Date. Any and all work product created by or on behalf of the Contingent Payments Trustee, the Contingent Payments Trust Professionals, and their respective agents, representatives, and employees shall be deemed confidential to the extent that such work product is not

protected by the attorney-client privilege, attorney work-product doctrine, or any other applicable privilege.

## ARTICLE II

### CONTINGENT PAYMENTS TRUST BENEFICIARIES

2.1. Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to the beneficial interest of a Contingent Payments Trust Beneficiary under this Trust Agreement, or if there is any disagreement between the assignees, transferees, heirs, representatives, or legatees succeeding to all or a part of such an interest resulting in adverse claims or demands being made in connection with such interest, then, in any of such events, the Contingent Payments Trustee shall be entitled, in its sole discretion, to refuse to comply with any such conflicting claims or demands.

2.2. Rights of Contingent Payments Trust Beneficiaries. “**Contingent Payments Trust Interests**” means a non-certified beneficial interest in the Contingent Payments Trust granted, in accordance with the Plan, either to the Contingent Payments Holding Trust or to Holders of a Noteholder Claim, an Allowed Patheon Rejection Claim, or an Allowed General Unsecured Claims, which shall entitle such Holders to distributions from the Contingent Payments Trust in accordance with the Plan. Each Contingent Payments Trust Beneficiary shall be entitled to participate in the rights and benefits due to a Contingent Payments Trust Beneficiary hereunder. Contingent Payments Trust Interests are hereby declared and shall be in all respects personal property. No surviving spouse, heir or devisee of any deceased Contingent Payments Trust Beneficiary shall have any right of dower, homestead or inheritance, or of partition, or any other right, statutory or otherwise, in the Contingent Payments Trust Assets, but the whole title to the Contingent Payments Trust Assets shall be vested in the Contingent Payments Trust and the sole interest of the Contingent Payments Trust Beneficiaries shall be the rights and benefits given to such person under this Trust Agreement, the Confirmation Order and the Plan. For the avoidance of doubt, the Contingent Payments Trust (with the assistance of the Disbursing Agent(s) (as defined herein) necessary) shall make Distributions to the Contingent Payments Trust Beneficiaries only in accordance with the Plan and this Trust Agreement.

2.3. Evidence of Contingent Payments Trust Interests. The Contingent Payments Trustee shall maintain at all times a register of the names, distribution addresses and amounts of Contingent Payments Trust Beneficiaries (the “**Register**”). If Holders of Noteholder Claims, an Allowed Patheon Rejection Claim, or Allowed General Unsecured Claims (as of the Effective Date, or as may be Allowed thereafter pursuant to the Plan and this Trust Agreement) are treated as Contingent Payments Trust Beneficiaries pursuant to the Plan, the Register shall include the names, distribution addresses and amounts of such Holders of Allowed Claims, and shall be based on the list of Holders of Claims maintained by the Notice and Claims Agent as of the Effective Date and prepared in accordance with the provisions of the Plan and the Confirmation Order. The initial Register shall be delivered to the Contingent Payments Trustee by the Debtor. All references in this Trust Agreement to Contingent Payments Trust Beneficiaries shall be read to mean holders of

record as set forth in the Register maintained by the Contingent Payments Trustee and, to the extent Holders of Noteholder Claims are beneficiaries, may include Holders of Noteholder Claims who are beneficial holders of Claims in Class 3, who hold their position through a broker, bank, or other nominee. The Contingent Payments Trustee shall cause the Register to be kept at its office or at such other place or places as may be designated by the Contingent Payments Trustee from time to time. The Contingent Payments Trustee shall, upon the written request of a Contingent Payments Trust Beneficiary, provide reasonably adequate documentary evidence of such Contingent Payments Trust Beneficiary's Contingent Payments Trust Interest, as indicated in the Register. For the avoidance of doubt, ownership of a Contingent Payments Trust Interest will not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except the book entry system.

2.4. Transfer of Contingent Payments Trust Interests. Subject to Section 2.5, the Contingent Payments Trust Interests shall be fully transferable and the Contingent Payments Trust shall recognize any such transfer of Contingent Payments Trust Interests occurring after the Effective Date; *provided*, that (i) any such transferor and transferee must provide written notice, in the form attached hereto as Exhibit A, to the Contingent Payments Trustee within five (5) business date of such transfer, and (ii) any transfer or assignment of a Contingent Payments Trust Interest by will, intestate succession or otherwise by operation of law shall not be effective against or binding upon the Contingent Payments Trust unless and until such transfer or assignment is recorded in the Register, which shall be completed as soon as practicable. The entries in the Register shall be conclusive absent manifest error, and the Contingent Payments Trust and the Contingent Payments Trustee shall treat each person whose name is recorded in the Register pursuant to the terms of this Trust Agreement as the owner of Contingent Payments Trust Interests indicated therein for all purposes of this Trust Agreement, notwithstanding notice to the contrary.

2.5. Exemption from Registration. The Contingent Payments Trust Interests have not been registered pursuant to the Securities Act of 1933, as amended (the "Securities Act"), or any state securities law, and shall not be listed for public trading on any securities exchange. The parties hereto intend that the rights of the holders of Contingent Payments Trust Interests shall not be "securities" under applicable laws, but none of the parties hereto represents or warrants that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemption from registration provided by Section 1145 of the Bankruptcy Code and by other applicable law to apply to their issuance under the Plan. The Contingent Payments Trust shall not be required to file reports with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), on account of any transfer. No transfer of a Contingent Payments Trust Interests that causes the Contingent Payments Trust to be required to file reports with the Securities and Exchange Commission pursuant to Sections 13 or 15(d) of the Exchange Act shall be permitted and any such transfer shall be void *ab initio*. In order to prevent the Contingent Payments Trust from becoming subject to such reporting requirements, the Contingent Payments Trustee may impose certain transfer restrictions designed to maintain the Contingent Payments Trust as

non-reporting entity, and the Contingent Payments Trust Agreement may be amended pursuant to Section 10.9 to make such changes as are deemed necessary or appropriate to ensure that the Contingent Payments Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the Trust Indenture Act of 1939, as amended, or the Investment Company Act of 1940, as amended.

2.6. Limited Liability. No provision of this Trust Agreement, the Plan or the Confirmation Order, and no mere enumeration herein of the rights or privileges of any Contingent Payments Trust Beneficiary, shall give rise to any liability of such Contingent Payments Trust Beneficiary solely in its capacity as such, whether such liability is asserted by the Debtor, creditors, successors, representatives, employees, or equity interest holders of the Debtor, or by any other person. Contingent Payments Trust Beneficiaries are deemed to receive the Distributions of Contingent Payments Trust Assets in accordance with the terms of this Trust Agreement, the Plan, and the Confirmation Order in exchange for their Allowed Claims without further obligation or liability of any kind, but subject to the provisions of this Trust Agreement.

### **ARTICLE III**

#### **DURATION AND TERMINATION OF CONTINGENT PAYMENTS TRUST**

3.1. Dissolution of the Contingent Payments Trust. The Contingent Payments Trust shall be dissolved upon the earlier of (i) the distribution of all distributable Contingent Payments Trust Assets (and any income and/or proceeds realized therefrom) to the Contingent Payments Trust Beneficiaries (ii) such other time as may be determined by the Contingent Payments Trustee, with the consent of the Controlling Contingent Payments Trust Beneficiaries. Except as otherwise specifically provided herein, upon dissolution of the Contingent Payments Trust, the Contingent Payments Trustee shall have no further duties or obligations hereunder and this Trust Agreement shall terminate other than the provisions that expressly survive termination.

### **ARTICLE IV**

#### **ADMINISTRATION OF THE CONTINGENT PAYMENTS TRUST**

4.1. Payment of Claims, Expenses, and Liabilities. The Contingent Payments Trustee shall use the funds in the Wind-Down Account to administer the Contingent Payments Trust, including paying taxes, filing tax returns, funding payroll, and other employee costs, providing for the purchase of errors and omissions insurance and/or other forms of indemnification for the Contingent Payments Trustee, in each case, to the extent applicable, and for all such items and other costs of administering the Plan and the Contingent Payments Trust. The Contingent Payments Trustee may establish and administer any other necessary reserves that may be required under the Plan or this Trust Agreement. Notwithstanding anything to the contrary contained in the Plan or this Trust Agreement other than Section 1.2(b) of this Trust Agreement, the Contingent Payments Trustee may make transfers of Cash between the accounts and reserves established under

the Plan to satisfy Claims and other obligations in accordance with the Plan and the Wind-Down Budget.

4.2. Distributions.

(a) Generally. The Contingent Payments Trustee (with the assistance of the Disbursing Agent(s) as necessary) shall make distributions to the Contingent Payments Trust Beneficiaries on account of their Contingent Payments Trust Interests only in accordance with the terms of the Plan, the Confirmation Order, this Trust Agreement and the Wind Down Budget, and only to the extent that the Contingent Payments Trust has sufficient income and/or proceeds realized from Contingent Payments Trust Assets or excess Cash in the Wind Down Account pursuant to Section 1.6 of this Trust Agreement to make such payments in accordance with and to the extent provided for in the Plan, the Confirmation Order and this Trust Agreement. The Contingent Payments Trustee, in consultation with the Contingent Payments Trust Advisory Board, shall make a determination of the amount of Cash available for distribution, which shall include the amount of unrestricted Cash then on hand (including any Cash received from the Debtor on the Effective Date, and treating any permissible investment as Cash for purposes of this Section 4.3 of this Trust Agreement), reduced by any such amounts that (i) are reasonably necessary to meet contingent liabilities and to maintain the value of the Contingent Payments Trust Assets, (ii) are determined to be necessary to pay or reserve for reasonably incurred or anticipated expenses (including, but not limited to, any Taxes imposed on or payable by the Debtor or the Contingent Payments Trust or in respect of the Contingent Payments Trust Assets), or (iii) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Contingent Payments Trust in accordance with the Plan and this Trust Agreement. The Contingent Payments Trustee shall then distribute available Cash, if any, to the Contingent Payments Trust Beneficiaries.

(b) Date of Distributions. The Contingent Payments Trustee shall make distributions to Contingent Payments Trust Beneficiaries entitled to distributions from the Contingent Payments Trust as provided in the Plan and this Trust Agreement on such dates as it chooses, in consultation with the Contingent Payments Trust Advisory Board; *provided*, however, that any such distributions shall be made in an expeditious and orderly manner following the receipt of any Contingent Payment or any determination that the Wind Down Account holds excess Cash in accordance with Section 1.6 of this Trust Agreement.

(c) Delivery of Distributions. If any dispute arises as to the identity of a Contingent Payments Trust Beneficiary that is entitled to receive a distribution pursuant to the Plan, the Disbursing Agent may, in lieu of making such distribution to such person, make the distribution into an escrow account until the disposition thereof is determined by written agreement among the interested parties to such dispute.

(d) Disbursing Agent.

(i) Except as otherwise provided herein, the Disbursing Agent shall make distributions to Contingent Payments Trust Beneficiaries to the address set

forth in the Register, which shall be (a) the addresses set forth on the respective proofs of Claim filed by such Contingent Payments Trust Beneficiaries, if applicable; (b) the addresses set forth on any written notices of address changes delivered to the Notice and Claims Agent or the Contingent Payments Trust, as applicable after the date of any related proof of Claim; or (c) at the address reflected in the Schedules or, if not reflected in the Schedules, then in the other records of the Debtor if no proof of Claim is filed and the Contingent Payments Trustee or the Debtor have not received a written notice of a change of address. The Contingent Payments Trustee shall have the absolute and unconditional right to rely on the information provided by the Debtor for purposes of notices and distributions under this Trust Agreement; *provided*, however, that the manner of such distributions shall be determined at the discretion of the Contingent Payments Trustee.

(ii) Distributions to Contingent Payments Trust Beneficiaries on account of Noteholder Claims. Contingent Payments Trust Beneficiaries that hold Contingent Payments Trust Interests on account of Noteholder Claims shall receive a distribution in accordance with the customary procedures of DTC. Distributions to such Contingent Payments Trust Beneficiaries shall be deemed completed when made to (or at the direction of) the Indenture Trustee, which shall hold or direct such distributions for the benefit of such Contingent Payments Trust Beneficiaries. The Indenture Trustee may transfer or direct the transfer of such distributions directly through the facilities of DTC (whether by means of book-entry exchange, free delivery, or otherwise) and will be entitled to recognize and deal for all purposes under the Plan and this Contingent Payments Trust Agreement with Contingent Payments Trust Beneficiaries that hold Contingent Payments Trust Interests on account of Noteholder Claims, to the extent consistent with the customary practices of DTC. The Indenture Trustee shall not incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct. If the Indenture Trustee is unable to make, or consents to the Contingent Payments Trustee making such distributions, then the Contingent Payments Trustee, with the Indenture Trustee's cooperation, shall make such distributions. The Indenture Trustee shall have no duties, obligations, or responsibilities with respect to any form of distribution to Contingent Payments Trust Beneficiaries that hold Contingent Payments Trust Interests on account of Noteholder Claims that is not DTC eligible, and the Contingent Payments Trustee shall make such distributions. For the avoidance of doubt, all such distributions referenced in this paragraph shall be subject to the Trustee Charging Lien.

(iii) Exculpation of Disbursing Agent. From and after the Effective Date, the Disbursing Agent, solely in its capacity as Disbursing Agent, shall be exculpated by all Entities, including Holders of Claims against the Debtor, Contingent Payments Trust Beneficiaries, and other parties in interest, from any and all Claims, Causes of Action, and other assertions of liability arising out of the discharge of the powers and duties conferred upon such Disbursing Agent by the Plan or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or applicable law, except for actions or omissions to act arising out of the

gross negligence or willful misconduct, fraud, malpractice, criminal conduct, or *ultra vires* acts of such Disbursing Agent.

(iv) Rights and Powers of Disbursing Agent. The Disbursing Agent may (a) effect all actions and execute all agreements, instruments, and other documents necessary to carry out the provisions of the Plan; (b) make all distributions contemplated hereby; and (c) perform such other duties as may be required of the Disbursing Agent pursuant to the Plan.

(v) Expenses of Disbursing Agent. Except as otherwise ordered by the Bankruptcy Court, any reasonable and documented fees and expenses incurred by the Disbursing Agent acting in such capacity (including reasonable documented attorneys' fees and expenses) on or after the Effective Date shall be paid in accordance with the Wind-Down Budget from the Wind-Down Account in the ordinary course of business. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties. If the Disbursing Agent is otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Contingent Payments Trust.

(e) Undeliverable or Non-Negotiated Distributions. If any distribution to a Contingent Payments Trust Beneficiary (1) is returned as undeliverable for lack of a current address or otherwise; or (2) is not cashed or otherwise presented for collection by the Contingent Payments Trust Beneficiary within ninety (90) calendar days after the mailing of such distribution, the Contingent Payments Trustee shall file with the Bankruptcy Court the name and last known address of the Contingent Payments Trust Beneficiary of undeliverable distribution or uncashed distribution, as applicable. If, after the passage of thirty (30) calendar days after such Filing, the payment or distribution on the Allowed Claim still cannot be made, then (1) the Contingent Payments Trust Beneficiary shall cease to be entitled to the undeliverable distribution or uncashed distribution, which will revert to the Contingent Payments Trust; and (2) the Allowed Claim of such Holder shall be deemed disallowed and expunged for purposes of further distributions under the Plan and this Trust Agreement. Nothing contained in the Plan or this Trust Agreement shall require the Debtor, the Contingent Payments Trustee, or any Disbursing Agent to attempt to locate any Contingent Payments Trust Beneficiary.

(f) Manner of Payment under Plan. Any distributions to be made by or on behalf of the Debtor or the Contingent Payments Trustee (as applicable) pursuant to the Plan or this Trust Agreement shall be made by checks drawn on accounts maintained by the Contingent Payments Trustee or by wire transfer if circumstances justify, at the option of the Contingent Payments Trustee.

(g) Foreign Currency Exchange Rate. As of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal*, on the Petition Date.

(h) Fractional Dollars. Notwithstanding any other provision of the Plan, the Disbursing Agent shall not be required to make distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment shall reflect a rounding of such fraction down to the nearest whole dollar.

(i) Satisfaction of Claims. Except as otherwise specifically provided in the Plan, distributions and deliveries to be made on account of Allowed Claims under the Plan shall be in complete and final satisfaction, settlement, and discharge of and exchange for such Allowed Claims.

(j) Minimum Distributions. No payment of Cash in an amount of less than one hundred U.S. dollars (\$100.00) shall be required to be made on account of any Allowed Claim. Such undistributed amount may instead be used in accordance with the Plan and this Trust Agreement. If the Cash available for the final distribution is less than the cost to distribute such funds, the Contingent Payments Trustee may donate such funds to a charitable organization that is (a) described in section 501(c)(3) of the IRC, (b) exempt from U.S. federal income tax under section 501(a) of the IRC, (c) not a “private foundation,” as defined in section 509(a) of the IRC, and (d) that is unrelated to the Contingent Payments Trust and any insider of the Contingent Payments Trustee.

(k) Allocation of Distributions between Principal and Interest. To the extent that any Allowed Claim entitled to a distribution under the Plan is based upon any obligation or instrument that is treated for U.S. federal income tax purposes as indebtedness of the Debtor and accrued but unpaid interest thereon, such distribution shall be allocated first to the principal amount of the Allowed Claim (as determined for U.S. federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Allowed Claim, to accrued but unpaid interest.

(l) Distributions Free and Clear. Except as otherwise provided in the Plan, any distribution or transfer made under this Trust Agreement, including distributions to any Contingent Payments Trust Beneficiary, shall be free and clear of any Liens, Claims, encumbrances, charges, and other interests, and no other entity shall have any interest, whether legal, beneficial, or otherwise, in property distributed or transferred pursuant to the Plan.

4.3. Compliance with Laws. Any and all distributions of the Contingent Payments Trust Assets shall be in compliance with applicable laws, including applicable federal and state tax and securities laws.

4.4. Fiscal Year. Except for the first and last years of the term of the Contingent Payments Trust, the fiscal year of the Contingent Payments Trust shall be the calendar year. For the first and last years of the term of the Contingent Payments Trust, the fiscal year of the Contingent Payments Trust shall be such portion of the calendar year that the Contingent Payments Trust is in existence.

4.5. Books and Records. To the extent applicable, the Contingent Payments Trust shall retain and preserve the Debtor's books, records, and files that relate to the Contingent Payments Trust Assets that shall have been delivered to or created by the Contingent Payments Trust, in such detail and for such period of time as may be necessary to enable it to make full and proper reports in respect thereof in accordance with the provisions of this Trust Agreement and applicable provisions of law, including applicable tax, securities and other federal and state laws. The Contingent Payments Trust Advisory Board shall have the right upon five (5) business days' notice to the Contingent Payments Trustee to inspect such books and records, subject to the Contingent Payments Trustee's right to deny access in a reasonable effort to preserve privileged or confidential information. Except as otherwise provided herein or in the Plan, nothing in this Trust Agreement requires the Contingent Payments Trustee to file any accounting or seek approval of any court with respect to the administration of the Contingent Payments Trust, or as a condition for making any payment or Distribution out of the Contingent Payments Trust Assets.

4.6. Contingent Payments Trust Insurance. The Contingent Payments Trustee is hereby authorized, but not required, to obtain all reasonable insurance coverage for itself, the Contingent Payments Trust Advisory Board, and their agents, representatives, employees or independent contractors, including coverage with respect to the liabilities, duties and obligations of the Contingent Payments Trustee, the Contingent Payments Trust Advisory Board, and their agents, representatives, employees or independent contractors under this Trust Agreement and the Plan ("**Insurance Coverages**"). The cost of any such Insurance Coverage shall be an expense of the Contingent Payments Trust and paid out of the Wind-Down Account in accordance with the Wind-Down Budget.

4.7. Reports.

(a) The Contingent Payments Trustee shall, as soon as reasonably practicable and no later than 45 days following the end of each fiscal quarter during the term of the Contingent Payments Trustee, deliver by electronic communication (including e-mail and Internet or intranet websites) to the Contingent Payments Trust Advisory Board, and to each Contingent Payments Trust Beneficiary who has so requested from the Liquidating Trustee in writing, the following information: (i) the costs and expenses of the Contingent Payments Trust that are incurred (including any taxes imposed on the Contingent Payments Trust or actual reasonable out-of-pocket fees and expenses incurred by Contingent Payments Trust Professionals in connection with the administration and liquidation of the Contingent Payments Trust Assets) during the preceding fiscal quarter and the remaining amount (if any) of the Wind-Down Account, (ii) the amounts listed in clause (i) incurred since the Effective Date, (iii) the amount of Cash and other assets received by the Contingent Payments Trust during the prior fiscal quarter, (iv) the aggregate amount of Cash and other assets received by the Contingent Payments Trust since the Effective Date and (v) the aggregate amount of distributions from the Contingent Payments Trust to the Contingent Payments Trust Beneficiaries since the Effective Date. The Contingent Payments Trustee shall also timely prepare, file, and distribute such additional statements, reports, and submissions as may be necessary to cause the Contingent Payments Trust and the Contingent Payments Trustee to be in compliance with applicable law. The Contingent Payments Trustee shall also provide the U.S. Trustee and

the Bankruptcy Court the information and reports they may reasonably request concerning Trust administration.

## ARTICLE V

### TAX MATTERS

5.1. Treatment of Trust for Tax Purposes. The Contingent Payments Trust is intended to be classified as an investment trust described in Treasury Regulations section 301.7701-4(c) that is treated as a grantor trust for U.S. federal income tax purposes. On the Effective Date, if all Disputed Claims are resolved prior to the Trust Election Date, then the Debtor shall be deemed to have distributed pro rata undivided interests in the Contingent Payments Trust Assets to Holders of Noteholder Claims, Allowed Patheon Rejection Claims or Allowed General Unsecured Claims and such Holders shall be deemed to have contributed such Contingent Payments Trust Assets to the Contingent Payments Trust in exchange for beneficial interests in the Contingent Payments Trust. If all Disputed Claims are not resolved prior to the Trust Election Date, then the Debtor shall be deemed to have distributed the Contingent Payments Trust Assets to the Contingent Payments Holding Trust and the Contingent Payments Holding Trust shall be deemed to have contributed the Contingent Payments Trust Assets to the Contingent Payments Trust in exchange for its beneficial interest in the Contingent Payments Trust.

5.2. Tax Reporting.

(a) To the extent permitted by applicable law, all parties, including the Contingent Payments Trustee, any Contingent Payments Trust Beneficiaries and all Holders of Noteholder Claims, Allowed Patheon Rejection Claims and Allowed General Unsecured Claims, shall report consistently with the foregoing for all applicable tax reporting purposes.

(b) The Contingent Payments Trustee shall be responsible for payment, out of the Wind-Down Account, of any taxes imposed on the Contingent Payments Trust or its assets.

(c) As soon as reasonably practicable after the Contingent Payments Trust Assets are transferred to the Contingent Payments Trust, but in no event later than one hundred and twenty (120) days thereafter, the Contingent Payments Trustee shall make a good faith valuation of the Contingent Payments Trust Assets, which may be based on the Debtor's valuation of the Contingent Payments Trust Assets if the Contingent Payments Trustee determines in its sole discretion that the Debtor's valuation is materially accurate, and such valuation shall be used consistently by all parties for all U.S. federal income tax purposes. The Contingent Payments Trustee shall also file (or cause to be filed) any other statements, returns, or disclosures relating to the Contingent Payments Trust that are required by any Governmental Unit. In connection with the preparation of the valuation contemplated hereby and by the Plan, the Contingent Payments Trustee shall be entitled to retain such professionals and advisors as the Contingent Payments Trustee shall determine to be appropriate or necessary, and the Contingent Payments Trustee shall take such other

actions in connection therewith as it determines to be appropriate or necessary. Such valuation shall be used consistently by such parties for all U.S. federal income tax purposes.

(d) The Contingent Payments Trustee shall annually send to each Contingent Payments Trust Beneficiary a separate statement and/or Schedule K-1, as applicable, regarding the information necessary for tax reporting purposes and shall instruct all such beneficiaries to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such beneficiary's underlying beneficial owners with instructions to utilize such information in preparing their U.S. federal income tax returns. The Contingent Payments Trustee shall also file (or cause to be filed) any other statement, return or disclosure relating to the Contingent Payments Trust that is required by any governmental unit.

5.3. Tax Withholdings by Contingent Payments Trustee.

(a) The Contingent Payments Trustee shall (1) withhold, deduct, and pay over to the appropriate governmental authority any amount required to be withheld under U.S. federal, state, local, or foreign tax laws with respect to any distribution pursuant to this Trust Agreement and (2) comply with any reporting requirements imposed by any U.S. federal, state, local, or foreign taxing authority. The Contingent Payments Trustee may withhold all or the appropriate portion of any distribution due to any Contingent Payments Trust Beneficiary until such time as such Contingent Payments Trust Beneficiary provides the necessary information to comply with any withholding requirements of any governmental authority. Any tax withheld shall be treated as distributed and received by the applicable Contingent Payments Trust Beneficiary for all purposes of this Trust Agreement and the Plan. If a Contingent Payments Trust Beneficiary fails to provide the information necessary to comply with any withholding requirements of any governmental authority on or before the day that is one year after the Effective Date of the Plan, then such beneficiary's distribution may be treated as unclaimed property in accordance with this Trust Agreement.

5.4. IRS Forms.

(a) In connection with the Plan, to the extent applicable and not an obligation of the Purchasers under the Sale Documents, the Contingent Payments Trustee shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Contingent Payments Trustee shall be authorized to take all actions necessary to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms it believes are reasonable and appropriate. The Contingent Payments Trustee reserves the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances.

(b) As a condition precedent to receiving any distribution under this Plan, each Contingent Payments Trust Beneficiary that is entitled to a distribution under the Plan and this Trust Agreement must provide the Contingent Payments Trustee an applicable executed IRS Form. An Allowed Claim of a Holder that fails to provide an applicable executed IRS Form or provide any other required information to effectuate a distribution within sixty (60) days after service (by first class mail) of a formal request for the same by the Contingent Payments Trustee shall be deemed disallowed and expunged for purposes of distributions under the Plan.

## ARTICLE VI

### POWERS OF AND LIMITATIONS ON THE CONTINGENT PAYMENTS TRUSTEE

#### 6.1. Term of the Contingent Payments Trustee.

(a) The Contingent Payments Trustee will serve on and after the Effective Date in accordance with this Trust Agreement and the Plan, reporting to the Contingent Payments Trust Advisory Board to the extent required by this Trust Agreement and the Plan. Subject to Article VII of this Trust Agreement and Article IV of the Plan, the Contingent Payments Trustee shall hold office until the earlier to occur of (i) the termination of the Contingent Payments Trust in accordance with the terms set forth in this Trust Agreement and the Plan or (ii) the Contingent Payments Trustee's death, resignation, dissolution, incapacity or removal pursuant to this Trust Agreement. The duties, responsibilities and powers of the Contingent Payments Trustee shall terminate on the date the Contingent Payments Trust is wound up and dissolved in accordance with Delaware law pursuant to Section 3.1 of this Trust Agreement; *provided*, that Section 9.2 of this Trust Agreement, Section 9.4 of this Trust Agreement, Section 9.5 of this Trust Agreement and Section 9.6 of this Trust Agreement shall survive such termination, dissolution and entry. References herein to the Contingent Payments Trustee shall refer to the individual, individuals, or entity serving as the Contingent Payments Trustee solely in its or their capacity as trustees hereunder.

#### 6.2. Responsibilities and Authority of the Contingent Payments Trustee.

(a) The responsibilities and authority of the Contingent Payments Trustee shall include the following rights and responsibilities, which shall be the exclusive rights and responsibilities of the Contingent Payments Trustee: (i) preserving and administering the Contingent Payments Trust, (ii) administering and paying taxes, including, among other things, (1) filing tax returns, and (2) representing the interest and account of the Contingent Payments Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding, or audit; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Contingent Payments Trustee's performance of its duties under the Plan and this Trust Agreement; (iv) distributing information statements as required for U.S. federal income tax and other applicable tax purposes; (v) making distributions to the Contingent Payments Trust Beneficiaries in accordance with the Plan and this Trust Agreement; and (vi) such

other responsibilities as may be vested in the Contingent Payments Trustee pursuant to the Plan, this Trust Agreement, or an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of the Plan.

6.3. Actions Taken by the Contingent Payments Trustee.

(a) The Contingent Payments Trustee may take any and all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan and this Trust Agreement, without the need for Bankruptcy Court approval (unless otherwise indicated), including, but not limited to:

(i) the execution and delivery of appropriate agreements or other documents of consolidation, conversion, disposition, transfer, or dissolution containing terms that are consistent with the terms of the Plan and this Trust Agreement and that satisfy the requirements of applicable law;

(ii) the power to invest funds of the Contingent Payments Trust, and withdraw, make distributions, and pay taxes and other obligations owed by the Contingent Payments Trust from such funds in accordance with the Plan and this Trust Agreement;

(iii) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Contingent Payments Trustee with respect to its responsibilities. For the avoidance of doubt, a law firm shall not be disqualified from serving as counsel to the Contingent Payments Trustee solely because of that law firm's prior retention by the Debtor, the Creditors' Committee, or a member of the Creditors' Committee, the Indenture Trustee, or the Consenting Noteholders;

(iv) the execution and delivery of any appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, duty, or obligation on terms consistent with the Plan and this Trust Agreement;

(v) the ability to appear and have standing in the Bankruptcy Court (or any other court having jurisdiction over the Contingent Payments Trust Assets) to be heard with regard to any matters that may affect or relate to the Contingent Payments Trust Assets;

(vi) the filing of appropriate documents with the appropriate governmental authorities pursuant to applicable law;

(vii) the ability to protect and enforce the rights to the Contingent Payments Trust Assets vested in the Contingent Payments Trust by this Trust Agreement;

(viii) the ability to oversee compliance with the Contingent Payments Trust's accounting, finance, and reporting obligations;

(ix) the powers set forth in Section 4.2(b) of this Trust Agreement;

(x) the power to pay any and all expenses and make all other payments in connection with administering the Contingent Payments Trust without further order of the Bankruptcy Court;

(xi) the ability to open and maintain bank accounts in the name of the Contingent Payments Trust, draw checks and drafts thereon on the sole signature of the Contingent Payments Trustee, and terminate such accounts as the Contingent Payments Trustee deems appropriate;

(xii) in the event that the Contingent Payments Trustee determines that the Contingent Payments Trust Beneficiaries or the Contingent Payments Trust may, will, or have become subject to adverse tax consequences, in the Contingent Payments Trustee's sole discretion, the power to take such actions that will, or are intended to, alleviate such adverse tax consequences;

(xiii) make Distributions to holders of Allowed Claims and deliver Distributions on account of the Contingent Payments Trust Interests or such other Distributions as may be authorized by Final Order of the Bankruptcy Court, this Trust Agreement, or the Plan to the Contingent Payments Trust Beneficiaries in accordance with this Trust Agreement; and

(xiv) any and all other actions that the Contingent Payments Trustee determines is necessary or appropriate to effectuate the Plan and this Trust Agreement.

#### 6.4. Limitations on Contingent Payments Trustee.

(a) The Contingent Payments Trustee shall, on behalf of the Contingent Payments Trust, protect and conserve the assets of the Trust. In construing the provisions of this Trust Agreement, the presumption shall be in favor of a grant of power to the Contingent Payments Trustee, but subject, for the avoidance of doubt, to the restrictions, prohibitions and limitations expressly set forth in Sections 1.2 and 1.3 and otherwise in this Trust Agreement. The Contingent Payments Trustee shall not at any time, on behalf of the Contingent Payments Trust or the Contingent Payments Trust Beneficiaries, (i) enter into or engage in any trade or business, or (ii) take any actions that are not related, directly or indirectly, to the purposes of this Trust Agreement and the Contingent Payments Trust or the administration or implementation of the terms hereof.

(b) Notwithstanding anything in this Trust Agreement to the contrary, the Contingent Payments Trustee shall provide reasonable notice to the Contingent Payments Trust Advisory Board with respect to the following matters (the "**Material Matters**"):

- (i) any incurrence of any cost, expense or fee in excess of \$[50,000] (covering services to be rendered or products utilized by the Contingent Payments Trustee within a one month period);
- (ii) determination of the timing of any Distribution to the Contingent Payments Trust Beneficiaries;
- (iii) the dissolution of the Contingent Payments Trust.

In the event that the Contingent Payments Trust Advisory Board objects to the Contingent Payments Trustee's proposed course of action with respect to any Material Matter, the Contingent Payments Trust Advisory Board shall submit such matter to the Contingent Payments Trust Beneficiaries, and the Contingent Payments Trustee shall not pursue such proposed course of action if, within twenty (20) days following the submission of such matter to the Contingent Payments Trust Beneficiaries, the Controlling Contingent Payments Trust Beneficiaries have not objected to the proposed course of action.

6.5. Compensation and Expenses of the Contingent Payments Trustee.

(a) The Contingent Payments Trustee shall be entitled to receive reasonable compensation in connection with its performance of its duties plus the reimbursement of reasonable out-of-pocket expenses. All reasonable and documented costs, expenses, and obligations, including filing fees, incurred by the Contingent Payments Trustee or the Contingent Payments Trust Professionals shall be paid from the Wind-Down Account, prior to any distribution to the Contingent Payments Trust Beneficiaries and without further Bankruptcy Court approval or order (subject to the limitations set forth in this Trust Agreement and the Plan).

6.6. Agents, Employees, and Professionals.

(a) The Contingent Payments Trustee, in consultation with the Contingent Payments Trust Advisory Board, shall have the right, without Court approval, to retain the services of attorneys, accountants, and other professionals and agents (the "**Contingent Payments Trust Professionals**"), to assist and advise the Contingent Payments Trustee in the performance of its duties, and to compensate and reimburse expenses of such professionals in accordance with the this Trust Agreement; *provided*, however, that it is understood that the Contingent Payments Trust intends to initially engage [•] as Primary Trust Counsel. None of the professionals that represented parties in interest in the Chapter 11 Case shall be precluded from being engaged by the Contingent Payments Trust solely on account of their service as a professional for such parties-in-interest prior to the Effective Date. The Contingent Payments Trustee may remove any Contingent Payments Trust Professional with or without Cause.

(b) The Primary Trust Counsel that is appointed in accordance with the terms of the Plan shall be considered a Contingent Payments Trust Professional for the purposes of this Trust Agreement and the Plan. Notwithstanding Section 6.7(a) of this Trust Agreement, in the event of the resignation, removal, bankruptcy or insolvency of the

Primary Trust Counsel, a vacancy shall be deemed to exist, and a successor shall be appointed by the Contingent Payments Trustee in consultation with the Contingent Payments Trust Advisory Board.

(c) After the Effective Date, Contingent Payments Trust Professionals shall be required to submit reasonably detailed invoices on a monthly basis to the Contingent Payments Trustee and the Contingent Payments Trust Advisory Board, including in such invoices a description of the work performed, who performed such work, and if billing on an hourly basis, the hourly rate of such person, plus an itemized statement of expenses. In the event of any dispute concerning the entitlement to, or the reasonableness of any compensation and/or expenses of any Contingent Payments Trust Professionals, either the Contingent Payments Trustee or the affected party may ask the Bankruptcy Court to resolve the dispute. The Contingent Payments Trustee is authorized to pay compensation for services rendered or reimbursement of expenses incurred after the Effective Date in the ordinary course and without the need for Bankruptcy Court approval.

6.7. Investment of Contingent Payments Trust Monies. The Contingent Payments Trustee may, in consultation with the Contingent Payments Trust Advisory Board, invest Cash (including any earnings thereon or proceeds therefrom); *provided*, that such investments are investments permitted to be made by an “investment trust” within the meaning of Treasury Regulations section 301.7701-4(c), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities. All monies and other assets received by the Contingent Payments Trust as Contingent Payments Trust Assets (including the proceeds thereof as a result of investment in accordance with this Section 6.6 of this Trust Agreement) shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Contingent Payments Trust Beneficiaries, and shall not be segregated from other Contingent Payments Trust Assets, unless and to the extent required by the Plan.

6.8. Resident Trustee.

(a) The Resident Trustee has been appointed and hereby agrees to serve as the trustee of the Contingent Payments Trust solely for the purpose of complying with the requirement of Section 3807(a) of the Trust Act that the Contingent Payments Trust have one trustee, which, in the case of a natural person, is a resident of the State of Delaware, or which in all other cases, has its principal place of business in the State of Delaware. The duties and responsibilities of the Resident Trustee shall be limited solely to (i) accepting legal process served on the Contingent Payments Trust in the State of Delaware, (ii) the execution of any certificates required to be filed with the office of the Delaware Secretary of State that the Resident Trustee is required to execute under section 3811 of the Trust Act, and (iii) any other duties specifically allocated to the Resident Trustee in this Trust Agreement. Except as provided in the foregoing sentence, the Resident Trustee shall have no management responsibilities or owe any fiduciary duties to the Contingent Payments Trust, the Contingent Payments Trustee, the Contingent Payments Trust Advisory Board, or the Contingent Payments Trust Beneficiaries.

(b) By execution of this Trust Agreement, the Resident Trustee accepts the Contingent Payments Trust created herein. Except as otherwise expressly required by Section 6.7(a) of this Trust Agreement, the Resident Trustee shall not have any duty or liability with respect to the administration of the Contingent Payments Trust, the investment of the Contingent Payments Trust Assets or the Distribution of the Contingent Payments Trust Assets to the Contingent Payments Trust Beneficiaries, and no such duties shall be implied. The Resident Trustee shall not be liable for the acts or omissions of the Contingent Payments Trustee or the Contingent Payments Trust Advisory Board, nor shall the Resident Trustee be liable for supervising or monitoring the performance of the duties and obligations of the Contingent Payments Trustee or the Contingent Payments Trust Advisory Board under this Trust Agreement, except as expressly required by Section 6.7(a) of this Trust Agreement. The Resident Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder. The Resident Trustee shall not be personally liable under any circumstances, except for its own willful misconduct, bad faith, or gross negligence. Without limiting the foregoing:

(i) the Resident 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;

(ii) no provision of this Trust Agreement shall require the Resident 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 Resident 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;

(iii) the Resident Trustee shall not be personally liable for the validity or sufficiency of this Trust Agreement or for the due execution of this Trust Agreement by the other parties to this Trust Agreement;

(iv) the Resident 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;

(v) the Resident Trustee may request the Contingent Payments 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 Resident Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(vi) in the exercise or administration of the Contingent Payments Trust hereunder, the Resident Trustee (A) may act directly or through agents or attorneys pursuant to agreements entered into with any of them and (B) may consult with nationally recognized counsel selected by it in good faith and with due care 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; and

(vii) the Resident Trustee acts solely as Resident Trustee hereunder and not in its individual capacity, and all persons having any claim against the Resident Trustee by reason of the transactions contemplated by this Trust Agreement shall look only to the Contingent Payments Trust Assets for payment or satisfaction thereof.

(c) The Resident Trustee shall be entitled to receive compensation out of the Wind-Down Account in accordance with the Wind-Down Budget for the services that the Resident Trustee performs in accordance with this Trust Agreement in accordance with such fee schedules as shall be agreed from time to time by the Resident Trustee and the Contingent Payments Trustee. The Resident Trustee may also consult with counsel (who may be counsel for the Contingent Payments Trust, counsel for the Resident Trustee, or counsel for both the Contingent Payments Trust and the Resident Trustee) with respect to those matters that relate to the Resident Trustee's role as the Delaware resident trustee of the Contingent Payments Trust, and the reasonable legal fees incurred in connection with such consultation shall be reimbursed out of the Wind-Down Budget to the Resident Trustee pursuant to this Section 6.7(c) of this Trust Agreement on terms reasonably acceptable to the Contingent Payments Trust Advisory Board; *provided* that no such fees shall be reimbursed to the extent that they are incurred as a result of the Resident Trustee's gross negligence, bad faith or willful misconduct.

(d) The Resident Trustee shall serve for the duration of the Contingent Payments Trust or until the earlier of (i) the effective date of the Resident Trustee's resignation, or (ii) the effective date of the removal of the Resident Trustee. The Resident Trustee may resign at any time by giving 30 days' written notice to the Contingent Payments Trustee and the Contingent Payments Trust Advisory Board; *provided*, however, that such resignation shall not be effective until such time as a successor Resident Trustee has accepted appointment. The Resident Trustee may be removed at any time by the Contingent Payments Trustee or the Contingent Payments Trust Advisory Board, by providing 30 days' written notice to the Resident Trustee; *provided*, however, such removal shall not be effective until such time as a successor Resident Trustee has accepted appointment. Upon the resignation or removal of the Resident Trustee, the Contingent Payments Trustee shall appoint a successor Resident Trustee. If no successor Resident Trustee shall have been appointed and shall have accepted such appointment within 45 days after the giving of such notice of resignation or removal, the Resident Trustee may petition the Bankruptcy Court for the appointment of a successor Resident Trustee. Any successor Resident Trustee appointed pursuant to this Section 6.7(d) of this Trust Agreement shall be eligible to act in such capacity in accordance with this Trust Agreement and, following compliance with this Section 6.7(d) of this Trust Agreement, shall become fully vested with the rights, powers, duties, and obligations of its predecessor under this Trust Agreement, with like effect as if originally named as Resident Trustee. Any such successor Resident Trustee shall notify the Resident Trustee of its appointment by providing written notice to the Resident Trustee, and upon receipt of such notice, the Resident Trustee shall be discharged of its duties herein.

6.9. Fiduciary and Other Duties. Notwithstanding anything in the Plan or this Trust Agreement to the contrary, the Contingent Payments Trustee and the members

of the Contingent Payments Trust Advisory Board shall always act in the best interests of the Contingent Payments Trust Beneficiaries and in furtherance of the purpose of the Contingent Payments Trust as set forth in Article IV.D of the Plan. Except for obligations expressly imposed on the Contingent Payments Trustee and the Contingent Payments Trust Advisory Board by this Trust Agreement, to the extent that, at law or in equity, the Contingent Payments Trustee or the Contingent Payments Trust Advisory Board has duties (including fiduciary duties) to the Contingent Payments Trust Beneficiaries or to any other person that is a party to or is otherwise bound by this Trust Agreement, such duties are hereby eliminated by this Trust Agreement to the fullest extent permitted by applicable law; *provided*, however, that this Trust Agreement does not eliminate the implied contractual covenant of good faith and fair dealing.

## ARTICLE VII

### SUCCESSOR CONTINGENT PAYMENTS TRUSTEE

7.1. Resignation. The Contingent Payments Trustee may resign from the Contingent Payments Trust by giving prior written notice thereof to the Contingent Payments Trust Advisory Board or, in the event the Contingent Payments Trust Advisory Board is no longer in existence, the Contingent Payments Trust Beneficiaries, and, prior to the entry of a final decree closing the Chapter 11 Case, to the U.S. Trustee and Bankruptcy Court. Such resignation shall become effective on the earlier to occur of (a) the date specified in such written notice and (b) the effective date of the appointment of a successor Contingent Payments Trustee in accordance with Section 7.4 of this Trust Agreement and such successor's acceptance of such appointment in accordance with Section 7.5 of this Trust Agreement.

7.2. Removal. The Contingent Payments Trustee may be removed with or without cause at any time by the Controlling Contingent Payments Trust Beneficiaries. Removal of the Contingent Payments Trustee shall be effective on the date specified in the resolution. Notwithstanding the removal of the Contingent Payments Trustee pursuant to this Section 7.2, the rights of the resigning Contingent Payments Trustee under this Trust Agreement with respect to acts or omissions occurring prior to the effectiveness of such removal will continue for the benefit of such resigning Contingent Payments Trustee following the effectiveness of such resignation. The "**Controlling Contingent Payments Trust Beneficiaries**" means, (i) the Contingent Payments Holding Trust or, (ii) upon resolution of all Disputed Claims and the transfer by the Contingent Payments Holding Trust of its interests in the Contingent Payments Trust to the Holders of Noteholder Claims, Allowed Patheon Rejection Claims and Allowed General Unsecured Claims, the Contingent Payments Trust Beneficiaries holding a majority of the aggregate amount of Allowed Claims of all Contingent Payments Trust Beneficiaries.

7.3. Effect of Resignation or Removal. The resignation, removal, incompetency, bankruptcy, or insolvency of the Contingent Payments Trustee shall not operate to terminate the Contingent Payments Trust or to revoke any existing agency created pursuant to the terms of this Trust Agreement, the Plan, or the Confirmation Order or invalidate any action theretofore taken by the Contingent Payments Trustee. All fees

and expenses properly incurred by the Contingent Payments Trustee prior to the resignation, incompetency or removal of the Contingent Payments Trustee shall be paid from the Wind-Down Account pursuant to the Wind-Down Budget, unless such fees and expenses are disputed by the Contingent Payments Trust Advisory Board, in which case the Bankruptcy Court shall resolve the dispute and any disputed fees and expenses of the predecessor Contingent Payments Trustee that are subsequently allowed by the Bankruptcy Court shall be paid from the Contingent Payments Trust Assets. In the event of the resignation or removal of the Contingent Payments Trustee, such Contingent Payments Trustee shall (a) promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the Contingent Payments Trust Advisory Board or the successor Contingent Payments Trustee or directed by the Bankruptcy Court to effect the termination of such Contingent Payments Trustee's capacity under this Trust Agreement, (b) promptly deliver to the Contingent Payments Trust Advisory Board and the successor Contingent Payments Trustee all documents, instruments, records and other writings related to the Contingent Payments Trust as may be in the possession of such Contingent Payments Trustee, and (c) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Contingent Payments Trustee.

7.4. Appointment of Successor. Upon the death, resignation, dissolution, incapacity or removal of a Contingent Payments Trustee, the Controlling Contingent Payments Trust Beneficiaries, in consultation with the Contingent Payments Trust Advisory Board, shall have the authority to designate a successor Contingent Payments Trustee, with the consent of the Controlling Contingent Payments Trust Beneficiaries.

7.5. Acceptance of Appointment by Successor Contingent Payments Trustee. Any successor Contingent Payments Trustee so appointed shall consent to and accept in writing the terms of this Trust Agreement and agrees that the provisions of this Trust Agreement shall be binding upon and inure to the benefit of the successor Contingent Payments Trustee. Upon acceptance in writing, such successor Contingent Payments Trustee shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion and privileges of its predecessor in the Contingent Payments Trust with like effect as if originally named Contingent Payments Trustee and shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

## ARTICLE VIII

### CONTINGENT PAYMENTS TRUST ADVISORY BOARD

8.1. Contingent Payments Trust Advisory Board.

(a) There is hereby established and created a special advisory board (the "**Contingent Payments Trust Advisory Board**") to monitor and oversee the Contingent Payments Trustee and other activities required in connection with the management and distribution of the Contingent Payments Trust Assets, including the performance of the Contingent Payments Trustee's obligations under the Plan and this Trust Agreement.

(b) As of the Effective Date, the members of the Contingent Payments Trust Advisory Board shall be [•], [•] and [•]. Any or all members of the Contingent Payments Trust Advisory Board may resign from the Contingent Payments Trust Advisory Board at any time by written notice of resignation to the Contingent Payments Trustee. A member of the Contingent Payments Trust Advisory Board shall be deemed to be immediately removed as a member of the Contingent Payments Trust Advisory Board in the event that a Contingent Payments Trust Advisory Board member (i) dies, resigns, or becomes incapacitated, or (ii) otherwise fails or refuses to serve and is removed pursuant to the terms of this Contingent Payments Trust Agreement. In the event of a Contingent Payments Trust Advisory Board member's resignation or removal, the Contingent Payments Trust Advisory Board, in consultation with the Contingent Payments Trustee, may, but is not required to, elect a replacement member. There shall be no minimum number of members of the Contingent Payments Trust Advisory Board to retain its function; provided, however, if there shall have been no Contingent Payments Trust Advisory Board for a period of thirty (30) consecutive days, then the Contingent Payments Trustee may, during such vacancy, and thereafter, ignore any reference in the Plan, this Trust Agreement, or the Confirmation Order to the Contingent Payments Trust Advisory Board, and all such references in the Plan, this Trust Agreement or the Confirmation Order shall be null and void. Any deadlock in a vote by the members of the Contingent Payments Trust Advisory Board may be broken by a vote cast by the Contingent Payments Trustee.

(c) The Contingent Payments Trustee shall provide the Contingent Payments Trust Advisory Board with such reports as set forth in Section 4.8. Each member of the Contingent Payments Trust Advisory Board shall be reimbursed by the Contingent Payments Trust from the Contingent Payments Trust Assets for its actual, reasonable, and documented out-of-pocket expenses incurred for serving on the Contingent Payments Trust Advisory Board; *provided* that each member of the Contingent Payments Trust Advisory Board shall not receive any reimbursement for the services of any attorney, accountant, and other professional and agent. Except as provided for in this Section 8.1(c) of this Trust Agreement, the members of the Contingent Payments Trust Advisory Board shall not be entitled to receive any other form of compensation for their services provided as such members. The Contingent Payments Trust Advisory Board may, but shall not be required to, adopt by-laws addressing the conduct of the Contingent Payments Trust Advisory Board.

(d) The Contingent Payments Trust Advisory Board, may, at any time, provide notice to the Contingent Payments Trust Beneficiaries that the Contingent Payments Trust Advisory Board recommends removal of the Contingent Payments Trustee by the Contingent Payments Trust Beneficiaries. Within ten (10) business days of providing such notice, the Contingent Payments Trust Beneficiaries shall vote on such matter, and the Contingent Payments Trustee shall be removed upon the vote in favor of removal by the Controlling Contingent Payments Trust Beneficiaries pursuant to Section 7.2 of this Trust Agreement.

(e) The Contingent Payments Trust Advisory Board, any of the Contingent Payments Trust Advisory Board's members or designees, attorneys, accountants, or other professionals, any duly designated agent or representative of the Contingent Payments Trust Advisory Board, and the respective employees of any of the

foregoing, shall not be liable for any act or omission of any other member, designee, agent, or representative of the Contingent Payments Trust Advisory Board, nor shall any member be liable for any act or omission taken or to be taken in that member's capacity as a member of the Contingent Payments Trust Advisory Board, other than acts resulting from such member's intentional misconduct, willful misconduct, or gross negligence. The Contingent Payments Trust Advisory Board may, in connection with the performance of the Contingent Payments Trust Advisory Board's functions, and in the Contingent Payments Trust Advisory Board's sole and absolute discretion, consult with counsel, accountants, and any other professionals, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such counsel, accountants, or other professionals, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, the Contingent Payments Trust Advisory Board shall be under no obligation to consult with counsel, accountants or other professionals, and the Contingent Payments Trust Advisory Board's determinations to not do so shall not result in the imposition of liability on the Contingent Payments Trust Advisory Board or the Contingent Payments Trust Advisory Board's members or designees, unless such determination is based on intentional misconduct, willful misconduct, or gross negligence.

(f) In the event there is an act required to be taken pursuant to the terms of this Trust Agreement, the Plan or the Confirmation Order by the Contingent Payments Trust Advisory Board and the Contingent Payments Trust Advisory Board cannot act because of a voting deadlock, the deadlock shall be broken by the vote of the Contingent Payments Trustee. If the Contingent Payments Trustee determines not to vote, the matter shall be decided by the Bankruptcy Court by submission of a motion on proper notice.

## ARTICLE IX

### RELIANCE, LIABILITY AND INDEMNIFICATION

9.1. Reliance by the Contingent Payments Trustee and the Members of the Contingent Payments Trust Advisory Board. Except as otherwise provided in this Trust Agreement, the Plan or the Confirmation Order, the Contingent Payments Trustee, the members of the Contingent Payments Trust Advisory Board and the Resident Trustee may rely and shall be protected in acting upon the advice of any Contingent Payments Trust Professional and/or upon any resolution, statement, instrument, opinion, report, notice, request, consent, order or other paper or document reasonably believed by the Contingent Payments Trustee, the Contingent Payments Trust Advisory Board and the Resident Trustee to be genuine and to have been signed or presented by the proper party or parties.

9.2. Liability to Third Persons. No Contingent Payments Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Contingent Payments Trust Assets or the affairs of the Contingent Payments Trustee. The Contingent Payments Trustee, the members of the Contingent Payments Trust Advisory Board, the Resident Trustee and the Contingent Payments Trust Professionals shall not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person (including, in the case of the

Contingent Payments Trustee and members of the Contingent Payments Trust Advisory Board, to any Contingent Payments Trust Professionals retained by the Contingent Payments Trustee in accordance with this Trust Agreement) in connection with the Contingent Payments Trust Assets or the affairs of the Contingent Payments Trust and shall not be liable with respect to any action taken or omitted to be taken in good faith, except for actions and omissions determined by a final order of the Bankruptcy Court to be due to their respective bad faith, gross negligence, intentional fraud, criminal conduct or willful misconduct, and all such persons shall look solely to the Contingent Payments Trust Assets for satisfaction of claims of any nature arising in connection with affairs of the Contingent Payments Trust. Other than as set forth in the Plan or in the Confirmation Order, nothing in this Section 9.2 of this Trust Agreement shall be deemed to release any Contingent Payments Trust Beneficiary from any actions or omissions occurring prior to the Effective Date.

9.3. Nonliability of Contingent Payments Trustee and Contingent Payments Trust Advisory Board for Acts of Others. Except as provided herein, nothing contained in this Trust Agreement, the Plan or the Confirmation Order shall be deemed to be an assumption by the Contingent Payments Trustee, the Contingent Payments Trust Advisory Board (or its members), the Resident Trustee or the Contingent Payments Trust Professionals of any of the liabilities, obligations or duties of the Debtor or shall be deemed to be or contain a covenant or agreement by the Contingent Payments Trustee to assume or accept any such liability, obligation or duty. Any successor Contingent Payments Trustee, Contingent Payments Trust Advisory Board member or Resident Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Contingent Payments Trustee hereunder, and any statement or representation made as to the assets comprising the Contingent Payments Trust Assets or as to any other fact bearing upon the prior administration of the Contingent Payments Trust, so long as it has a good faith basis to do so. The Contingent Payments Trustee, the Contingent Payments Trust Advisory Board members, and the Resident Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. The Contingent Payments Trustee or any successor Contingent Payments Trustee and the Contingent Payments Trust Advisory Board members shall not be liable for any act or omission of any predecessor Contingent Payments Trustee or Contingent Payments Trust Advisory Board member. No provision of this Trust Agreement shall require the Contingent Payments Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of his rights or powers hereunder if the Contingent Payments 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.

9.4. Exculpation. No Holder of a Claim or Interest, Contingent Payments Trust Beneficiary, or any other party in interest will have, or otherwise pursue, any claim or Cause of Action against the Contingent Payments Trustee, the members of the Contingent Payments Trust Advisory Board, the Resident Trustee, the Contingent Payments Trust, or the Contingent Payments Trust Professionals (for each of the foregoing, solely in the performance of their duties) for making payments and distributions in accordance with the Plan and this Trust Agreement or for fulfilling any functions incidental

to implementing the provisions of the Plan or the this Trust Agreement, except for actions or omissions to act that are determined by final order of the Bankruptcy Court to have arisen out of their own respective intentional fraud, criminal conduct, gross negligence or willful misconduct. Any action taken or omitted to be taken with the express approval of the Bankruptcy Court shall conclusively be deemed not to constitute gross negligence or willful misconduct.

9.5. Limitation of Liability. The Contingent Payments Trustee, the members of the Contingent Payments Trust Advisory Board, the Resident Trustee and the Contingent Payments Trust Professionals will not be liable for punitive, exemplary, consequential, special, or other damages for a breach of this Trust Agreement under any circumstances.

9.6. Indemnity. The Contingent Payments Trust shall indemnify and hold harmless (a) the Contingent Payments Trustee (solely in its capacity as such and in its capacity as officer and director of the Debtor), (b) members of the Contingent Payments Trust Advisory Board, (c) the Resident Trustee and (d) the Contingent Payments Trust Professionals ((a), (b), (c) and (d) collectively, the “**Indemnified Parties**”), from and against and with respect to any and all liabilities, losses, damages, claims, costs, and expenses, including, but not limited to, attorneys’ fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, other than actions or omissions resulting from such Indemnified Party’s bad faith, willful misconduct (including, without limitation, actual fraud), or gross negligence, or the implementation or administration of the Plan or this Trust Agreement. To the extent that an Indemnified Party asserts a claim for indemnification as provided above, (y) any payment on account of such claim shall be paid solely from the Wind-Down Account and shall be entitled to a priority distribution therefrom, superior to any other rights (other than those rights of the Contingent Payments Trust Professionals) to receive a distribution from the Wind-Down Account, including the Contingent Payments Trust Beneficiaries and (z) the legal fees and related costs incurred by counsel to the Contingent Payments Trustee in monitoring and participating in the defense of such claims giving rise to the asserted right of indemnification shall be advanced to such Indemnified Party (and such Indemnified Party undertakes to repay such amounts if it ultimately shall be determined that such Indemnified Party is not entitled to be indemnified therefore) out of the Wind-Down Account or any insurance purchased using the Wind-Down Account, and paid with priority over distributions to the Contingent Payments Trust Beneficiaries. This indemnification provision shall remain available to, and be binding upon, any former Contingent Payments Trustee or Resident Trustee or member of the Contingent Payments Trust Advisory Board, or the estate of any decedent of the Contingent Payments Trustee or Resident Trustee or member of the Contingent Payments Trust Advisory Board, and shall survive the termination of this Trust Agreement.

## ARTICLE X

### MISCELLANEOUS PROVISIONS

10.1. Governing Law. Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent that any document to be entered into in

connection herewith provides otherwise, the rights, duties, and obligations arising under this Trust Agreement shall be governed by, and construed and enforced in accordance with, the Bankruptcy Code and, to the extent not inconsistent therewith, the laws of the State of Delaware, without giving effect to principles of conflicts of laws.

10.2. Jurisdiction. Subject to the proviso below, prior to the entry of a final decree closing the Chapter 11 Case, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction over the Contingent Payments Trust, the Contingent Payments Trustee and the Contingent Payments Trust Advisory Board, including the administration and activities of the Contingent Payments Trust, the Contingent Payments Trustee and the Contingent Payments Trust Advisory Board, and, pursuant to the Plan, the Bankruptcy Court has retained such jurisdiction.

10.3. Severability. In the event any provision of this Trust Agreement or the application thereof to any person or circumstances shall be determined by a final, non-appealable judgment or order to be invalid or unenforceable to any extent, the remainder of this Trust 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 Trust Agreement shall be valid and enforceable to the full extent permitted by law.

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

(a) if to the Contingent Payments Trust, to:

[•]

with a copy to:

[•]

(b) if to the Contingent Payments Trust Advisory Board, to each of:

[•]

[•]

[•]

(c) if to the Resident Trustee, to:

[•]

(d) if to any Contingent Payments Trust Beneficiary, to the name and distribution address set forth in the Register with respect to such Contingent Payments Trust Beneficiary.

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

10.6. Controlling Document. In the event of any conflict between the terms and provisions in the Plan and the terms and provisions in the Disclosure Statement, the Plan Supplement, any other instrument or document created or executed pursuant to the Plan, or any order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), the Plan shall govern and control; *provided* that, in the event of a conflict between this Trust Agreement, on the one hand, and any of the Plan, the Plan Supplement or the Definitive Documents, on the other hand, this Trust Agreement shall govern and control in all respects relating to the operation and/or administration of the Contingent Payments Trust and/or indemnification of the Contingent Payments Trustee.

10.7. Entire Trust Agreement. This Trust Agreement (including the recitals and annex hereto), the Plan, and the Confirmation Order constitute the entire agreement by and among the parties and supersede all prior and contemporaneous agreements or understandings by and among the parties with respect to the subject matter of this Trust Agreement.

10.8. Cooperation. On the Effective Date, the Debtor shall promptly upon the request of the Contingent Payments Trustee (a) turn over or otherwise make available to the Contingent Payments Trust at no cost to the Contingent Payments Trust or the Contingent Payments Trustee, any books and records of the Debtor held by such professionals that relate to the Contingent Payments Trust Assets, and (b) subject to payment of reasonable and documented fees and expenses incurred by such professionals (i) make available information, including electronic records or documents, reasonably required by the Contingent Payments Trust to carry out its duties hereunder and (ii) otherwise reasonably cooperate with the Contingent Payments Trustee in carrying out its duties hereunder, subject, in the case of (a) and (b), to the confidentiality provisions herein to preserve the confidential nature of the Debtor's books and records.

10.9. Amendment and Waiver. This Trust Agreement may from time to time be amended, supplemented or modified by the Contingent Payments Trustee, but only with (i) the approval of the Bankruptcy Court or (ii) the written consent of the Controlling Contingent Payments Trust Beneficiaries; *provided* that any such amendment which alters the duties or liabilities of the Contingent Payments Trust Advisory Board shall also require the consent of the Contingent Payments Trust Advisory Board; *provided further* that any such amendment which alters the duties or liabilities of the Resident Trustee shall also require the consent of the Resident Trustee. The Contingent Payments Trustee shall provide the Contingent Payments Trust Advisory Board notice of any proposed amendment, supplement or modification to this Trust Agreement at least five (5) business day prior to

the effective date of such amendment, supplement or modification; provided, however, that the Contingent Payments Trust Advisory Board may waive the notice period. Notwithstanding this Section 10.9 of this Trust Agreement, (a) any amendment to this Trust Agreement shall not be inconsistent with the Plan and the Confirmation Order and shall not be permitted if such amendment or waiver would permit the Contingent Payments Trustee to vary the investment of Contingent Payments Trust Beneficiaries (within the meaning of Treasury Regulations section 301.7701-4(c)) or would otherwise adversely affect the status of the Contingent Payments Trust as a grantor trust for U.S. federal income tax purposes, (b) the Contingent Payments Trustee may, without the approval of the Controlling Contingent Payments Trust Beneficiaries or the Resident Trustee, amend the provisions of the Contingent Payments Trust Agreement if the Contingent Payments Trust is advised at any time by its accountants or legal counsel that the amendments made are necessary to ensure that the Contingent Payments Trust's status as a grantor trust will be respected for U.S. federal income tax purposes and (c) the Contingent Payments Trustee may, without the approval of the Controlling Contingent Payments Trust Beneficiaries or the Resident Trustee, amend the provisions of the Contingent Payments Trust Agreement to the extent necessary to implement the provisions of the Plan.

10.10. Confidentiality. The Contingent Payments Trustee, each member of the Contingent Payments Trust Advisory Board, and each of their respective employees, members, agents, professionals and advisors, including the Contingent Payments Trust Professionals (each a “**Confidential Party**” and, collectively, the “**Confidential 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 Confidential Party, of or pertaining to any Debtor to which any of the Contingent Payments Trust Assets relates; *provided*, however, that such information may be disclosed if (a) it is now or in the future becomes generally available to the public other than as a result of a disclosure by the Confidential Parties or (b) such disclosure is required of the Confidential Parties pursuant to legal process including subpoena or other court order or other applicable laws or regulations. In the event that any Confidential Party is requested to divulge confidential information pursuant to this clause (b), such Confidential Party shall promptly, in advance of making such disclosure, provide reasonable notice of such required disclosure to the Contingent Payments Trustee (or the Contingent Payments Trust Advisory Board in case the Contingent Payments Trustee or the Resident Trustee is the disclosing party) to allow sufficient time to object to or prevent such disclosure through judicial or other means and shall cooperate reasonably with the Contingent Payments Trustee (or the Contingent Payments Trust Advisory Board, as applicable) in making any such objection, including appearing in any judicial or administrative proceeding in support of any objection to such disclosure.

10.11. Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, 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. The words herein and words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section, or subdivision of this Trust Agreement. The term “including” shall mean “including, without limitation.”

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

10.13. Intention of Parties to Establish Grantor Trust. This Trust Agreement is intended to create an investment trust that is treated as a grantor trust for U.S. federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Trust Agreement may be amended to comply with such U.S. federal income tax laws, which amendments may apply retroactively.

[Signature Page Follows]

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

**TRICIDA, INC.**

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

**CONTINGENT PAYMENTS TRUSTEE**

By: \_\_\_\_\_  
Name: [•]

**RESIDENT TRUSTEE**

[•], not in its individual capacity, but solely  
as Resident Trustee

By: \_\_\_\_\_  
Name: [•]

**EXHIBIT A**

**Notice of Transfer**

The undersigned Contingent Payments Trust Beneficiary (the “**Transferor**”) has agreed to transfer the Contingent Payments Trust Interest set forth below to the undersigned transferee (the “**Transferee**”).

Transferor Name:

Date Executed:

Amount and Type of Contingent Payments Trust Interest Transferred:

Notes Claim:

General Unsecured Claim (Allowed / Asserted):

Patheon Rejection Claim:

Transferee Name:

Transferee Address:

Transferee e-mail address:

**EXHIBIT C**

**Revised Contingent Payments Holding Trust Agreement**

**CONTINGENT PAYMENTS HOLDING TRUST AGREEMENT OF**

**TRICIDA CONTINGENT PAYMENTS HOLDING TRUST**

**DATED AS OF [•], 2023**

**BY AND AMONG**

**[•] AS CONTINGENT PAYMENTS HOLDING TRUSTEE,**

**[•] AS RESIDENT TRUSTEE,**

**and**

**THE DEBTOR HERETO**

**TABLE OF CONTENTS**

---

PAGE

ARTICLE I

DECLARATION OF TRUST

1.1 Creation of Trust .....	2
1.2 Purpose of Contingent Payments Holding Trust .....	2
1.3 Transfer of Contingent Payments Holding Trust Assets to the Contingent Payments Holdings Trust .....	3
1.4 Appointment and Acceptance of Contingent Payments Holding Trustee .....	5
1.5 Wind-Down Budget .....	6
1.6 Reversionary Interests .....	6
1.7 Incidents of Ownership .....	6
1.8 Privileges .....	6

ARTICLE II

CONTINGENT PAYMENTS HOLDING TRUST BENEFICIARIES

2.1 Conflicting Claims .....	7
2.2 Rights of Contingent Payments Holding Trust Beneficiaries .....	7
2.3 Evidence of Contingent Payments Holding Trust Interests .....	7
2.4 Transfer of Contingent Payments Holding Trust Interests .....	8
2.5 Exemption from Registration .....	8
2.6 Limited Liability .....	8

ARTICLE III

DURATION AND TERMINATION OF CONTINGENT PAYMENTS HOLDING  
TRUST

3.1 Dissolution of the Contingent Payments Holding Trust .....	9
3.2 Continuance of Contingent Payments Holding Trust for Winding Up .....	9

ARTICLE IV

ADMINISTRATION OF THE CONTINGENT PAYMENTS HOLDING TRUST

4.1 Payment of Claims, Expenses, and Liabilities .....	10
4.2 Distributions .....	10
4.3 Compliance with Laws .....	11
4.4 Fiscal Year .....	11
4.5 Contingent Payments Holding Trust Insurance .....	11
4.6 Reports .....	11

ARTICLE V

TAX MATTERS

5.1 Treatment of Trust for Tax Purposes .....12  
5.2 Tax Reporting .....13  
5.3 Tax Withholdings by Contingent Payments Holding Trustee .....14  
5.4 IRS Forms .....14

ARTICLE VI

POWERS OF AND LIMITATIONS ON THE CONTINGENT PAYMENTS HOLDING TRUSTEE

6.1 Term of the Contingent Payments Holding Trustee .....15  
6.2 Responsibilities and Authority of the Contingent Payments Holding Trustee .....15  
6.3 Actions Taken by the Contingent Payments Holding Trustee.....16  
6.4 Limitations on Contingent Payments Holding Trustee.....17  
6.5 Compensation and Expenses of the Contingent Payments Holding Trustee .....18  
6.6 Agents, Employees, and Professionals .....18  
6.7 Investment of Contingent Payments Holding Trust Monies.....19  
6.8 Resident Trustee.....19  
6.9 Fiduciary and Other Duties .....22

ARTICLE VII

SUCCESSOR CONTINGENT PAYMENTS HOLDING TRUSTEE

7.1 Resignation .....22  
7.2 Removal .....23  
7.3 Effect of Resignation or Removal.....23  
7.4 Appointment of Successor .....23  
7.5 Acceptance of Appointment by Successor Contingent Payments Holding Trustee.....24

ARTICLE VIII

CONTINGENT PAYMENTS HOLDING TRUST ADVISORY BOARD

8.1 Contingent Payments Holding Trust Advisory Board .....24

ARTICLE IX

RELIANCE, LIABILITY AND INDEMNIFICATION

9.1 Reliance by the Contingent Payments Holding Trustee and the Members of the Contingent Payments Holding Trust Advisory Board .....26  
9.2 Liability to Third Persons .....26

9.3 Nonliability of Contingent Payments Holding Trustee and Contingent Payments  
Holding Trust Advisory Board for Acts of Others .....27

9.4 Exculpation .....27

9.5 Limitation of Liability.....28

9.6 Indemnity .....28

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Governing Law .....28

10.2 Jurisdiction.....29

10.3 Severability .....29

10.4 Notices .....29

10.5 Headings .....30

10.6 Controlling Document .....30

10.7 Entire Trust Agreement.....30

10.8 Cooperation.....30

10.9 Amendment and Waiver .....30

10.10 Confidentiality .....31

10.11 Meanings of Other Terms .....31

10.12 Counterparts .....31

10.13 Intention of Parties to Establish Liquidating Trust .....32

**CONTINGENT PAYMENTS HOLDING TRUST AGREEMENT OF TRICIDA  
CONTINGENT PAYMENTS HOLDING TRUST**

THIS CONTINGENT PAYMENTS HOLDING TRUST AGREEMENT OF TRICIDA CONTINGENT PAYMENTS HOLDING TRUST, dated as of [•], 2023 (this “**Trust Agreement**”), is by and among Tricida, Inc. (the “**Debtor**”), as debtor, [•], as liquidating trustee (together with any successor or additional trustee appointed under the terms of this Trust Agreement, including Section 6.1 of this Trust Agreement, the “**Contingent Payments Holding Trustee**”), and [•] as the Delaware resident trustee (together with any successor Delaware resident trustee appointed under the terms of this Trust Agreement, the “**Resident Trustee**”), for the purpose of forming a statutory trust under and pursuant to the provisions of 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, the “**Trust Act**”) as contemplated by the Plan (the “**Contingent Payments Holding Trust**”).<sup>1</sup>

**BACKGROUND**

A. On January 11, 2023 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Case**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”);

B. On February 22, 2023, the Bankruptcy Court approved the sale of various subsets of the Debtor’s Assets to the Purchasers pursuant to section 363 of the Bankruptcy Code by entry of the Sale Order, as defined in the Plan;

C. On March 27, 2023, the Debtor filed the *Third Amended Chapter 11 Plan of Liquidation for Tricida, Inc.* [D.I. 328] and the *Fourth Amended Disclosure Statement for Chapter 11 Plan of Liquidation for Tricida, Inc.* [D.I. 329];

D. On [•], 2023, the Bankruptcy Court entered an order confirming the Plan [D. I. [•]] (the “**Confirmation Order**”), which became effective on [•], 2023 (the “**Effective Date**”);

E. The Plan provides for, among other things, the creation of a trust on the Effective Date for the purpose of liquidating and administering the assets of the Contingent Payments Holding Trust (the “**Contingent Payments Holding Trust Assets**”) and making distributions on account thereof to Holders of Noteholder Claims, Allowed Patheon Rejection Claims or Allowed General Unsecured Claims (the “**Contingent Payments Holding Trust Beneficiaries**”) in accordance with the terms of this Trust Agreement and the Plan. The Contingent Payments Holding Trust is intended to be treated

---

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the *Chapter 11 Plan of Liquidation for Tricida, Inc.*, as confirmed by the Confirmation Order (as defined below) (including all exhibits thereto, as the same may be further amended, modified, or supplemented from time to time, the “**Plan**”).

as a liquidating trust in accordance with section 301.7701-4(d) of the regulations promulgated under the Internal Revenue Code of 1986, as amended (the “**IRC**,” and such regulations, the “**Treasury Regulations**”), with no objective to continue or engage in the conduct of a trade or business. The further classification of the Contingent Payments Holding Trust for tax purposes shall depend on whether all Disputed Claims are resolved prior to the Trust Election Date. If all Disputed Claims are resolved prior to the Trust Election Date, the Contingent Payments Holding Trust is intended to qualify as a “grantor trust” as to which the Contingent Payments Holding Trust Beneficiaries shall be treated as grantors and owners for U.S. federal income tax purposes and, to the extent permitted by applicable law, for state and local income tax purposes. If all Disputed Claims are not resolved prior to the Trust Election Date, the Contingent Payments Holding Trust is intended to be treated as a “complex trust” in accordance with Subpart C of Part I of Subchapter J of the IRC. The Contingent Payments Holding Trust is established and is effective for the benefit of the Contingent Payments Holding Trust Beneficiaries; and

F. The duties and powers of the Contingent Payments Holding Trustee shall include all powers necessary to administer the Contingent Payments Holding Trust prior to the Contingent Payments Holding Trust’s dissolution upon resolution of the Disputed Claims as set forth in Article IV.E of the Plan, including, without limitation, the duties and powers listed in the Plan.

## **AGREEMENT**

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

## **ARTICLE I**

### **DECLARATION OF TRUST**

1.1 Creation of Trust. The Debtor, the Contingent Payments Holding Trustee, and the Resident Trustee, pursuant to the Plan and the Confirmation Order, and in accordance with the applicable provisions of chapter 11 of the Bankruptcy Code, hereby create the Contingent Payments Holding Trust, which shall bear the name “Tricida Contingent Payments Holding Trust.” In connection with the exercise of the Contingent Payments Holding Trustee’s power hereunder, the Contingent Payments Holding Trustee may use this name or such variation thereof as the Contingent Payments Holding Trustee sees fit. On the Effective Date, the Contingent Payments Holding Trust shall be established pursuant to this Trust Agreement.

1.2 Purpose of Contingent Payments Holding Trust. The Contingent Payments Holding Trust shall be established for the purpose of: (i) liquidating and administering the assets of the Contingent Payments Holding Trust and making distributions on account thereof; (ii) administering and paying taxes, including, among other things, (1) filing tax returns, and (2) representing the interest and account of the Contingent Payments Holding Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding, or audit; (iii) retaining and paying, without

the need for retention or fee applications, professionals in connection with the Contingent Payments Holding Trustee's performance of its duties under the Plan and this Trust Agreement; (iv) making distributions to the Contingent Payments Holding Trust Beneficiaries in accordance with the terms of the Plan and this Trust Agreement; and (v) such other responsibilities or powers as may be vested in or assumed by the Contingent Payments Holding Trustee pursuant to the Plan, this Trust Agreement, or by an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of this Plan, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Contingent Payments Holding Trust, in accordance with Treasury Regulations section 301.7701-4(d). The Contingent Payments Holding Trust shall qualify either as a "grantor trust," if all Disputed Claims are resolved prior to the Trust Election Date, or a "complex trust," if all Disputed Claims are not resolved prior to the Trust Election Date, for U.S. federal income tax purposes, as described in Article IV.E.1. of the Plan and Section 5.1 herein, and, to the extent permitted by applicable law, for state and local income tax purposes. To the extent permitted by applicable law, all parties, including the Contingent Payments Holding Trustee and any Contingent Payments Holding Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes. From and after the Effective Date, the Contingent Payments Holding Trustee shall act as the exclusive representative of the Estate for all purposes set forth in Article IV.D.2(b) of the Plan.

### 1.3 Transfer of Contingent Payments Holding Trust Assets to the Contingent Payments Holdings Trust.

(a) Pursuant to the Plan and the Confirmation Order, on the Effective Date, all right, title, and interest in and to the Contingent Payments Holding Trust Assets shall be deemed to have been irrevocably transferred, assigned, conveyed and delivered by the Debtor to the Contingent Payments Holding Trust free and clear of all encumbrances, liens and Claims of any Person, in trust for the benefit of the Contingent Payments Holding Trust Beneficiaries for the uses and purposes stated therein and herein. The Contingent Payments Holding Trust hereby accepts all such Contingent Payments Holding Trust Assets free and clear of any and all liens and claims and agrees to hold and administer the Contingent Payments Holding Trust Assets and the remainder of the Contingent Payments Holding Trust for the benefit of the Contingent Payments Holding Trust Beneficiaries, subject to the terms and conditions of this Trust Agreement. For the avoidance of doubt, upon the transfer of the Contingent Payments Holding Trust Assets, the Contingent Payments Holding Trust shall succeed to all of the Debtor's right, title, and interest in and to the Contingent Payments Holding Trust Assets, and the Debtor will have no further interest in or with respect to the Contingent Payments Holding Trust Assets or the Contingent Payments Holding Trust. The Contingent Payments Holding Trust Assets shall include, for the avoidance of doubt, (i) the Contingent Payments Holding Trust Interest and (ii) Cash in an amount as set forth in the Wind-Down Budget to fund the Wind-Down Account (as defined herein), shall be deemed transferred to the Contingent Payments Holding Trust without any further action of the Debtor or any managers, employees, officers, directors, members, partners, shareholders, agents, advisors, or representatives of the Debtor. Pursuant to section 1141(b) and 1141(c) of the Bankruptcy Code, all transfers

to the Contingent Payments Holding Trust shall be made free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as may be otherwise provided in the Plan. For all U.S. federal income tax purposes, and, to the extent permitted by applicable law, for state and local income tax purposes, all parties (including, without limitation, the Debtor, the Contingent Payments Holding Trustee, and the Contingent Payments Holding Trust Beneficiaries) shall treat the transfer of any of the Contingent Payments Holding Trust Assets to the Contingent Payments Holding Trust Beneficiaries in accordance with the terms herein as described in Section 5.1 of this Trust Agreement.

(b) Upon transfer of the Contingent Payments Holding Trust Assets to the Contingent Payments Holding Trust, the Debtor and its predecessors, successors, and assigns shall be released from all liability with respect to the delivery thereof and shall have no reversionary or further interest in or with respect to the Contingent Payments Holding Trust Assets or the Contingent Payments Holding Trust. Notwithstanding the foregoing, for purposes of section 553 of the Bankruptcy Code, the transfer of the Contingent Payments Holding Trust Assets to the Contingent Payments Holding Trust shall not affect the mutuality of obligations that otherwise may have existed prior to the effectuation of such transfer.

(c) Nothing in this Trust Agreement alters the rights and obligations of the Debtor (and its Estate) and the Debtor's insurers (and third-party claims administrators) under the Insurance Policies or modifies the coverage or benefits provided thereunder or the terms and conditions thereof or diminishes or impairs the enforceability of the Insurance Policies. The Debtor shall be deemed to have assumed only the D&O Policies, and any Insurance Policy other than a D&O Policy shall be deemed terminated on the Effective Date. Except as otherwise provided in the Plan, proceeds payable under any Insurance Policy shall be in accordance with the provisions of the applicable Insurance Policy. Except as set forth in Article IX of the Plan, nothing in the Plan or this Trust Agreement shall constitute or be deemed a waiver of any Cause of Action (including, for the avoidance of doubt, any Retained Cause of Action) that the Debtor or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained in the Plan or this Trust Agreement be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

(d) Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan and this Trust Agreement, including, without limitation, the transfer of the Contingent Payments Holding Trust Assets to the Contingent Payments Holding Trust, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation all such instruments or other documents governing or evidencing such transfers without the payment of any such tax, recordation fee, or governmental assessment.

(e) The Contingent Payments Holding Trust Assets and all other property held from time to time by the Contingent Payments Holding Trust under this Trust Agreement

and any earnings, including interest, on any of the foregoing shall be held and be applied by the Contingent Payments Holding Trustee in accordance with the terms of this Trust Agreement, the Plan and the Confirmation Order for the benefit of the Contingent Payments Holding Trust Beneficiaries, and for no other party, subject to the further covenants, conditions and terms set forth in this Trust Agreement, the Plan and the Confirmation Order.

(f) The Debtor, the Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Advisory Board, and any party under the control of such parties, hereby agree to execute any documents or other instruments and shall take all other steps as necessary to cause title to the Contingent Payments Holding Trust Assets to be transferred to the Contingent Payments Holding Trust in accordance with this Trust Agreement, the Plan and the Confirmation Order.

1.4 Appointment and Acceptance of Contingent Payments Holding Trustee.

(a) The Contingent Payments Holding Trustee has been selected by the Majority Consenting Noteholders in consultation with the Official Committee of Unsecured Creditors appointed in the Tricida, Inc, bankruptcy case. On the occurrence of the Effective Date, the Contingent Payments Holding Trustee shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to serve as the trustee and administrator of the Contingent Payments Holding Trust established pursuant to Article IV.D. of the Plan and this Trust Agreement. The Contingent Payments Holding Trustee shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan and this Trust Agreement. The Debtor shall file a notice prior to the Confirmation Hearing designating the Person or Entity selected as the Contingent Payments Holding Trustee. The appointment of the Contingent Payments Holding Trustee shall be approved in the Confirmation Order and such appointment shall be effective in accordance with the terms of Article IV.D of the Plan. The Contingent Payments Holding Trustee shall serve in such capacity, pursuant to the terms of this Trust Agreement and the Plan, until the resignation or discharge of such trustee and the appointment of a successor Contingent Payments Holding Trustee in accordance with the terms of this Trust Agreement and the Plan.

(b) The Contingent Payments Holding Trustee accepts the Contingent Payments Holding Trust created by this Trust Agreement in accordance with the terms of the Plan, the Confirmation Order and this Trust Agreement and the grant, assignment, transfer, conveyance and delivery to the Contingent Payments Holding Trust, on behalf, and for the benefit, of the Contingent Payments Holding Trust Beneficiaries, by the Debtor of all of its respective rights, titles and interests in the Contingent Payments Holding Trust Assets, upon and subject to the terms and conditions set forth herein, in the Plan and in the Confirmation Order. The Contingent Payments Holding Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purpose of the Contingent Payments Holding Trust and not otherwise. The Contingent Payments Holding Trustee shall have the authority to bind the Contingent Payments Holding Trust in accordance with, and within the limitations set forth in this Trust Agreement, but shall for

all purposes hereunder be acting in the capacity as Contingent Payments Holding Trustee, and not individually.

1.5 Wind-Down Budget. On the Effective Date, pursuant to the Wind-Down Budget, the Debtor shall transfer funds into an account held by the Contingent Payments Holding Trust (the “**Wind-Down Account**”), which funds shall be used for all reasonable activities and expenses to be incurred in administering the Contingent Payments Holding Trust, including but not limited to the fees and expenses of the Contingent Payments Holding Trust Professionals, as defined in Section 6.5 below.

1.6 Reversionary Interests. In no event shall the Contingent Payments Holding Trust Assets revert to or be distributed to the Debtor.

1.7 Incidents of Ownership. The Contingent Payments Holding Trust Beneficiaries shall be the sole beneficiaries of the Contingent Payments Holding Trust, and the Contingent Payments Holding Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein, in the Plan and in the Confirmation Order, including those powers set forth in Section 6.2 of this Trust Agreement.

1.8 Privileges.

(a) In connection with the vesting and transfer of the Contingent Payments Holding Trust Assets, the Contingent Payments Holding Trustee shall stand in the same position as the Debtor with respect to any claim the Debtor and/or its Estate may have as to an attorney-client privilege, work-product doctrine, or any other privilege or confidentiality protections attaching to any documents or communications (whether written or oral) relating to the Contingent Payments Holding Trust Assets, and the Contingent Payments Holding Trustee shall succeed to all rights of the Debtor and/or its Estate to hold, preserve, assert, be the beneficiary of or waive any such privilege or protection (collectively, “**Privileges**”). As of the Effective Date, all Privileges of the Debtor relating to the Contingent Payments Holding Trust Assets shall be deemed transferred, assigned, and delivered by the Debtor to the Contingent Payments Holding Trust, without waiver or release, and shall vest with the Contingent Payments Holding Trust. No such Privilege shall be waived by disclosures to the Contingent Payments Holding Trustee of the Debtor’s documents, information, or communication subject to attorney-client privilege, work product protections, or other immunities (including those related to common interest or joint defense with third parties), or protections from disclosure held by the Debtor. The Debtor’s Privileges relating to the Contingent Payments Holding Trust Assets will remain subject to the rights of third parties under applicable law, including any rights arising from the common interest doctrine, the joint defense doctrine, joint attorney-client representation, or any agreement; *provided*, that prior to waiving such privilege, the Contingent Payments Holding Trustee shall provide such third party with any written notice to the extent required by any joint defense or common interest agreements as of the Petition Date. Any and all work product created by or on behalf of the Contingent Payments Holding Trustee, the Contingent Payments Holding Trust Professionals, and their respective agents, representatives, and employees shall be deemed confidential to the

extent that such work product is not protected by the attorney-client privilege, attorney work-product doctrine, or any other applicable privilege.

## ARTICLE II

### CONTINGENT PAYMENTS HOLDING TRUST BENEFICIARIES

2.1 Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to the beneficial interest of a Contingent Payments Holding Trust Beneficiary under this Trust Agreement, or if there is any disagreement between the assignees, transferees, heirs, representatives, or legatees succeeding to all or a part of such an interest resulting in adverse claims or demands being made in connection with such interest, then, in any of such events, the Contingent Payments Holding Trustee shall be entitled, in its sole discretion, to refuse to comply with any such conflicting claims or demands.

2.2 Rights of Contingent Payments Holding Trust Beneficiaries. Each Contingent Payments Holding Trust Beneficiary shall be entitled to participate in the rights and benefits due to a Contingent Payments Holding Trust Beneficiary hereunder. The Contingent Payments Holding Trust Assets are hereby declared and shall be in all respects personal property. No surviving spouse, heir or devisee of any deceased Contingent Payments Holding Trust Beneficiary shall have any right of dower, homestead or inheritance, or of partition, or any other right, statutory or otherwise, in the Contingent Payments Holding Trust Interest, but the whole title to the Contingent Payments Holding Trust Assets shall be vested in the Contingent Payments Holding Trust and the sole interest of the Contingent Payments Holding Trust Beneficiaries shall be the rights and benefits given to such person under this Trust Agreement, the Confirmation Order and the Plan.

2.3 Evidence of Contingent Payments Holding Trust Interests. The Contingent Payments Holding Trustee shall maintain at all times a register of the names, distribution addresses and amounts of Contingent Payments Holding Trust Beneficiaries (the “**Register**”). The Register shall include the names, distribution addresses and amounts of Holders of Allowed Claims, and shall be based on the list of Holders of Claims maintained by the Notice and Claims Agent as of the Effective Date and prepared in accordance with the provisions of the Plan and the Confirmation Order. The initial Register shall be delivered to the Contingent Payments Holding Trustee by the Debtor. All references in this Trust Agreement to Contingent Payments Holding Trust Beneficiaries shall be read to mean holders of record as set forth in the Register maintained by the Contingent Payments Holding Trustee and, to the extent Holders of Noteholder Claims are beneficiaries, may include Holders of Noteholder Claims who are beneficial holders of Claims in Class 3, who hold their position through a broker, bank, or other nominee. The Contingent Payments Holding Trustee shall cause the Register to be kept at its office or at such other place or places as may be designated by the Contingent Payments Holding Trustee from time to time. The Contingent Payments Holding Trustee shall, upon the written request of a Contingent Payments Holding Trust Beneficiary, provide reasonably adequate documentary evidence of such Contingent Payments Holding Trust Beneficiary’s Contingent Payments Holding Trust Interest, as indicated in the Register. For the

avoidance of doubt, ownership of a Contingent Payments Holding Trust Interest will not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except the book entry system.

2.4 Transfer of Contingent Payments Holding Trust Interests. Subject to Section 2.5, the Contingent Payments Holding Trust Interests shall be fully transferable and the Contingent Payments Holding Trust shall recognize any such transfer of Contingent Payments Holding Trust Interests occurring after the Effective Date; *provided*, that (i) any such transferor and transferee must provide written notice, in the form attached hereto as Exhibit A, to the Contingent Payments Holding Trustee within five (5) business days of such transfer, and (ii) any transfer or assignment of a Contingent Payments Holding Trust Interest by will, intestate succession or otherwise by operation of law shall not be effective against or binding upon the Contingent Payments Holding Trust unless and until such transfer or assignment is recorded in the Register, which shall be completed as soon as practicable. The entries in the Register shall be conclusive absent manifest error, and the Contingent Payments Holding Trust and the Contingent Payments Holding Trustee shall treat each person whose name is recorded in the Register pursuant to the terms of this Trust Agreement as the owner of Contingent Payments Holding Trust Interests indicated therein for all purposes of this Trust Agreement, notwithstanding notice to the contrary.

2.5 Exemption from Registration. The Contingent Payments Holding Trust Interests have not been registered pursuant to the Securities Act of 1933, as amended (the “Securities Act”), or any state securities law, and shall not be listed for public trading on any securities exchange. The parties hereto intend that the rights of the holders of Contingent Payments Holding Trust Interests shall not be “securities” under applicable laws, but none of the parties hereto represents or warrants that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemption from registration provided by Section 1145 of the Bankruptcy Code and by other applicable law to apply to their issuance under the Plan. The Contingent Payments Holding Trust shall not be required to file reports with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on account of any transfer. No transfer of a Contingent Payments Holding Trust Interests that causes the Contingent Payments Holding Trust to be required to file reports with the Securities and Exchange Commission pursuant to Sections 13 or 15(d) of the Exchange Act shall be permitted and any such transfer shall be void *ab initio*. In order to prevent the Contingent Payments Holding Trust from becoming subject to such reporting requirements, the Contingent Payments Holding Trustee may impose certain transfer restrictions designed to maintain the Contingent Payments Holding Trust as non-reporting entity, and the Contingent Payments Holding Trust Agreement may be amended pursuant to Section 10.9 to make such changes as are deemed necessary or appropriate to ensure that the Contingent Payments Holding Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the Trust Indenture Act of 1939, as amended, or the Investment Company Act of 1940, as amended.

2.6 Limited Liability. No provision of this Trust Agreement, the Plan or the Confirmation Order, and no mere enumeration herein of the rights or privileges of

any Contingent Payments Holding Trust Beneficiary, shall give rise to any liability of such Contingent Payments Holding Trust Beneficiary solely in its capacity as such, whether such liability is asserted by the Debtor, creditors, successors, representatives, employees, or equity interest holders of the Debtor, or by any other person.

### ARTICLE III

#### DURATION AND TERMINATION OF CONTINGENT PAYMENTS HOLDING TRUST

3.1 Dissolution of the Contingent Payments Holding Trust. The Contingent Payments Holding Trust shall be dissolved upon the earlier of (a) the distribution of the Contingent Payments Holding Trust Assets to the Contingent Payments Holding Trust Beneficiaries in accordance with Section 4.2 of this Trust Agreement; and (b) the fifth anniversary of the creation of the Contingent Payments Holding Trust; *provided* that, if warranted by the facts and circumstances involved in administering the Contingent Payments Holding Trust, upon application to, and if approved by, the Bankruptcy Court upon a finding that such extension is necessary or appropriate for purposes of administering the Contingent Payments Holding Trust, the term of the Contingent Payments Holding Trust may be extended by the Contingent Payments Holding Trustee for a specified term; *provided further* that, in no event shall the Contingent Payments Holding Trust be dissolved later than five years from the creation of such Contingent Payments Holding Trust unless the Bankruptcy Court, upon motion within the six-month period prior to the fifth anniversary of such creation (or within the six-month period prior to the end of any extension period), determines that a fixed period extension (not to exceed three years, together with any prior extensions, without a favorable private letter ruling from the Internal Revenue Service (the “IRS”) or an opinion of counsel satisfactory to the Contingent Payments Holding Trustee that any further extension would not adversely affect the status of the trust as a liquidating trust for U.S. federal income tax purposes) is necessary to administer the Contingent Payments Holding Trust. Upon dissolution of the Contingent Payments Holding Trust, the Contingent Payments Holding Trust Assets shall be distributed to the Contingent Payments Holding Trust Beneficiaries in accordance with the terms of the Plan.

3.2 Continuance of Contingent Payments Holding Trust for Winding Up. After the termination of the Contingent Payments Holding Trust and for the purpose of liquidation and winding up the affairs of the Contingent Payments Holding Trust, the Contingent Payments Holding Trustee shall continue to act as such until its duties have been fully performed, including such post-distribution tasks as necessary to wind up the affairs of the Contingent Payments Holding Trust. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the Contingent Payments Holding Trust and final distribution of the Contingent Payments Holding Trust Assets, the Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Advisory Board shall have no further duties or obligations hereunder and this Trust Agreement shall terminate other than the provisions that expressly survive termination.

## ARTICLE IV

### ADMINISTRATION OF THE CONTINGENT PAYMENTS HOLDING TRUST

4.1 Payment of Claims, Expenses, and Liabilities. The Contingent Payments Holding Trustee shall use the funds in the Wind-Down Account to administer the Contingent Payments Holding Trust, including paying taxes, filing tax returns, funding payroll, and other employee costs, providing for the purchase of errors and omissions insurance and/or other forms of indemnification for the Contingent Payments Holding Trustee, in each case, to the extent applicable, and for all such items and other costs of administering the Plan and the Contingent Payments Holding Trust. The Contingent Payments Holding Trustee may establish and administer any other necessary reserves that may be required under the Plan or this Trust Agreement. Notwithstanding anything to the contrary contained in the Plan or this Trust Agreement, the Contingent Payments Holding Trustee may make transfers of Cash between the accounts and reserves established under the Plan to satisfy Claims and other obligations in accordance with the Plan and the Wind-Down Budget.

#### 4.2 Distributions.

(a) Generally. The Contingent Payments Holding Trust shall distribute the Contingent Payments Holding Trust Assets (and any income and/or proceeds realized therefrom) to the Contingent Payments Holding Trust Beneficiaries in accordance with the terms of the Plan, the Confirmation Order and this Trust Agreement; *provided*, for the avoidance of doubt, that the Contingent Payments Holding Trust shall be required to distribute its interests in the Contingent Payments Trust to the Contingent Payments Holding Trust Beneficiaries upon the resolution of the Disputed Claims.

(b) Date of Distributions. The Contingent Payments Holding Trustee shall make distributions of the Contingent Payments Holding Trust Assets as provided in the Plan and this Trust Agreement on such dates as it chooses, in consultation with the Contingent Payments Holding Trust Advisory Board; *provided*, however, that any such distribution shall be made in an expeditious and orderly manner following the resolution of the Disputed Claims.

(c) Undeliverable or Non-Negotiated Distributions. If any distribution to a Contingent Payments Holding Trust Beneficiary is returned as undeliverable for lack of a current address or otherwise, the Contingent Payments Holding Trustee shall file with the Bankruptcy Court the name and last known address of the Contingent Payments Holding Trust Beneficiary of undeliverable distribution. If, after the passage of thirty (30) calendar days after such Filing, the distribution of the Contingent Payments Holding Trust Interest still cannot be made, then (1) the Contingent Payments Holding Trust Beneficiary shall cease to be entitled to the undeliverable distribution, which will revert to the Contingent Payments Holding Trust; and (2) the Allowed Claim of such Holder shall be deemed disallowed and expunged for purposes of further distributions under the Plan and this Trust Agreement. Nothing contained in the Plan or this Trust Agreement shall require the Debtor

or the Contingent Payments Holding Trustee to attempt to locate any Contingent Payments Holding Trust Beneficiary.

(d) Foreign Currency Exchange Rate. As of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal*, on the Petition Date.

(e) Satisfaction of Claims. Except as otherwise specifically provided in the Plan, distributions and deliveries to be made on account of Allowed Claims under the Plan shall be in complete and final satisfaction, settlement, and discharge of and exchange for such Allowed Claims.

4.3 Compliance with Laws. Any distribution of the Contingent Payments Holding Trust Assets shall be in compliance with applicable laws, including applicable federal and state tax and securities laws.

4.4 Fiscal Year. Except for the first and last years of the term of the Contingent Payments Holding Trust, the fiscal year of the Contingent Payments Holding Trust shall be the calendar year. For the first and last years of the term of the Contingent Payments Holding Trust, the fiscal year of the Contingent Payments Holding Trust shall be such portion of the calendar year that the Contingent Payments Holding Trust is in existence.

4.5 Contingent Payments Holding Trust Insurance. The Contingent Payments Holding Trustee is hereby authorized, but not required, to obtain all reasonable insurance coverage for itself, the Contingent Payments Holding Trust Advisory Board, and their agents, representatives, employees or independent contractors, including coverage with respect to the liabilities, duties and obligations of the Contingent Payments Holding Trustee, the Contingent Payments Holding Trust Advisory Board, and their agents, representatives, employees or independent contractors under this Trust Agreement and the Plan (“**Insurance Coverages**”). The cost of any such Insurance Coverage shall be an expense of the Contingent Payments Holding Trust and paid out of the Wind-Down Account in accordance with the Wind-Down Budget.

4.6 Reports.

(a) The Contingent Payments Holding Trustee shall, as soon as reasonably practicable and no later than 45 days following the end of each fiscal quarter during the term of the Contingent Payments Holding Trust, deliver by electronic communication (including e-mail and Internet or intranet websites) to the Contingent Payments Holding Trust Advisory Board, and to each Contingent Payments Holding Trust Beneficiary who has so requested from the Contingent Payments Holding Trustee in writing, the following information: (i) the costs and expenses of the Contingent Payments Holding Trust that are incurred (including any taxes imposed on the Contingent Payments Holding Trust) or actual reasonable out-of-pocket fees and expenses incurred by Contingent Payments Holding Trust Professionals in connection with the administration and liquidation of the

Contingent Payments Holding Trust Assets during the preceding fiscal quarter and the remaining amount (if any) of the Wind-Down Account, (ii) the amounts listed in clause (i) incurred since the Effective Date, (iii) the amount of Cash and other assets received by the Contingent Payments Holding Trust during the prior fiscal quarter, (iv) the aggregate amount of Cash and other assets received by the Contingent Payments Holding Trust since the Effective Date and (v) the aggregate amount of distributions from the Contingent Payments Holding Trust to the Contingent Payments Holding Trust Beneficiaries since the Effective Date. In the event that the Contingent Payments Holding Trustee receives notice regarding the status of Disputed Claims pursuant to Section IV.E.2 of the Plan, it shall take the actions as described in Section 5.1 of this Trust Agreement. The Contingent Payments Holding Trustee shall also timely prepare, file, and distribute such additional statements, reports, and submissions as may be necessary to cause the Contingent Payments Holding Trust and the Contingent Payments Holding Trustee to be in compliance with applicable law. The Contingent Payments Holding Trustee shall also provide the U.S. Trustee and the Bankruptcy Court the information and reports they may reasonably request concerning Trust administration.

## ARTICLE V

### TAX MATTERS

5.1 Treatment of Trust for Tax Purposes. The Contingent Payments Holding Trust is intended to be treated as a liquidating trust in accordance with Treasury Regulations section 301.7701-4(d). The further U.S. federal income tax classification of the Contingent Payments Holding Trust shall be determined pursuant to subsections (a) or (b) below, as applicable. Such further classification shall depend on whether the Contingent Payments Holding Trustee has received notice from the Liquidating Trustee pursuant to Section IV.E.2 of the Plan that all Disputed Claims have been resolved. In no event shall the Contingent Payments Holding Trustee file an election to treat any portion of the Contingent Payments Holding Trust Assets as a “disputed ownership fund” as described in Treasury Regulations section 1.468B-9.

(a) Disputed Claims Resolved Before Trust Election Date: If the Contingent Payments Holding Trust receives notice that all Disputed Claims are resolved prior to the Trust Election Date, the Contingent Payments Holding Trust shall be classified as a “grantor trust” for U.S. federal income tax purposes as to which the Contingent Payments Holding Trust Beneficiaries are treated as grantors and owners. On the Effective Date, the Debtor shall be deemed to have distributed to the Contingent Payments Holding Trust Beneficiaries an undivided interest in the Contingent Payments Holding Trust Assets and such Holders shall be deemed to have immediately contributed such Contingent Payments Holding Trust Assets to the Contingent Payments Holding Trust in exchange for undivided interests in the Contingent Payments Holding Trust Assets. Following receipt of such notice of the resolution of all Disputed Claims prior to the Trust Election Date, the Contingent Payments Holding Trustee shall distribute the interests in the Contingent Payments Holding Trust Assets *pro rata* to the Contingent Payments Holding Trust Beneficiaries and, following such distribution, shall dissolve.

(b) Disputed Claims Unresolved Prior to Trust Election Date: If the Contingent Payments Holding Trustee receives notice that all Disputed Claims have not been resolved prior to the Trust Election Date, then the Contingent Payments Holding Trustee shall file its U.S. federal income tax return as a “complex trust” in accordance with Subpart C of Part I of Subchapter J of the IRC. To the extent allowed by applicable law, the Contingent Payments Holding Trustee shall have the power, in its sole and absolute discretion, to (i) cause all or any part of the capital gains of the Contingent Payments Holding Trust to be included in such trust’s distributable net income within the meaning of IRC section 643(a)(3), in any of the ways permitted by that section or by Treasury Regulations section 1.643(a)-3, and (ii) determine whether to make any adjustment between income and principal because of any tax decision made with respect to any Contingent Payments Holding Trust Assets.

5.2 Tax Reporting.

(a) To the extent permitted by applicable law, all parties, including the Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes.

(b) The Contingent Payments Holding Trustee shall be responsible for payment, out of the Wind-Down Account, of any taxes imposed on the Contingent Payments Holding Trust or its assets.

(c) As soon as reasonably practicable after the Contingent Payments Holding Trust Assets are transferred to the Contingent Payments Holding Trust, but in no event later than one hundred and twenty (120) days thereafter, the Contingent Payments Holding Trustee shall make a good faith valuation of the Contingent Payments Holding Trust Assets, which may be based on the Debtor’s valuation of the Contingent Payments Holding Trust Assets if the Contingent Payments Holding Trustee determines in its sole discretion that the Debtor’s valuation is materially accurate, and such valuation shall be used consistently by all parties for all U.S. federal income tax purposes. The Contingent Payments Holding Trustee shall also file (or cause to be filed) any other statements, returns, or disclosures relating to the Contingent Payments Holding Trust that are required by any Governmental Unit. In connection with the preparation of the valuation contemplated hereby and by the Plan, the Contingent Payments Holding Trustee shall be entitled to retain such professionals and advisors as the Contingent Payments Holding Trustee shall determine to be appropriate or necessary, and the Contingent Payments Holding Trustee shall take such other actions in connection therewith as it determines to be appropriate or necessary. Such valuation shall be used consistently by such parties for all U.S. federal income tax purposes.

(d) The Contingent Payments Holding Trustee shall annually send to each Contingent Payments Holding Trust Beneficiary a separate statement and/or Schedule K-1, as applicable, regarding the information necessary for tax reporting purposes and shall instruct all such beneficiaries to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such beneficiary’s underlying beneficial owners with instructions to utilize such information in preparing their U.S.

federal income tax returns. The Contingent Payments Holding Trustee shall also file (or cause to be filed) any other statement, return or disclosure relating to the Contingent Payments Holding Trust that is required by any governmental unit.

(e) The Contingent Payments Holding Trustee may request an expedited determination of taxes of the Contingent Payments Holding Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Contingent Payments Holding Trust for all taxable periods through the dissolution of the Contingent Payments Holding Trust. Nothing in this Section 5.02(e) shall be deemed to determine, expand or contract the jurisdiction of the Bankruptcy Court under Section 505 of the Bankruptcy Code.

### 5.3 Tax Withholdings by Contingent Payments Holding Trustee.

(a) The Contingent Payments Holding Trustee shall (1) withhold, deduct, and pay over to the appropriate governmental authority any amount required to be withheld under U.S. federal, state, local, or foreign tax laws with respect to any distribution pursuant to this Trust Agreement and (2) comply with any reporting requirements imposed by any U.S. federal, state, local, or foreign taxing authority. The Contingent Payments Holding Trustee may withhold all or the appropriate portion of any distribution due to any Contingent Payments Holding Trust Beneficiary until such time as such Contingent Payments Holding Trust Beneficiary provides the necessary information to comply with any withholding requirements of any governmental authority. Any tax withheld shall be treated as distributed and received by the applicable Contingent Payments Holding Trust Beneficiary for all purposes of this Trust Agreement and the Plan. If a Contingent Payments Holding Trust Beneficiary fails to provide the information necessary to comply with any withholding requirements of any governmental authority on or before the day that is one year after the Effective Date of the Plan, then such beneficiary's distribution may be treated as unclaimed property in accordance with this Trust Agreement.

### 5.4 IRS Forms.

(a) In connection with the Plan, to the extent applicable and not an obligation of the Purchasers under the Sale Documents, the Contingent Payments Holding Trustee shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Contingent Payments Holding Trustee shall be authorized to take all actions necessary to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms it believes are reasonable and appropriate. The Contingent Payments Holding Trustee reserves the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances.

(b) As a condition precedent to receiving any distribution under this Plan, each Contingent Payments Holding Trust Beneficiary that is entitled to a distribution under the Plan and this Trust Agreement must provide the Contingent Payments Holding Trustee an executed IRS Form. An Allowed Claim of a Holder that fails to provide an executed IRS Form or provide any other required information to effectuate a distribution within sixty (60) days after service (by first class mail) of a formal request for the same by the Contingent Payments Holding Trustee shall be deemed disallowed and expunged for purposes of distributions under the Plan.

## ARTICLE VI

### POWERS OF AND LIMITATIONS ON THE CONTINGENT PAYMENTS HOLDING TRUSTEE

#### 6.1 Term of the Contingent Payments Holding Trustee.

(a) The Contingent Payments Holding Trustee will serve on and after the Effective Date in accordance with this Trust Agreement and the Plan, reporting to the Contingent Payments Holding Trust Advisory Board to the extent required by this Trust Agreement and the Plan. Subject to Article VII of this Trust Agreement and Article IV of the Plan, the Contingent Payments Holding Trustee shall hold office until the earlier to occur of (i) the termination of the Contingent Payments Holding Trust in accordance with the terms set forth in this Trust Agreement and the Plan or (ii) the Contingent Payments Holding Trustee's death, resignation, dissolution, incapacity or removal pursuant to this Trust Agreement. The duties, responsibilities and powers of the Contingent Payments Holding Trustee shall terminate on the date the Contingent Payments Holding Trust is wound up and dissolved in accordance with Delaware law pursuant to Section 3.1 of this Trust Agreement; *provided*, that Section 3.2 of this Trust Agreement, Section 9.2 of this Trust Agreement, Section 9.4 of this Trust Agreement, Section 9.5 of this Trust Agreement and Section 9.6 of this Trust Agreement shall survive such termination, dissolution and entry. References herein to the Contingent Payments Holding Trustee shall refer to the individual or individuals serving as the Contingent Payments Holding Trustee solely in its or their capacity as trustees hereunder.

#### 6.2 Responsibilities and Authority of the Contingent Payments Holding Trustee.

(a) The responsibilities and authority of the Contingent Payments Holding Trustee shall include the following rights and responsibilities, which shall be the exclusive rights and responsibilities of the Contingent Payments Holding Trustee: (i) liquidating and administering the Contingent Payments Holding Trust Assets, (ii) administering and paying taxes, including, among other things, (1) filing tax returns, and (2) representing the interest and account of the Contingent Payments Holding Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding, or audit; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Contingent Payments Holding Trustee's performance of its duties under the Plan and this Trust Agreement; (iv) distributing information statements as required for U.S. federal income tax and other applicable tax purposes; and (v) such other

responsibilities as may be vested in the Contingent Payments Holding Trustee pursuant to the Plan, this Trust Agreement, or an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of the Plan.

6.3 Actions Taken by the Contingent Payments Holding Trustee.

(a) The Contingent Payments Holding Trustee may take any and all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan and this Trust Agreement, without the need for Bankruptcy Court approval (unless otherwise indicated) subject to and in accordance with the terms of the Plan and this Trust Agreement, including, but not limited to:

(i) the execution and delivery of appropriate agreements or other documents of consolidation, conversion, disposition, transfer, or dissolution containing terms that are consistent with the terms of the Plan and this Trust Agreement and that satisfy the requirements of applicable law;

(ii) the power to invest funds of the Contingent Payments Holding Trust, and withdraw, make distributions, and pay taxes and other obligations owed by the Contingent Payments Holding Trust from such funds in accordance with the Plan and this Trust Agreement;

(iii) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Contingent Payments Holding Trustee with respect to its responsibilities. For the avoidance of doubt, a law firm shall not be disqualified from serving as counsel to the Contingent Payments Holding Trustee solely because of that law firm's prior retention by the Debtor, the Creditors' Committee, or a member of the Creditors' Committee, the Indenture Trustee, or the Consenting Noteholders;

(iv) the execution and delivery of any appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, duty, or obligation on terms consistent with the Plan and this Trust Agreement;

(v) the ability to appear and have standing in the Bankruptcy Court (or any other court having jurisdiction over the Contingent Payments Holding Trust Assets) to be heard with regard to matters that may affect or relate to the Contingent Payments Holding Trust Assets;

(vi) the filing of appropriate documents with the appropriate governmental authorities pursuant to applicable law;

(vii) the ability to protect and enforce the rights to the Contingent Payments Holding Trust Assets vested in the Contingent Payments Holding Trust by this Trust Agreement;

(viii) the ability to oversee compliance with the Contingent Payments Holding Trust's accounting, finance, and reporting obligations;

(ix) the powers set forth in Section 4.2(b) of this Trust Agreement;

(x) the power to pay any and all expenses and make all other payments in connection with administering the Contingent Payments Holding Trust without further order of the Bankruptcy Court;

(xi) the ability to open and maintain bank accounts in the name of the Contingent Payments Holding Trust, draw checks and drafts thereon on the sole signature of the Contingent Payments Holding Trustee, and terminate such accounts as the Contingent Payments Holding Trustee deems appropriate;

(xii) in the event that the Contingent Payments Holding Trustee determines that the Contingent Payments Holding Trust Beneficiaries or the Contingent Payments Holding Trust may, will, or have become subject to adverse tax consequences, in the Contingent Payments Holding Trustee's sole discretion, the power to take such actions that will, or are intended to, alleviate such adverse tax consequences;

(xiii) make Distributions to holders of Allowed Claims and deliver Distributions on account of the Contingent Payments Holding Trust Interests or such other Distributions as may be authorized by Final Order of the Bankruptcy Court, this Trust Agreement, or the Plan to the Contingent Payments Holding Trust Beneficiaries in accordance with this Trust Agreement; and

(xiv) any and all other actions that the Contingent Payments Holding Trustee determines is necessary or appropriate to effectuate the Plan and this Trust Agreement.

#### 6.4 Limitations on Contingent Payments Holding Trustee.

(a) The Contingent Payments Holding Trustee shall, on behalf of the Contingent Payments Holding Trust, hold the Contingent Payments Holding Trust out as a trust in the process of liquidation and not as an investment company. The authority of the Contingent Payments Holding Trustee shall be restricted to the liquidation of the Contingent Payments Holding Trust Assets on behalf, and for the benefit, of the Contingent Payments Holding Trust Beneficiaries and the distribution and application of the Contingent Payments Holding Trust Assets for the purposes set forth in, and the conservation and protection of the Contingent Payments Holding Trust Assets and the administration thereof in accordance with, the provisions of this Trust Agreement, the Plan and the Confirmation Order, and the Contingent Payments Holding Trustee shall not take any action that would jeopardize (i) treatment of the Contingent Payments Holding Trust as a liquidating trust that is a grantor trust for U.S. federal income tax purposes, if all Disputed Claims are resolved prior to the Trust Election Date, or (ii) treatment of the Contingent Payments Holding Trust as a liquidating trust that is a "complex trust" in accordance with Subpart C of Part I of Subchapter J of the IRC for U.S. federal income tax

purposes, if all Disputed Claims are not resolved prior to the Trust Election Date. The Contingent Payments Holding Trustee shall not at any time, on behalf of the Contingent Payments Holding Trust or the Contingent Payments Holding Trust Beneficiaries, (i) enter into or engage in any trade or business, or (ii) take any actions that are not related, directly or indirectly, to the purposes of this Trust Agreement and the Contingent Payments Holding Trust or the administration or implementation of the terms hereof.

(b) Notwithstanding anything in this Trust Agreement to the contrary, the Contingent Payments Holding Trustee shall provide reasonable notice to the Contingent Payments Holding Trust Advisory Board with respect to the following matters (the “**Material Matters**”):

- (i) any incurrence of any cost, expense or fee in excess of \$[50,000] (covering services to be rendered or products utilized by the Contingent Payments Holding Trustee within a one month period);
- (ii) determination of the timing of any Distribution to the Contingent Payments Holding Trust Beneficiaries;
- (iii) the dissolution of the Contingent Payments Holding Trust.

In the event that the Contingent Payments Holding Trust Advisory Board objects to the Contingent Payments Holding Trustee’s proposed course of action with respect to any Material Matter, the Contingent Payments Holding Trust Advisory Board shall submit such matter to the Contingent Payments Holding Trust Beneficiaries, and the Contingent Payments Holding Trustee shall not pursue such proposed course of action if, within twenty (20) days following the submission of such matter to the Contingent Payments Holding Trust Beneficiaries, the Majority Contingent Payments Holding Trust Beneficiaries have not objected to the proposed course of action.

6.5 Compensation and Expenses of the Contingent Payments Holding Trustee.

(a) The Contingent Payments Holding Trustee shall be entitled to receive reasonable compensation in connection with its performance of its duties plus the reimbursement of reasonable out-of-pocket expenses. All reasonable and documented costs, expenses, and obligations, including filing fees, incurred by the Contingent Payments Holding Trustee or the Contingent Payments Holding Trust Professionals shall be paid from the Wind-Down Account without further Bankruptcy Court approval or order (subject to the limitations set forth in this Trust Agreement and the Plan).

6.6 Agents, Employees, and Professionals.

(a) The Contingent Payments Holding Trustee, in consultation with the Contingent Payments Holding Trust Advisory Board, shall have the right, without Court approval, to retain the services of attorneys, accountants, and other professionals and agents (the “**Contingent Payments Holding Trust Professionals**”), to assist and advise the Contingent Payments Holding Trustee in the performance of its duties, and to compensate and reimburse expenses of such professionals in accordance with the this Trust Agreement;

*provided*, however, that it is understood that the Contingent Payments Holding Trust intends to initially engage [•] as Primary Trust Counsel. None of the professionals that represented parties in interest in the Chapter 11 Case shall be precluded from being engaged by the Contingent Payments Holding Trust solely on account of their service as a professional for such parties-in-interest prior to the Effective Date. The Contingent Payments Holding Trust may remove any Contingent Payments Holding Trust Professional with or without Cause.

(b) The Primary Trust Counsel that is appointed in accordance with the terms of the Plan shall be considered a Contingent Payments Holding Trust Professional for the purposes of this Trust Agreement and the Plan. Notwithstanding Section 6.7(a) of this Trust Agreement, in the event of the resignation, removal, bankruptcy or insolvency of the Primary Trust Counsel, a vacancy shall be deemed to exist, and a successor shall be appointed by the Contingent Payments Holding Trustee in consultation with the Contingent Payments Holding Trust Advisory Board.

(c) After the Effective Date, Contingent Payments Holding Trust Professionals shall be required to submit reasonably detailed invoices on a monthly basis to the Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Advisory Board, including in such invoices a description of the work performed, who performed such work, and if billing on an hourly basis, the hourly rate of such person, plus an itemized statement of expenses. In the event of any dispute concerning the entitlement to, or the reasonableness of any compensation and/or expenses of any Contingent Payments Holding Trust Professionals, either the Contingent Payments Holding Trustee or the affected party may ask the Bankruptcy Court to resolve the dispute. The Contingent Payments Holding Trustee is authorized to pay compensation for services rendered or reimbursement of expenses incurred after the Effective Date in the ordinary course and without the need for Bankruptcy Court approval.

6.7 Investment of Contingent Payments Holding Trust Monies. The Contingent Payments Holding Trustee may, in consultation with the Contingent Payments Holding Trust Advisory Board, invest Cash (including any earnings thereon or proceeds therefrom); *provided*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulations section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities. All monies and other assets received by the Contingent Payments Holding Trust as Contingent Payments Holding Trust Assets (including the proceeds thereof as a result of investment in accordance with this Section 6.6 of this Trust Agreement) shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Contingent Payments Holding Trust Beneficiaries, and shall not be segregated from other Contingent Payments Holding Trust Assets, unless and to the extent required by the Plan.

6.8 Resident Trustee.

(a) The Resident Trustee has been appointed and hereby agrees to serve as the trustee of the Contingent Payments Holding Trust solely for the purpose of complying with the requirement of Section 3807(a) of the Trust Act that the Contingent Payments Holding

Trust have one trustee, which, in the case of a natural person, is a resident of the State of Delaware, or which in all other cases, has its principal place of business in the State of Delaware. The duties and responsibilities of the Resident Trustee shall be limited solely to (i) accepting legal process served on the Contingent Payments Holding Trust in the State of Delaware, (ii) the execution of any certificates required to be filed with the office of the Delaware Secretary of State that the Resident Trustee is required to execute under section 3811 of the Trust Act, and (iii) any other duties specifically allocated to the Resident Trustee in this Trust Agreement. Except as provided in the foregoing sentence, the Resident Trustee shall have no management responsibilities or owe any fiduciary duties to the Contingent Payments Holding Trust, the Contingent Payments Holding Trustee, the Contingent Payments Holding Trust Advisory Board, or the Contingent Payments Holding Trust Beneficiaries.

(b) By execution of this Trust Agreement, the Resident Trustee accepts the Contingent Payments Holding Trust created herein. Except as otherwise expressly required by Section 6.7(a) of this Trust Agreement, the Resident Trustee shall not have any duty or liability with respect to the administration of the Contingent Payments Holding Trust, the investment of the Contingent Payments Holding Trust Assets or the Distribution of the Contingent Payments Holding Trust Assets to the Contingent Payments Holding Trust Beneficiaries, and no such duties shall be implied. The Resident Trustee shall not be liable for the acts or omissions of the Contingent Payments Holding Trustee or the Contingent Payments Holding Trust Advisory Board, nor shall the Resident Trustee be liable for supervising or monitoring the performance of the duties and obligations of the Contingent Payments Holding Trustee or the Contingent Payments Holding Trust Advisory Board under this Trust Agreement, except as expressly required by Section 6.7(a) of this Trust Agreement. The Resident Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder. The Resident Trustee shall not be personally liable under any circumstances, except for its own willful misconduct, bad faith, or gross negligence. Without limiting the foregoing:

(i) the Resident 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;

(ii) no provision of this Trust Agreement shall require the Resident 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 Resident 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;

(iii) the Resident Trustee shall not be personally liable for the validity or sufficiency of this Trust Agreement or for the due execution of this Trust Agreement by the other parties to this Trust Agreement;

(iv) the Resident 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;

(v) the Resident Trustee may request the Contingent Payments Holding 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 Resident Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(vi) in the exercise or administration of the Contingent Payments Holding Trust hereunder, the Resident Trustee (A) may act directly or through agents or attorneys pursuant to agreements entered into with any of them and (B) may consult with nationally recognized counsel selected by it in good faith and with due care 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; and

(vii) the Resident Trustee acts solely as Resident Trustee hereunder and not in its individual capacity, and all persons having any claim against the Resident Trustee by reason of the transactions contemplated by this Trust Agreement shall look only to the Contingent Payments Holding Trust Assets for payment or satisfaction thereof.

(c) The Resident Trustee shall be entitled to receive compensation out of the Wind-Down Account in accordance with the Wind-Down Budget for the services that the Resident Trustee performs in accordance with this Trust Agreement in accordance with such fee schedules as shall be agreed from time to time by the Resident Trustee and the Contingent Payments Holding Trustee. The Resident Trustee may also consult with counsel (who may be counsel for the Contingent Payments Holding Trust, counsel for the Resident Trustee, or counsel for both the Contingent Payments Holding Trust and the Resident Trustee) with respect to those matters that relate to the Resident Trustee's role as the Delaware resident trustee of the Contingent Payments Holding Trust, and the reasonable legal fees incurred in connection with such consultation shall be reimbursed out of the Wind-Down Budget to the Resident Trustee pursuant to this Section 6.7(c) of this Trust Agreement on terms reasonably acceptable to the Contingent Payments Holding Trust Advisory Board; *provided* that no such fees shall be reimbursed to the extent that they are incurred as a result of the Resident Trustee's gross negligence, bad faith or willful misconduct.

(d) The Resident Trustee shall serve for the duration of the Contingent Payments Holding Trust or until the earlier of (i) the effective date of the Resident Trustee's resignation, or (ii) the effective date of the removal of the Resident Trustee. The Resident Trustee may resign at any time by giving 30 days' written notice to the Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Advisory Board; *provided*, however, that such resignation shall not be effective until such time as a successor Resident Trustee has accepted appointment. The Resident Trustee may be removed at any time by the Contingent Payments Holding Trustee or the Contingent

Payments Holding Trust Advisory Board, by providing 30 days' written notice to the Resident Trustee; *provided*, however, such removal shall not be effective until such time as a successor Resident Trustee has accepted appointment. Upon the resignation or removal of the Resident Trustee, the Contingent Payments Holding Trustee shall appoint a successor Resident Trustee. If no successor Resident Trustee shall have been appointed and shall have accepted such appointment within 45 days after the giving of such notice of resignation or removal, the Resident Trustee may petition the Bankruptcy Court for the appointment of a successor Resident Trustee. Any successor Resident Trustee appointed pursuant to this Section 6.7(d) of this Trust Agreement shall be eligible to act in such capacity in accordance with this Trust Agreement and, following compliance with this Section 6.7(d) of this Trust Agreement, shall become fully vested with the rights, powers, duties, and obligations of its predecessor under this Trust Agreement, with like effect as if originally named as Resident Trustee. Any such successor Resident Trustee shall notify the Resident Trustee of its appointment by providing written notice to the Resident Trustee, and upon receipt of such notice, the Resident Trustee shall be discharged of its duties herein.

6.9 Fiduciary and Other Duties. Notwithstanding anything in the Plan or this Trust Agreement to the contrary, the Contingent Payments Holding Trustee and the members of the Contingent Payments Holding Trust Advisory Board shall always act in the best interests of the Contingent Payments Holding Trust Beneficiaries and in furtherance of the purpose of the Contingent Payments Holding Trust as set forth in Article IV.D of the Plan; *provided*, however, that the Contingent Payments Holding Trustee and the members of the Contingent Payments Holding Trust Advisory Board shall not owe fiduciary obligations to (i) any defendants or potential defendants of Causes of Action or Retained Causes of Action in their capacities as such or (ii) any Holder of an Unliquidated or Disputed Claim, in their capacities as such, it being the intent of such fiduciary duties to ensure that the obligations of the Contingent Payments Holding Trustee and the members of the Contingent Payments Holding Trust Advisory Board are to maximize the value of the Contingent Payments Holding Trust Assets. Except for obligations expressly imposed on the Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Advisory Board by this Trust Agreement, to the extent that, at law or in equity, the Contingent Payments Holding Trustee or the Contingent Payments Holding Trust Advisory Board has duties (including fiduciary duties) to the Contingent Payments Holding Trust Beneficiaries or to any other person that is a party to or is otherwise bound by this Trust Agreement, such duties are hereby eliminated by this Trust Agreement to the fullest extent permitted by applicable law; *provided*, however, that this Trust Agreement does not eliminate the implied contractual covenant of good faith and fair dealing.

## ARTICLE VII

### SUCCESSOR CONTINGENT PAYMENTS HOLDING TRUSTEE

7.1 Resignation. The Contingent Payments Holding Trustee may resign from the Contingent Payments Holding Trust by giving prior written notice thereof to the Contingent Payments Holding Trust Advisory Board or, in the event the Contingent Payments Holding Trust Advisory Board is no longer in existence, the Contingent

Payments Holding Beneficiaries, and, prior to the entry of a final decree closing the Chapter 11 Case, to the U.S. Trustee and Bankruptcy Court. Such resignation shall become effective on the earlier to occur of (a) the date specified in such written notice and (b) the effective date of the appointment of a successor Contingent Payments Holding Trustee in accordance with Section 7.4 of this Trust Agreement and such successor's acceptance of such appointment in accordance with Section 7.5 of this Trust Agreement.

7.2 Removal. The Contingent Payments Holding Trustee may be removed with or without cause at any time by the Majority Contingent Payments Holding Trust Beneficiaries. Removal of the Contingent Payments Holding Trustee shall be effective on the date specified in the resolution. Notwithstanding the removal of the Contingent Payments Holding Trustee pursuant to this Section 7.2, the rights of the resigning Contingent Payments Holding Trustee under this Trust Agreement with respect to acts or omissions occurring prior to the effectiveness of such removal will continue for the benefit of such resigning Contingent Payments Holding Trustee following the effectiveness of such resignation. “**Majority Contingent Payments Holding Trust Beneficiaries**” means the Contingent Payments Holding Trust Beneficiaries holding a majority of the aggregate amount of Allowed Claims of all Contingent Payments Holding Trust Beneficiaries.

7.3 Effect of Resignation or Removal. The resignation, removal, incompetency, bankruptcy, or insolvency of the Contingent Payments Holding Trustee shall not operate to terminate the Contingent Payments Holding Trust or to revoke any existing agency created pursuant to the terms of this Trust Agreement, the Plan, or the Confirmation Order or invalidate any action theretofore taken by the Contingent Payments Holding Trustee. All fees and expenses properly incurred by the Contingent Payments Holding Trustee prior to the resignation, incompetency or removal of the Contingent Payments Holding Trustee shall be paid from the Wind-Down Account pursuant to the Wind-Down Budget, unless such fees and expenses are disputed by the Contingent Payments Holding Trust Advisory Board, in which case the Bankruptcy Court shall resolve the dispute and any disputed fees and expenses of the predecessor Contingent Payments Holding Trustee that are subsequently allowed by the Bankruptcy Court shall be paid from the Contingent Payments Holding Trust Assets. In the event of the resignation or removal of the Contingent Payments Holding Trustee, such Contingent Payments Holding Trustee shall (a) promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the Contingent Payments Holding Trust Advisory Board or the successor Contingent Payments Holding Trustee or directed by the Bankruptcy Court to effect the termination of such Contingent Payments Holding Trustee's capacity under this Trust Agreement, (b) promptly deliver to the Contingent Payments Holding Trust Advisory Board and the successor Contingent Payments Holding Trustee all documents, instruments, records and other writings related to the Contingent Payments Holding Trust as may be in the possession of such Contingent Payments Holding Trustee, and (c) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Contingent Payments Holding Trustee.

7.4 Appointment of Successor. Upon the death, resignation, dissolution, incapacity or removal of a Contingent Payments Holding Trustee, the Majority Contingent

Payments Holding Trust Beneficiaries, in consultation with the Contingent Payments Holding Trust Advisory Board, shall have the authority to designate a successor Contingent Payments Holding Trustee, with the consent of the Majority Contingent Payments Holding Trust Beneficiaries.

7.5 Acceptance of Appointment by Successor Contingent Payments Holding Trustee. Any successor Contingent Payments Holding Trustee so appointed shall consent to and accept in writing the terms of this Trust Agreement and agrees that the provisions of this Trust Agreement shall be binding upon and inure to the benefit of the successor Contingent Payments Holding Trustee. Upon acceptance in writing, such successor Contingent Payments Holding Trustee shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion and privileges of its predecessor in the Contingent Payments Holding Trust with like effect as if originally named Contingent Payments Holding Trustee and shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

## ARTICLE VIII

### CONTINGENT PAYMENTS HOLDING TRUST ADVISORY BOARD

#### 8.1 Contingent Payments Holding Trust Advisory Board.

(a) There is hereby established and created a special advisory board (the “**Contingent Payments Holding Trust Advisory Board**”) to monitor and oversee the Contingent Payments Holding Trustee and other activities required in connection with the management and distribution of the Contingent Payments Holding Trust Assets, including the performance of the Contingent Payments Holding Trustee’s obligations under the Plan and this Trust Agreement.

(b) As of the Effective Date, the members of the Contingent Payments Holding Trust Advisory Board shall be [●], [●] and [●]. Any or all members of the Contingent Payments Holding Trust Advisory Board may resign from the Contingent Payments Holding Trust Advisory Board at any time by written notice of resignation to the Contingent Payments Holding Trustee. A member of the Contingent Payments Holding Trust Advisory Board (i) shall be deemed to be immediately removed as a member of the Contingent Payments Holding Trust Advisory Board in the event that a Contingent Payments Holding Trust Advisory Board member (i) dies, resigns, or becomes incapacitated, or (ii) otherwise fails or refuses to serve and is removed pursuant to the terms of this Contingent Payments Holding Trust Agreement. In the event of a Contingent Payments Holding Trust Advisory Board member’s resignation or removal, the Contingent Payments Holding Trust Advisory Board, in consultation with the Contingent Payments Holding Trustee, may, but is not required to, elect a replacement member. There shall be no minimum number of members of the Contingent Payments Holding Trust Advisory Board to retain its function; provided, however, if there shall have been no Contingent Payments Holding Trust Advisory Board for a period of thirty (30) consecutive days, then the Contingent Payments Holding Trustee may, during such vacancy, and thereafter, ignore any reference in the Plan, this Trust Agreement, or the Confirmation Order to the

Contingent Payments Holding Trust Advisory Board, and all such references in the Plan, this Trust Agreement or the Confirmation Order shall be null and void. Any deadlock in a vote by the members of the Contingent Payments Holding Trust Advisory Board may be broken by a vote cast by the Contingent Payments Holding Trustee.

(c) The Contingent Payments Holding Trustee shall provide the Contingent Payments Holding Trust Advisory Board with such reports as set forth in Section 4.8. Each member of the Contingent Payments Holding Trust Advisory Board shall be reimbursed by the Contingent Payments Holding Trust from the Contingent Payments Holding Trust Assets for its actual, reasonable, and documented out-of-pocket expenses incurred for serving on the Contingent Payments Holding Trust Advisory Board; *provided* that each member of the Contingent Payments Holding Trust Advisory Board shall not receive any reimbursement for the services of any attorney, accountant, and other professional and agent. Except as provided for in this Section 8.1(c) of this Trust Agreement, the members of the Contingent Payments Holding Trust Advisory Board shall not be entitled to receive any other form of compensation for their services provided as such members. The Contingent Payments Holding Trust Advisory Board may, but shall not be required to, adopt by-laws addressing the conduct of the Contingent Payments Holding Trust Advisory Board.

(d) The Contingent Payments Holding Trust Advisory Board, may, at any time, provide notice to the Contingent Payments Holding Trust Beneficiaries that the Contingent Payments Holding Trust Advisory Board recommends removal of the Contingent Payments Holding Trustee by the Contingent Payments Holding Trust Beneficiaries. Within ten (10) business days of providing such notice, the Contingent Payments Holding Trust Beneficiaries shall vote on such matter, and the Contingent Payments Holding Trustee shall be removed upon the vote in favor of removal by the Majority Contingent Payments Holding Trust Beneficiaries pursuant to Section 7.2 of this Trust Agreement.

(e) The Contingent Payments Holding Trust Advisory Board, any of the Contingent Payments Holding Trust Advisory Board's members or designees, attorneys, accountants, or other professionals, any duly designated agent or representative of the Contingent Payments Holding Trust Advisory Board, and the respective employees of any of the foregoing, shall not be liable for any act or omission of any other member, designee, agent, or representative of the Contingent Payments Holding Trust Advisory Board, nor shall any member be liable for any act or omission taken or to be taken in that member's capacity as a member of the Contingent Payments Holding Trust Advisory Board, other than acts resulting from such member's intentional misconduct, willful misconduct, or gross negligence. The Contingent Payments Holding Trust Advisory Board may, in connection with the performance of the Contingent Payments Holding Trust Advisory Board's functions, and in the Contingent Payments Holding Trust Advisory Board's sole and absolute discretion, consult with counsel, accountants, and any other professionals, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such counsel, accountants, or other professionals, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, the Contingent Payments Holding Trust Advisory Board shall be under no obligation to consult with counsel, accountants or other professionals,

and the Contingent Payments Holding Trust Advisory Board's determinations to not do so shall not result in the imposition of liability on the Contingent Payments Holding Trust Advisory Board or the Contingent Payments Holding Trust Advisory Board's members or designees, unless such determination is based on intentional misconduct, willful misconduct, or gross negligence.

(f) In the event there is an act required to be taken pursuant to the terms of this Trust Agreement, the Plan or the Confirmation Order by the Contingent Payments Holding Trust Advisory Board and the Contingent Payments Holding Trust Advisory Board cannot act because of a voting deadlock, the deadlock shall be broken by the vote of the Contingent Payments Holding Trustee. If the Contingent Payments Holding Trustee determines not to vote, the matter shall be decided by the Bankruptcy Court by submission of a motion on proper notice.

## ARTICLE IX

### RELIANCE, LIABILITY AND INDEMNIFICATION

9.1 Reliance by the Contingent Payments Holding Trustee and the Members of the Contingent Payments Holding Trust Advisory Board. Except as otherwise provided in this Trust Agreement, the Plan or the Confirmation Order, the Contingent Payments Holding Trustee, the members of the Contingent Payments Holding Trust Advisory Board and the Resident Trustee may rely and shall be protected in acting upon the advice of any Contingent Payments Holding Trust Professional and/or upon any resolution, statement, instrument, opinion, report, notice, request, consent, order or other paper or document reasonably believed by the Contingent Payments Holding Trustee, the Contingent Payments Holding Trust Advisory Board and the Resident Trustee to be genuine and to have been signed or presented by the proper party or parties.

9.2 Liability to Third Persons. No Contingent Payments Holding Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Contingent Payments Holding Trust Assets or the affairs of the Contingent Payments Holding Trustee. The Contingent Payments Holding Trustee, the members of the Contingent Payments Holding Trust Advisory Board, the Resident Trustee and the Contingent Payments Holding Trust Professionals shall not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person (including, in the case of the Contingent Payments Holding Trustee and members of the Contingent Payments Holding Trust Advisory Board, to any Contingent Payments Holding Trust Professionals retained by the Contingent Payments Holding Trustee in accordance with this Trust Agreement) in connection with the Contingent Payments Holding Trust Assets or the affairs of the Contingent Payments Holding Trust and shall not be liable with respect to any action taken or omitted to be taken in good faith, except for actions and omissions determined by a final order of the Bankruptcy Court to be due to their respective bad faith, gross negligence, intentional fraud, criminal conduct or willful misconduct, and all such persons shall look solely to the Contingent Payments Holding Trust Assets for satisfaction of claims of any nature arising in connection with affairs of the Contingent Payments Holding Trust. Other than as set forth in the Plan or in the Confirmation Order,

nothing in this Section 9.2 of this Trust Agreement shall be deemed to release any Contingent Payments Holding Trust Beneficiary from any actions or omissions occurring prior to the Effective Date.

9.3 Nonliability of Contingent Payments Holding Trustee and Contingent Payments Holding Trust Advisory Board for Acts of Others. Except as provided herein, nothing contained in this Trust Agreement, the Plan or the Confirmation Order shall be deemed to be an assumption by the Contingent Payments Holding Trustee, the Contingent Payments Holding Trust Advisory Board (or its members), the Resident Trustee or the Contingent Payments Holding Trust Professionals of any of the liabilities, obligations or duties of the Debtor or shall be deemed to be or contain a covenant or agreement by the Contingent Payments Holding Trustee to assume or accept any such liability, obligation or duty. Any successor Contingent Payments Holding Trustee, Contingent Payments Holding Trust Advisory Board member or Resident Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Contingent Payments Holding Trustee hereunder, and any statement or representation made as to the assets comprising the Contingent Payments Holding Trust Assets or as to any other fact bearing upon the prior administration of the Contingent Payments Holding Trust, so long as it has a good faith basis to do so. The Contingent Payments Holding Trustee, the Contingent Payments Holding Trust Advisory Board members, and the Resident Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. The Contingent Payments Holding Trustee or any successor Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Advisory Board members shall not be liable for any act or omission of any predecessor Contingent Payments Holding Trustee or Contingent Payments Holding Trust Advisory Board member. No provision of this Trust Agreement shall require the Contingent Payments Holding Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of his rights or powers hereunder if the Contingent Payments Holding 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.

9.4 Exculpation. No Holder of a Claim or Interest, Contingent Payments Holding Trust Beneficiary, or any other party in interest will have, or otherwise pursue, any claim or Cause of Action against the Contingent Payments Holding Trustee, the members of the Contingent Payments Holding Trust Advisory Board, the Resident Trustee, the Contingent Payments Holding Trust, or the Contingent Payments Holding Trust Professionals (for each of the foregoing, solely in the performance of their duties) for making payments and distributions in accordance with the Plan and this Trust Agreement or for fulfilling any functions incidental to implementing the provisions of the Plan or the this Trust Agreement, except for actions or omissions to act that are determined by final order of the Bankruptcy Court to have arisen out of their own respective intentional fraud, criminal conduct, gross negligence or willful misconduct. Any action taken or omitted to be taken with the express approval of the Bankruptcy Court shall conclusively be deemed not to constitute gross negligence or willful misconduct.

9.5 Limitation of Liability. The Contingent Payments Holding Trustee, the members of the Contingent Payments Holding Trust Advisory Board, the Resident Trustee and the Contingent Payments Holding Trust Professionals will not be liable for punitive, exemplary, consequential, special, or other damages for a breach of this Trust Agreement under any circumstances.

9.6 Indemnity. The Contingent Payments Holding Trust shall indemnify and hold harmless (a) the Contingent Payments Holding Trustee (solely in its capacity as such and in its capacity as officer and director of the Debtor), (b) members of the Contingent Payments Holding Trust Advisory Board, (c) the Resident Trustee and (d) the Contingent Payments Holding Trust Professionals ((a), (b), (c) and (d) collectively, the “**Indemnified Parties**”)), from and against and with respect to any and all liabilities, losses, damages, claims, costs, and expenses, including, but not limited to, attorneys’ fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, other than actions or omissions resulting from such Indemnified Party’s bad faith, willful misconduct (including, without limitation, actual fraud), or gross negligence, or the implementation or administration of the Plan or this Trust Agreement. To the extent that an Indemnified Party asserts a claim for indemnification as provided above, (y) any payment on account of such claim shall be paid solely from the Wind-Down Account and shall be entitled to a priority distribution therefrom, superior to any other rights (other than those rights of the Contingent Payments Holding Trust Professionals) to receive a distribution from the Wind-Down Account, including the Contingent Payments Holding Trust Beneficiaries and (z) the legal fees and related costs incurred by counsel to the Contingent Payments Holding Trustee in monitoring and participating in the defense of such claims giving rise to the asserted right of indemnification shall be advanced to such Indemnified Party (and such Indemnified Party undertakes to repay such amounts if it ultimately shall be determined that such Indemnified Party is not entitled to be indemnified therefore) out of the Wind-Down Account or any insurance purchased using the Wind-Down Account, and paid with priority over distributions to the Contingent Payments Holding Trust Beneficiaries. This indemnification provision shall remain available to, and be binding upon, any former Contingent Payments Holding Trustee or Resident Trustee or member of the Contingent Payments Holding Trust Advisory Board, or the estate of any decedent of the Contingent Payments Holding Trustee or Resident Trustee or member of the Contingent Payments Holding Trust Advisory Board, and shall survive the termination of this Trust Agreement.

## ARTICLE X

### MISCELLANEOUS PROVISIONS

10.1 Governing Law. Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent that any document to be entered into in connection herewith provides otherwise, the rights, duties, and obligations arising under this Trust Agreement shall be governed by, and construed and enforced in accordance with, the Bankruptcy Code and, to the extent not inconsistent therewith, the laws of the State of Delaware, without giving effect to principles of conflicts of laws.

10.2 Jurisdiction. Subject to the proviso below, prior to the entry of a final decree closing the Chapter 11 Cases, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction over the Contingent Payments Holding Trust, the Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Advisory Board, including the administration and activities of the Contingent Payments Holding Trust, the Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Advisory Board, and, pursuant to the Plan, the Bankruptcy Court has retained such jurisdiction.

10.3 Severability. In the event any provision of this Trust Agreement or the application thereof to any person or circumstances shall be determined by a final, non-appealable judgment or order to be invalid or unenforceable to any extent, the remainder of this Trust 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 Trust Agreement shall be valid and enforceable to the full extent permitted by law.

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

(a) if to the Contingent Payments Holding Trust, to:

[•]

with a copy to:

[•]

(b) if to the Contingent Payments Holding Trust Advisory Board, to each of:

[•]

[•]

[•]

(c) if to the Resident Trustee, to:

[•]

(d) if to any Contingent Payments Holding Trust Beneficiary, to the name and distribution address set forth in the Register with respect to such Contingent Payments Holding Trust Beneficiary.

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

10.6 Controlling Document. In the event of any conflict between the terms and provisions in the Plan and the terms and provisions in the Disclosure Statement, the Plan Supplement, any other instrument or document created or executed pursuant to the Plan, or any order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), the Plan shall govern and control; *provided* that, in the event of a conflict between this Trust Agreement, on the one hand, and any of the Plan, the Plan Supplement or the Definitive Documents, on the other hand, this Trust Agreement shall govern and control in all respects relating to the operation and/or administration of the Contingent Payments Holding Trust and/or indemnification of the Contingent Payments Holding Trustee.

10.7 Entire Trust Agreement. This Trust Agreement (including the recitals and annex hereto), the Plan, and the Confirmation Order constitute the entire agreement by and among the parties and supersede all prior and contemporaneous agreements or understandings by and among the parties with respect to the subject matter of this Trust Agreement.

10.8 Cooperation. On the Effective Date, the Debtor shall promptly upon the request of the Contingent Payments Holding Trustee (a) turn over or otherwise make available to the Contingent Payments Holding Trust at no cost to the Contingent Payments Holding Trust or the Contingent Payments Holding Trustee, any books and records of the Debtor held by such professionals, and (b) subject to payment of reasonable and documented fees and expenses incurred by such professionals (i) make available information, including electronic records or documents, reasonably required by the Contingent Payments Holding Trust to carry out its duties hereunder and (ii) otherwise reasonably cooperate with the Contingent Payments Holding Trustee in carrying out its duties hereunder, subject, in the case of (a) and (b), to the confidentiality provisions herein to preserve the confidential nature of the Debtor's books and records.

10.9 Amendment and Waiver. This Trust Agreement may from time to time be amended, supplemented or modified by the Contingent Payments Holding Trustee, but only with (i) the approval of the Bankruptcy Court or (ii) the written consent of the Majority Contingent Payments Holding Trust Beneficiaries; *provided* that any such amendment which alters the duties or liabilities of the Contingent Payments Holding Trust Advisory Board shall also require the consent of the Contingent Payments Holding Trust Advisory Board; *provided further* that any such amendment which alters the duties or liabilities of the Resident Trustee shall also require the consent of the Resident Trustee. The Contingent Payments Holding Trustee shall provide the Contingent Payments Holding Trust Advisory Board notice of any proposed amendment, supplement or modification to

this Trust Agreement at least five (5) business day prior to the effective date of such amendment, supplement or modification; provided, however, that the Contingent Payments Holding Trust Advisory Board may waive the notice period. Notwithstanding this Section 10.9 of this Trust Agreement, any amendment to this Trust Agreement shall not be inconsistent with the Plan and the Confirmation Order and shall be consistent with the purpose and intention of the Contingent Payments Holding Trust to liquidate in an expeditious but orderly manner the Contingent Payments Holding Trust Assets in accordance with Treasury Regulations section 301.7701-4(d) and Section 1.2 of this Trust Agreement.

10.10 Confidentiality. The Contingent Payments Holding Trustee, each member of the Contingent Payments Holding Trust Advisory Board, and each of their respective employees, members, agents, professionals and advisors, including the Contingent Payments Holding Trust Professionals (each a “**Confidential Party**” and, collectively, the “**Confidential 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 Confidential Party, of or pertaining to any Debtor to which any of the Contingent Payments Holding Trust Assets relates; *provided*, however, that such information may be disclosed if (a) it is now or in the future becomes generally available to the public other than as a result of a disclosure by the Confidential Parties or (b) such disclosure is required of the Confidential Parties pursuant to legal process including subpoena or other court order or other applicable laws or regulations. In the event that any Confidential Party is requested to divulge confidential information pursuant to this clause (b), such Confidential Party shall promptly, in advance of making such disclosure, provide reasonable notice of such required disclosure to the Contingent Payments Holding Trustee (or the Contingent Payments Holding Trust Advisory Board in case the Contingent Payments Holding Trustee or Resident Trustee is the disclosing party) to allow sufficient time to object to or prevent such disclosure through judicial or other means and shall cooperate reasonably with the Contingent Payments Holding Trustee (or the Contingent Payments Holding Trust Advisory Board, as applicable) in making any such objection, including appearing in any judicial or administrative proceeding in support of any objection to such disclosure.

10.11 Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, 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. The words herein and words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section, or subdivision of this Trust Agreement. The term “including” shall mean “including, without limitation.”

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

10.13 Intention of Parties to Establish Liquidating Trust. This Trust Agreement is intended to create a liquidating trust within the meaning of Treasury Regulations section 301.7701-4(d) for U.S. federal income tax purposes. If all Disputed Claims are resolved prior to the Trust Election Date, the Contingent Payments Holding Trust is intended to be classified as a grantor trust for U.S. federal income tax purposes as to which the Contingent Payments Holding Trust Beneficiaries are treated as grantors and owners. If all Disputed Claims are not resolved prior to the Trust Election Date, the Contingent Payments Holdings Trust is intended to be classified as a “complex trust” in accordance with Subpart C of Part I of Subchapter J of the IRC for U.S. federal income tax purposes. To the extent provided by law, the Contingent Payments Holding Trust shall be governed and construed in all respects as such a trust as determined by the foregoing sentence and any ambiguity herein shall be construed consistent herewith and, if necessary, this Trust Agreement may be amended to comply with such U.S. federal income tax laws, which amendments may apply retroactively.

[Signature Page Follows]

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

**TRICIDA, INC.**

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

**CONTINGENT PAYMENTS HOLDING TRUSTEE**

By: \_\_\_\_\_  
Name: [•]

**RESIDENT TRUSTEE**

[•], not in its individual capacity, but solely as Resident Trustee

By: \_\_\_\_\_  
Name: [•]

**EXHIBIT A**

**Notice of Transfer**

The undersigned Contingent Payments Holding Trust Beneficiary (the “**Transferor**”) has agreed to transfer the Contingent Payments Holding Trust Interest set forth below to the undersigned transferee (the “**Transferee**”).

Transferor Name:

Date Executed:

Amount and Type of Contingent Payments Holding Trust Interest Transferred:

Notes Claim:

General Unsecured Claim (Allowed / Asserted):

Patheon Rejection Claim:

Transferee Name:

Transferee Address:

Transferee e-mail address:

**EXHIBIT D**

**Blackline of Liquidating Trust Agreement**

**LIQUIDATING TRUST AGREEMENT OF**

**TRICIDA LIQUIDATING TRUST**

**DATED AS OF [•], 2023**

**BY AND AMONG**

**[•] AS LIQUIDATING TRUSTEE,**

**[•] AS RESIDENT TRUSTEE,**

**and**

**THE DEBTOR HERETO**

**TABLE OF CONTENTS**

PAGE

~~ARTICLE~~ARTICLE I

DECLARATION OF TRUST

1.1. Creation of Trust.....	2
1.2. Purpose of Liquidating Trust.....	2
1.3. Transfer of Liquidating Trust Assets.....	<del>23</del>
1.4. Appointment and Acceptance of Liquidating Trustee.....	<del>45</del>
1.5. Liquidation of Liquidating Trust Assets.....	<del>46</del>
1.6. Wind-Down Budget.....	<del>56</del>
1.7. <del>No Reversion to Debtor</del> .....	<del>5</del> <u>Reversionary Interests</u> .....
1.8. Incidents of Ownership.....	<del>56</del>
1.9. Privileges.....	<del>67</del>

~~ARTICLE~~ARTICLE II

LIQUIDATING TRUST BENEFICIARIES

2.1. Conflicting Claims.....	<del>67</del>
2.2. Rights of Liquidating Trust Beneficiaries.....	<del>67</del>
2.3. Evidence of Liquidating Trust Interest.....	<del>78</del>
2.4. Transfers of Liquidating Trust Interests.....	<del>78</del>
2.5. Exemption from Registration.....	<del>79</del>
2.6. Limited Liability.....	<del>89</del>

~~ARTICLE~~ARTICLE III

DURATION AND TERMINATION OF LIQUIDATING TRUST

3.1. Dissolution of the Liquidating Trust.....	<del>89</del>
3.2. Continuance of Liquidating Trust for Winding Up.....	<del>810</del>

~~ARTICLE~~ARTICLE IV

ADMINISTRATION OF THE LIQUIDATING TRUST

4.1. Payment of Claims, Expenses, and Liabilities.....	<del>910</del>
4.2. Procedures for Resolving Unliquidated and Disputed Claims.....	<del>911</del>
4.3. Distributions.....	<del>113</del>
4.4. Compliance with Laws.....	<del>1716</del>
4.5. Fiscal Year.....	<del>1716</del>
4.6. Books and Records.....	<del>1716</del>
4.7. Liquidating Trust Insurance.....	<del>1817</del>
4.8. Reports.....	<del>1817</del>

~~ARTICLE~~ARTICLE V

TAX MATTERS

5.1. Liquidating Trustee’s Tax Power for Debtor.....	<del>1817</del>
--	-----------------

5.2. Treatment of <del>Trusts</del> <u>Trust</u> for Tax Purposes .....	<del>19</del> <u>18</u>
5.3. Tax Reporting .....	<del>20</del> <u>18</u>
5.4. Tax Withholdings by Liquidating Trustee .....	<del>21</del> <u>20</u>
<u>5.5. IRS Forms</u> .....	<u>20</u>

~~ARTICLE~~ARTICLE VI

POWERS OF AND LIMITATIONS ON THE LIQUIDATING TRUSTEE

6.1. <u>Term of the</u> Liquidating Trustee .....	<del>22</del> <u>20</u>
6.2. Responsibilities and Authority of the Liquidating Trustee .....	<del>22</del> <u>21</u>
6.3. <del>Powers of</del> <u>Actions Taken by</u> the Liquidating Trustee .....	<del>23</del> <u>21</u>
6.4. Limitations on Liquidating Trustee .....	23
6.5. Compensation and Expenses of the Liquidating Trustee .....	24
6.6. Agents, Employees, and Professionals .....	24
6.7. Investment of Liquidating Trust Monies .....	25
<del>6.8. Termination</del> .....	<del>25</del>
<del>6.9</del> <u>6.8.</u> Resident Trustee .....	25
<del>6.10</del> <u>6.9.</u> Fiduciary and Other Duties .....	28

~~ARTICLE~~ARTICLE VII

SUCCESSOR LIQUIDATING TRUSTEE

7.1. Resignation .....	28
7.2. Removal .....	28
7.3. Effect of Resignation or Removal .....	29
7.4. Appointment of Successor .....	29
7.5. Acceptance of Appointment by Successor Liquidating Trustee .....	29

~~ARTICLE~~ARTICLE VIII

LIQUIDATING TRUST ADVISORY BOARD

<u>8.1. Liquidating Trust Advisory Board</u> .....	<u>29</u>
--	-----------

ARTICLE IX

RELIANCE, LIABILITY AND INDEMNIFICATION

<del>8.1</del> <u>9.1.</u> Reliance by the Liquidating Trustee <del>30</del> <u>and the Members of the Liquidating Trust Advisory Board</u> .....	<del>30</del> <u>31</u>
<del>8.2</del> <u>9.2.</u> Liability to Third Persons .....	<del>30</del> <u>31</u>
<del>8.3.</del> <u>9.3. Nonliability of Liquidating Trustee and Liquidating Trust Advisory Board</u> for Acts of Others .....	<del>30</del> <u>32</u>
<del>8.4.</del> <u>9.4. Exculpation</u> .....	<del>31</del> <u>32</u>
<del>8.5.</del> <u>9.5. Limitation of Liability</u> .....	<del>31</del> <u>33</u>
<del>8.6</del> <u>9.6.</u> Indemnity .....	<del>31</del> <u>33</u>

~~ARTICLE IX~~ARTICLE X

MISCELLANEOUS PROVISIONS

<del>9.1</del> <u>10.1.</u> Governing Law .....	<del>32</del> <u>33</u>
<del>9.2.</del> <u>10.2. Jurisdiction</u> .....	<del>32</del> <u>33</u>
<del>9.3.</del> <u>10.3. Severability</u> .....	<del>32</del> <u>34</u>

<del>9.4</del> <u>10.4.</u> Notices.....	<del>32</del> <u>34</u>
<del>9.5</del> <u>10.5.</u> Headings.....	<del>33</del> <u>35</u>
<del>9.6.</del> <u>10.6.</u> Controlling Document.....	<del>33</del> <u>35</u>
<del>9.7</del> <u>10.7.</u> Entire Trust Agreement.....	<del>33</del> <u>35</u>
<del>9.8.</del> <u>10.8.</u> Cooperation.....	<del>33</del> <u>35</u>
<del>9.9</del> <u>10.9.</u> Amendment and Waiver.....	<del>34</del> <u>35</u>
<del>9.10.</del> <u>10.10.</u> Confidentiality.....	<del>34</del> <u>36</u>
<del>9.11</del> <u>10.11.</u> Meanings of Other Terms.....	<del>34</del> <u>36</u>
<del>9.12.</del> <u>10.12.</u> Counterparts.....	<del>34</del> <u>36</u>
<del>9.13</del> <u>10.13.</u> Intention of Parties to Establish Liquidating Trust.....	<del>34</del> <u>36</u>

## LIQUIDATING TRUST AGREEMENT OF TRICIDA LIQUIDATING TRUST

THIS LIQUIDATING TRUST AGREEMENT OF TRICIDA LIQUIDATING TRUST, dated as of [●], 2023 (this “**Trust Agreement**”), is by and among Tricida, Inc. (the “**Debtor**”), as debtor, [●], as liquidating trustee (together with any successor or additional trustee appointed under the terms of this Trust Agreement, including Section 6.1 of this Trust Agreement, the “**Liquidating Trustee**”), and [●] as the Delaware resident trustee (together with any successor Delaware resident trustee appointed under the terms of this Trust Agreement, the “**Resident Trustee**”), for the purpose of forming a statutory trust under and pursuant to the provisions of 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, the “**Trust Act**”) as contemplated by the Plan (the “**Liquidating Trust**”).<sup>1</sup>

### BACKGROUND

A. On January 11, 2023 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Case**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”);

B. On February 22, 2023, the Bankruptcy Court approved the sale of various subsets of the Debtor’s Assets to the Purchasers pursuant to section 363 of the Bankruptcy Code by entry of the Sale Order, as defined in the Plan;

C. On March 27, 2023, the Debtor filed the ~~Third~~Fourth Amended Disclosure Statement for Chapter 11 Plan of Liquidation for Tricida, Inc. [D.I. ~~328~~329] ~~and~~;

~~D.~~ On May [●], 2023, the Debtor filed the Fourth Amended Disclosure Statement for Chapter 11 Plan of Liquidation for Tricida, Inc. [D.I. ~~329~~●];

~~D~~E. On [●], 2023, the Bankruptcy Court entered an order confirming the Plan [D. I. [●]] (the “**Confirmation Order**”), which became effective on [●], 2023 (the “**Effective Date**”);

~~E~~F. The Plan provides for, among other things, the creation of a liquidating trust on the Effective Date for the purpose of liquidating and administering the Liquidating Trust Assets and making distributions on account thereof in accordance with section 301.7701-4(d) of the regulations promulgated under the Internal Revenue Code of 1986, as amended (the “**IRC**,” and such regulations, the “**Treasury**”

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the *Chapter 11 Plan of Liquidation for Tricida, Inc.*, as confirmed by the Confirmation Order (as defined below) (including all exhibits thereto, as the same may be further amended, modified, or supplemented from time to time, the “**Plan**”).

**Regulations**”), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust, as provided for under the Plan and this Trust Agreement. The Liquidating Trust ~~was~~is established and is effective for the benefit of the Liquidating Trust Beneficiaries; and

**FG.** The duties and powers of the Liquidating Trustee shall include all powers necessary to administer the Liquidating Trust Assets, including, without limitation, the duties and powers listed in the Plan.

## AGREEMENT

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

### ARTICLE I~~ARTICLE I~~

#### DECLARATION OF TRUST

**1.1.** ~~1.1.~~ Creation of Trust. The Debtor, the Liquidating Trustee, and the Resident Trustee, pursuant to the Plan and the Confirmation Order, and in accordance with the applicable provisions of chapter 11 of the Bankruptcy Code, hereby create the Liquidating Trust, which shall bear the name “Tricida Liquidating Trust.” In connection with the exercise of the Liquidating Trustee’s power hereunder, the Liquidating Trustee may use this name or such variation thereof as the Liquidating Trustee sees fit. On the Effective Date, the Liquidating Trust ~~will~~shall be established pursuant to this Trust Agreement.

**1.2.** ~~1.2.~~ Purpose of Liquidating Trust. The Liquidating Trust shall be established for the purpose of (a) receiving and holding the Liquidating Trust Assets; (b) administering, disputing, objecting to, compromising, or otherwise resolving all General Unsecured Claims; (c) making distributions to the Liquidating Trust Beneficiaries in accordance with the Liquidating Trust Waterfall; (d) maximizing recoveries for the benefit of the Liquidating Trust Beneficiaries; and (e) commencing and pursuing the Retained Causes of Action and Transferred Causes of Action, along with all other Causes of Action that are not otherwise subject to release or exculpation pursuant to the Plan, and managing and administering any proceeds thereof, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust, in accordance with ~~Treas. Reg. §~~Treasury Regulations section 301.7701-4(d). Subject to the DOF Election described in Article IV.C.6(g) of the Plan and Section 5.2 of this Trust Agreement, the Liquidating Trust ~~is intended to~~shall qualify as a “grantor trust” for U.S. federal income tax purposes and, to the extent permitted by applicable law, for state and local income tax purposes, with the Liquidating Trust Beneficiaries treated as grantors and owners of the Liquidating Trust. To the extent permitted by applicable law, all parties, including the Liquidating Trustee and any Liquidating Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes. From and

after the Effective Date, the Liquidating Trustee shall act as the exclusive representative of the Estate for all purposes other than as set forth in Article IV.D.2(b) and IV.D.3(b) of the Plan.

1.3. ~~1.3.~~ Transfer of Liquidating Trust Assets.

(a) ~~On~~ Pursuant to the Plan and the Confirmation Order, on the Effective Date ~~and upon establishment of the Liquidating Trust, all Liquidating Trust Assets, which,~~ all right, title, and interest in and to the Liquidating Trust Assets shall be deemed to have been irrevocably transferred, assigned, conveyed and delivered by the Debtor to the Liquidating Trust free and clear of all encumbrances, liens and Claims of any Person, in trust for the benefit of the Liquidating Trust Beneficiaries for the uses and purposes stated therein and herein. The Liquidating Trust hereby accepts all such Liquidating Trust Assets free and clear of any and all liens and claims and agrees to hold and administer the Liquidating Trust Assets and the remainder of the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries, subject to the terms and conditions of this Trust Agreement. For the avoidance of doubt, upon the transfer of the ~~Liquidating Trust Assets,~~ the Liquidating Trust shall succeed to all of the Debtor's right, title, and interest in and to the Liquidating Trust Assets, and the Debtor will have no further interest in or with respect to the Liquidating Trust Assets or the Liquidating Trust. The Liquidating Trust Assets shall include, for the avoidance of doubt, (i) any Causes of Action not otherwise subject to release or exculpation pursuant to the Plan, including all Retained Causes of Action and Transferred Causes of Action, (ii) the remaining Cash of the Debtor or the Estate after (A) paying the Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, Allowed Other Priority Claims, and Allowed *De Minimis* Unsecured Claims as set forth in Article III.B of the Plan, (B) adequately funding the Professional Fee Reserve and the Wind-Down Budget (which, for the avoidance of doubt, shall include Cash to be distributed to the Contingent Payments Holding Trust and/or the Contingent Payments Trust for the administration thereof), and (C) making the Noteholder Effective Date Distribution and Patheon Effective Date Distribution and the GUC Effective Date Distribution all of which shall be deemed transferred to the Liquidating Trust without any further action of the Debtor or any managers, employees, officers, directors, members, partners, shareholders, agents, advisors, or representatives of the Debtor. For the avoidance of doubt, the Contingent Payments Trust Assets and the Contingent Payments Trust Interest do not constitute Liquidating Trust Assets and shall not be deemed transferred to the Liquidating Trust. Pursuant to section 1141(b) and 1141(c) of the Bankruptcy Code, all transfers to the Liquidating Trust shall be made free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as may be otherwise provided in the Plan. For all U.S. federal income tax purposes, and, to the extent permitted by applicable law, for state and local income tax purposes, and subject to the DOF Election described at Article IV.C.6(g) of the Plan and Section 5.2 of this Trust Agreement, all parties (including, without limitation, the Debtor, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust in accordance with the terms herein as a transfer to the Liquidating Trust Beneficiaries, followed by a transfer by such Liquidating Trust Beneficiaries to the

Liquidating Trust, and the Liquidating Trust Beneficiaries will be treated as the grantors and owners thereof.

(b) On the Effective Date, or at such other time as is reasonably convenient to the Liquidating Trustee and the Debtor, the Debtor shall provide to the Liquidating Trust timely access to all of the books and records of the Debtor in the Debtor's possession. The Debtor shall also instruct any third parties or professionals possessing such books and records (including computer generated or computer maintained books, records, and data) to permit access to such books and records as may be reasonably requested by the Liquidating Trustee; *provided*, that the Liquidating Trustee shall be responsible for the out-of-pocket costs and expenses of providing access and/or maintaining such books and records with the third parties following the Effective Date, such cost and expense to be provided for in the Wind-Down Account; *provided, further* that the Liquidating Trustee may, without Bankruptcy Court approval, destroy any documents that it believes are no longer required to effectuate the terms and conditions of the Plan, excepting only the Potentially Relevant Books and Records to the Pardi Litigation, which shall be maintained as set forth in Article XII.I of the Plan.

(c) Upon delivery of the Liquidating Trust Assets to the Liquidating Trust, the Debtor and its predecessors, successors, and assigns shall be released from all liability with respect to the delivery thereof and shall have no reversionary or further interest in or with respect to the Liquidating Trust Assets or the Liquidating Trust. Notwithstanding the foregoing, for purposes of section 553 of the Bankruptcy Code, the transfer of the Liquidating Trust Assets to the Liquidating Trust shall not affect the mutuality of obligations that otherwise may have existed prior to the effectuation of such transfer.

(d) Nothing in this Trust Agreement alters the rights and obligations of the Debtor (and its Estate) and the Debtor's insurers (and third-party claims administrators) under the Insurance Policies or modifies the coverage or benefits provided thereunder or the terms and conditions thereof or diminishes or impairs the enforceability of the Insurance Policies. All of the Debtor's rights and its Estate's rights under any Insurance Policy to which the Debtor and/or the Debtor's Estate may be beneficiaries shall vest with the Liquidating Trust for the benefit of the Liquidating Trust Beneficiaries and all of the beneficiaries of such policies. The Debtor shall be deemed to have assumed only the D&O Policies, and any Insurance Policy other than a D&O Policy shall be deemed terminated on the Effective Date. Except as otherwise provided in the Plan, ~~distributions to Liquidating Trust Beneficiaries~~ proceeds payable under any Insurance Policy shall be in accordance with the provisions of ~~any~~the applicable Insurance Policy. Except as set forth in Article IX of the Plan, nothing in the Plan or this Trust Agreement shall constitute or be deemed a waiver of any Cause of Action (including, for the avoidance of doubt, any Retained Cause of Action) that the Debtor or any Entity, including the Liquidating Trust, may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained in the Plan or this Trust Agreement be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

(e) Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan and this Trust Agreement, including, without limitation, the transfer of the Liquidating Trust Assets to the Liquidating Trust, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation all such instruments or other documents governing or evidencing such transfers without the payment of any such tax, recordation fee, or governmental assessment.

(f) The Liquidating Trust Assets and all other property held from time to time by the Liquidating Trust under this Trust Agreement and any earnings, including interest, on any of the foregoing shall be held and be applied by the Liquidating Trustee in accordance with the terms of this Trust Agreement, the Plan and the Confirmation Order for the benefit of the Liquidating Trust Beneficiaries, and for no other party, subject to the further covenants, conditions and terms set forth in this Trust Agreement, the Plan and the Confirmation Order.

(g) The Debtor ~~and~~, the Liquidating Trustee and the Liquidating Trust Advisory Board, and any party under the control of such parties, hereby agree to execute any documents or other instruments and shall take all other steps as necessary to cause title to the Liquidating Trust Assets to be transferred to the Liquidating Trust in accordance with this Trust Agreement, the Plan and the Confirmation Order.

1.4. ~~1.4.~~ Appointment and Acceptance of Liquidating Trustee.

(a) The Liquidating Trustee has been selected by the Majority Consenting Noteholders. ~~Upon the occurrence of~~ in consultation with the Official Committee of Unsecured Creditors appointed in the Tricida, Inc, bankruptcy case. On the Effective Date, the Liquidating Trustee shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to serve as the trustee and administrator of the Liquidating Trust established pursuant to Article IV.C. of the Plan and this Trust Agreement. The Liquidating Trustee shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan and this Trust Agreement. The Debtor shall file a notice prior to the Confirmation Hearing designating the ~~individual~~ Person selected as the Liquidating Trustee. The appointment of the Liquidating Trustee shall be approved in the Confirmation Order and such appointment shall be effective in accordance with the terms of Article IV.A of the Plan. The ~~initial~~ Liquidating Trustee shall serve in such capacity, pursuant to the terms of this Trust Agreement and the Plan, until the resignation or discharge of such trustee and the appointment of a successor Liquidating Trustee in accordance with the terms of this Trust Agreement and the Plan.

(b) The Liquidating Trustee accepts the Liquidating Trust created by this Trust Agreement in accordance with the terms of the Plan, the Confirmation Order and this Trust Agreement and the grant, assignment, transfer, conveyance and delivery to

the Liquidating Trust, on behalf, and for the benefit, of the Liquidating Trust Beneficiaries, by the Debtor of all of its respective rights, titles and interests in the Liquidating Trust Assets, upon and subject to the terms and conditions set forth herein, in the Plan and in the Confirmation Order. The Liquidating Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purpose of the Liquidating Trust and not otherwise. The Liquidating Trustee shall have the authority to bind the Liquidating Trust in accordance with, and within the limitations set forth in this Trust Agreement, but shall for all purposes hereunder be acting in the capacity as Liquidating Trustee, and not individually.

1.5. ~~1.5.~~ Liquidation of Liquidating Trust Assets. The Liquidating Trustee shall, in an expeditious but commercially reasonable manner and subject to the provisions of the Plan, the Confirmation Order and the other provisions of this Trust Agreement, liquidate and convert to Cash the Liquidating Trust Assets, make timely distributions in accordance with the terms of this Trust Agreement, the Plan and the Confirmation Order and not unduly prolong the existence of the Liquidating Trust. The Liquidating Trustee shall liquidate the Liquidating Trust Assets in an effort to maximize net recoveries, and the Liquidating Trustee shall be entitled to take into consideration the risks, timing, and costs of potential actions in making determinations as to the maximization of recoveries; *provided*, that the determinations and actions of the Liquidating Trustee shall in all cases be subject to the limitations provided in this Trust Agreement. Subject to the terms of this Trust Agreement, such liquidations may be accomplished through the prosecution, compromise and settlement, abandonment or dismissal of any Claims, Causes of Action ~~or~~, Retained Causes of Action, or Transferred Causes of Action that are not otherwise subject to release or exculpation pursuant to the Plan, or through the sale or other disposition of the Liquidating Trust Assets (in whole or in combination, and including the sale of the Causes of Action ~~or~~, Retained Causes of Action, or Transferred Causes of Action that are not otherwise subject to release or exculpation pursuant to the Plan). The Liquidating Trustee may incur any reasonable and necessary expenses in connection with the liquidation and conversion of the Liquidating Trust Assets into Cash or in connection with the administration of the Liquidating Trust.

1.6. ~~1.6.~~ Wind-Down Budget. On the Effective Date, pursuant to the Wind-Down Budget, the Debtor shall transfer funds into an account held by the Liquidating Trust (the "**Wind-Down Account**"), which funds shall be used for all reasonable activities and expenses to be incurred in winding down the Chapter 11 Case and administering the Liquidating Trust, including but not limited to the fees and expenses of the Liquidating Trust Professionals, the post-Effective Date professional fees and expenses of the Retained Professionals, the Consenting Noteholder Fees and Expenses, and the Statutory Fees. From time to time, the Liquidating Trustee shall determine whether the Cash in the Wind-Down Budget exceeds the amount of Cash needed to fund the Wind-Down Budget and may distribute any such excess Cash in accordance with the Liquidating Trust Waterfall.

1.7. ~~1.7.~~ Reversionary Interests. In no event shall any part of the Liquidating Trust Assets revert to or be distributed to the Debtor. The Liquidating Trust shall have a reversionary interest in any Cash remaining in the Professional Fee Reserve

after payment in full of all Allowed Professional Fee Claims and all Consenting Noteholder Fees and Expenses without any further notice, action, or order of the Bankruptcy Court.

1.8. ~~1.8.~~ Incidents of Ownership. The Liquidating Trust Beneficiaries shall be the sole beneficiaries of the Liquidating Trust and the Liquidating Trust Assets, and the Liquidating Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein, in the Plan and in the Confirmation Order, including those powers set forth in Section 6.2 of this Trust Agreement.

1.9. ~~1.9.~~ Privileges.

(a) In connection with the vesting and transfer of the Liquidating Trust Assets, the Liquidating Trustee shall stand in the same position as the Debtor with respect to any claim the Debtor and/or its Estate may have as to an attorney-client privilege, work-product doctrine, or any other privilege or confidentiality protections attaching to any documents or communications (whether written or oral) relating to the Liquidating Trust Assets, and the Liquidating Trustee shall succeed to all rights of the Debtor and/or its Estate to hold, preserve, assert, be the beneficiary of or waive any such privilege or protection (collectively, “**Privileges**”). As of the Effective Date, all Privileges of the Debtor relating to the Liquidating Trust Assets shall be deemed transferred, assigned, and delivered by the Debtor to the Liquidating Trust, without waiver or release, and shall vest with the Liquidating Trust. No such Privilege shall be waived by disclosures to the Liquidating Trustee of the Debtor’s documents, information, or communication subject to attorney-client privilege, work product protections, or other immunities (including those related to common interest or joint defense with third parties), or protections from disclosure held by the Debtor. The Debtor’s Privileges relating to the Liquidating Trust Assets will remain subject to the rights of third parties under applicable law, including any rights arising from the common interest doctrine, the joint defense doctrine, joint attorney-client representation, or any agreement; *provided*, that prior to waiving such privilege, the Liquidating Trustee shall provide such third party with any written notice to the extent required by any joint defense or common interest agreements as of the Petition Date. Any and all work product created by or on behalf of the Liquidating Trustee, the ~~professionals~~ Liquidating Trust Professionals, and their respective agents, representatives, and employees shall be deemed confidential to the extent that such work product is not protected by the attorney-client privilege, attorney work-product doctrine, or any other applicable privilege. In addition, any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 or any other law, rule, or order held by the Debtor prior to the Effective Date with respect to the Liquidating Trust Assets shall vest in the Liquidating Trust from the Effective Date through the date of dissolution of the Liquidating Trust.

ARTICLE II ~~ARTICLE H~~**LIQUIDATING TRUST BENEFICIARIES**

2.1. ~~2.1.~~ Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to the beneficial interest of a Liquidating Trust Beneficiary under this Trust Agreement, or if there is any disagreement between the assignees, transferees, heirs, representatives, or legatees succeeding to all or a part of such an interest resulting in adverse claims or demands being made in connection with such interest, then, in any of such events, the Liquidating Trustee shall be entitled, in its sole discretion, to refuse to comply with any such conflicting claims or demands.

2.2. ~~2.2.~~ Rights of Liquidating Trust Beneficiaries. “**Liquidating Trust Interests**” means a non-certified beneficial interest in the Liquidating Trust

granted to Holders of a Noteholder Claim, ~~an Allowed~~ Patheon Rejection Claim, or an Allowed General Unsecured Claim, which shall entitle such Holders to distributions from the Liquidating Trust in accordance with the Plan and the Liquidating Trust Waterfall. Each Liquidating Trust Beneficiary shall be entitled to participate in the rights and benefits due to a Liquidating Trust Beneficiary hereunder. The Liquidating Trust Interests are hereby declared and shall be in all respects personal property. No surviving spouse, heir or devisee of any deceased Liquidating Trust Beneficiary shall have any right of dower, homestead or inheritance, or of partition, or any other right, statutory or otherwise, in the Liquidating Trust Assets, but the whole title to the Liquidating Trust Assets shall be vested in the Liquidating Trust and the sole interest of the Liquidating Trust Beneficiaries shall be the rights and benefits given to such person under this Trust Agreement, the Confirmation Order and the Plan. For the avoidance of doubt, the Liquidating Trust (with the assistance of the Disbursing Agent(s) (as defined herein) as necessary) shall make Distributions to the Liquidating Trust Beneficiaries only in accordance with the Liquidating Trust Waterfall ~~(as defined herein)~~.

2.3. ~~2.3.~~ Evidence of Liquidating Trust Interest. The Liquidating Trust shall maintain at all times a register of the names, distribution addresses and amounts of Allowed Claims (as of the Effective Date, or as may be Allowed thereafter pursuant to the Plan and this Liquidating Trust Agreement) of the Liquidating Trust Beneficiaries (the “**Register**”). The initial Register shall be delivered to the Liquidating Trustee by the Debtor and shall be based on the list of Holders of Claims maintained by the Notice and Claims Agent as of the Effective Date and prepared in accordance with the provisions of the Plan and the Confirmation Order. All references in this Trust Agreement to Liquidating Trust Beneficiaries shall be read to mean holders of record as set forth in the Register maintained by the Liquidating Trustee and shall include Holders of Noteholder Claims who are beneficial holders of Claims in Class 3, who hold their position through a broker, bank, or other nominee. The Liquidating Trustee shall cause the Register to be kept at its office or at such other place or places as may be designated by the Liquidating Trustee from time to time. The Liquidating Trustee shall, upon the written request of a Liquidating Trust Beneficiary, provide reasonably adequate documentary evidence of such Liquidating Trust Beneficiary’s Liquidating Trust Interest, as indicated in the Register. For the avoidance of doubt, ownership of a Liquidating Trust Interest will not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except the book entry system.

2.4. ~~2.4.~~ Transfers of Liquidating Trust Interests. Subject to Section 2.5, Liquidating Trust Interests (which, for the avoidance of doubt, entitles such Liquidating Trust Beneficiary the right to distribution from the Liquidating Trust in accordance with the Plan and the Liquidating Trust Waterfall) shall be fully transferable. Following the recognition of any such transfer as provided in this Section 2.4, any such Transferee shall (to the extent of the Liquidating Trust Interests transferred) succeed to the rights and benefits of such Transferor under this Trust Agreement, the Confirmation Order and the Plan. The Liquidating Trust shall recognize any such transfer of ~~Claims~~ Liquidating Trust Interests occurring after the Effective Date; *provided*, that (i) any such transferor and transferee must provide written notice, in the form attached hereto as Exhibit A, to the Liquidating Trustee within five (5) business date of such

transfer, and (ii) any transfer or assignment of a Liquidating Trust Interest by will, intestate succession or otherwise by operation of law shall not be effective against or binding upon the Liquidating Trust unless and until such transfer or assignment is recorded in the Register, which shall be completed as soon as practicable. The entries in the Register shall be conclusive absent manifest error, and the Liquidating Trust and the Liquidating Trustee shall treat each person whose name is recorded in the Register pursuant to the terms of this Trust Agreement as the owner of Liquidating Trust Interests indicated therein for all purposes of this Trust Agreement, notwithstanding notice to the contrary.

2.5. ~~2.5.~~ Exemption from Registration. The Liquidating Trust Interests have not been registered pursuant to the Securities Act of 1933, as amended (the “Securities Act”), or any state securities law, and shall not be listed for public trading on any securities exchange. The parties hereto intend that the rights of the holders of Liquidating Trust Interests shall not be “securities” under applicable laws, but none of the parties hereto represents or warrants that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemption from registration provided by Section 1145 of the Bankruptcy Code and by other applicable law to apply to their issuance under the Plan. The Liquidating Trust shall not be required to file reports with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on account of any transfer. No transfer of a Liquidating Trust Interests that causes the Liquidating Trust to be required to file reports with the Securities and Exchange Commission pursuant to Sections 13 or 15(d) of the Exchange Act shall be permitted and any such transfer shall be void *ab initio*. In order to prevent the Liquidating Trust from becoming subject to such reporting requirements, the Liquidating Trustee may impose certain transfer restrictions designed to maintain the Liquidating Trust as non-reporting entity, and the Liquidating Trust Agreement may be amended pursuant to Section 10.9 to make such changes as are deemed necessary or appropriate to ensure that the Liquidating Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the Trust Indenture Act of 1939, as amended, or the Investment Company Act of 1940, as amended.

2.6. ~~2.6.~~ Limited Liability. No provision of this Trust Agreement, the Plan or the Confirmation Order, and no mere enumeration herein of the rights or privileges of any Liquidating Trust Beneficiary, shall give rise to any liability of such Liquidating Trust Beneficiary solely in its capacity as such, whether such liability is asserted by the Debtor, creditors, successors, representatives, employees, or equity interest holders of the Debtor, or by any other person. Liquidating Trust Beneficiaries are deemed to receive the Distributions of Liquidating Trust Assets in accordance with the provisions of this Trust Agreement, the Plan, and the Confirmation Order in exchange for their Allowed Claims without further obligation or liability of any kind, but subject to the provisions of this Trust Agreement.

ARTICLE III~~ARTICLE III~~

**DURATION AND TERMINATION OF LIQUIDATING TRUST**

3.1. ~~3.1.~~ Dissolution of the Liquidating Trust. The Liquidating Trust shall be dissolved upon the earlier of (a) the distribution of all of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries; and (b) the fifth anniversary of the creation of the Liquidating Trust; *provided* that, if warranted by the facts and circumstances involved in resolving or monetizing any Liquidating Trust Assets, upon application to, and if approved by, the Bankruptcy Court upon a finding that such extension is necessary or appropriate for purposes of resolving or monetizing such Liquidating Trust Assets and distributing the proceeds to Liquidating Trust Beneficiaries, the term of the Liquidating Trust may be extended by the Liquidating Trustee for a specified term; *provided*, that in no event shall the Liquidating Trust be dissolved later than five years from the creation of such Liquidating Trust unless the Bankruptcy Court, upon motion within the six-month period prior to the fifth anniversary of such creation (or within the six-month period prior to the end of any extension period), determines that a fixed period extension (not to exceed three years, together with any prior extensions, without a favorable private letter ruling from the Internal Revenue Service (the “IRS”) or an opinion of counsel satisfactory to the Liquidating Trustee that any further extension would not adversely affect the status of the trust as a Liquidating Trust liquidating trust for U.S. federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets. ~~“Majority Liquidating Trust Beneficiaries” means the Liquidating Trust Beneficiaries holding a majority of the aggregate amount of Allowed Claims of all Liquidating Trust Beneficiaries.~~

3.2. ~~3.2.~~ Continuance of Liquidating Trust for Winding Up. After the termination of the Liquidating Trust and for the purpose of liquidation and winding up the affairs of the Liquidating Trust, the Liquidating Trustee shall continue to act as such until its duties have been fully performed, including such post-distribution tasks as necessary to wind up the affairs of the Liquidating Trust. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the Liquidating Trust and final distribution of the Liquidating Trust Assets, the Liquidating Trustee and the Liquidating Trust Advisory Board shall have no further duties or obligations hereunder and this Trust Agreement shall terminate other than the provisions that expressly survive termination.

ARTICLE IV~~ARTICLE IV~~

**ADMINISTRATION OF THE LIQUIDATING TRUST**

4.1. ~~4.1.~~ Payment of Claims, Expenses, and Liabilities. The Liquidating Trustee shall use the funds in the Wind-Down Account to administer the Plan and wind-down the Debtor’s affairs pursuant to the Wind-Down Budget, including, but not limited to, the costs of holding and liquidating the Liquidating Trust Assets, objecting to Claims, paying the fees and expenses of the Liquidating Trust Professionals, making

distributions on Allowed Claims, making distributions to Retained Professionals for Allowed Professional Fee Claims and to Consenting Noteholder Professionals for Consenting Noteholder Fees and Expenses, including from the Professional Fee Reserve, paying any post-Effective Date U.S. Trustee Statutory Fees, prosecuting Retained Causes of Action, Transferred Causes of Action, and any other Causes of Action held by the Estate against third parties that are not released, waived, exculpated, or transferred pursuant to the Plan (including pursuant to Article IX of the Plan) or otherwise, defending or estimating Claims or costs against the Estate, paying taxes, filing tax returns, winding down the Debtor's 401(k) retirement plan, providing for the purchase of errors and omissions insurance and/or other forms of indemnification for the Liquidating Trustee, in each case, to the extent applicable, and for all such items and other costs of administering the Plan and the Estate. The Liquidating Trustee may establish and administer any other necessary reserves that may be required under the Plan or this Trust Agreement. Notwithstanding anything to the contrary contained in the Plan or this Trust Agreement, the Liquidating Trustee may make transfers of Cash between the accounts and reserves established under the Plan to satisfy Claims and other obligations in accordance with the Plan and the Wind-Down Budget.

4.2. ~~4.2.~~ Procedures for Resolving Unliquidated and Disputed Claims.

(a) Allowance of Claims. After the Effective Date, the Liquidating Trustee shall have and retain any and all rights and defenses that the Debtor had with respect to any Claim immediately prior to the Effective Date, including all legal and equitable defenses to or setoffs or recoupments against any Claims.

(b) Claims Administration Responsibilities. Except as otherwise specifically provided in the Plan, after the Effective Date, the Liquidating Trustee shall have the authority to: (1) File, withdraw, or litigate to judgment, objections to Claims, including, without limitation, the power to seek subordination or recharacterization of Claims by objection, motion, or adversary proceeding, as applicable; (2) settle or compromise any Disputed Claim, without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

(c) Estimation of Claims. The Liquidating Trustee may (but is not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to Section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. Notwithstanding any provision otherwise herein, a Claim that has been expunged or disallowed from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars (\$0.00) unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum

limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the Liquidating Trustee may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

(d) Disputed Claims Reserve.

(i) On or after the Effective Date, the Liquidating Trustee shall establish, fund with Cash, and manage a Disputed Claims Reserve, which shall be administered by the Liquidating Trustee. The amount of the Disputed Claims Reserve shall be determined by the Bankruptcy Court.

(ii) The Liquidating Trustee shall hold Liquidating Trust Assets in the Disputed Claims Reserve in trust for the benefit of (i) Holders of Disputed General Unsecured Claims to the extent such Claims are subsequently Allowed and entitled to distributions from the Liquidating Trust pursuant to the Liquidating Trust Waterfall and (ii) Holders of Notes Claims, [Patheon Rejection Claims](#) and Allowed General Unsecured Claims to the extent that Disputed General Unsecured Claims are subsequently Disallowed.

(iii) The Liquidating Trustee may adjust the Disputed Claims Reserve to reflect all earnings thereon (net of any expenses relating thereto, such expenses including any taxes imposed thereon or otherwise payable by the reserve), to be distributed pursuant to the Plan and this Trust Agreement.

(e) Adjustment to Claims Without Objection. Any Claim that has been paid, satisfied, or assumed by Purchasers in the Sale, or any Claim that has been amended or superseded, may be adjusted or expunged on the Register by the Liquidating Trustee without an objection to such Claim having to be Filed following notice filed on the docket in the Bankruptcy Court of such adjustment or expungement.

(f) Time to File Objections to Claims. Except as otherwise provided herein, any objections to Claims shall be Filed on or before the Claims Objection Bar Date (as such date may be extended upon presentment of an order to the Bankruptcy Court by the Liquidating Trustee).

(g) Amendment to Claims. Except as provided herein, on or after the Effective Date, without the prior authorization of the Bankruptcy Court or the Liquidating Trustee, a Claim may not be Filed or amended and any such new or amended Claim Filed shall be deemed disallowed in full and expunged without any further notice to or action, order or approval of the Bankruptcy Court.

(h) No Distribution Pending Allowance. If an objection to a Claim, Proof of Claim, or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim, Proof of Claim, or portion thereof unless and until the Disputed Claim becomes an Allowed Claim.

(i) Distributions after Allowance of all Disputed Claims. The Liquidating Trustee shall file a notice with the Bankruptcy Court when all Disputed

Claims have been resolved and shall promptly file an application for entry by the Bankruptcy Court of a final decree closing the Chapter 11 Case. If all Disputed Claims have not been resolved on or before Trust Election Date, the Liquidating Trustee shall file a general status notice as to the expected tax treatment of the Liquidating Trust. Upon the resolution of all Disputed Claims, the Liquidating Trustee shall make a *pro rata* distribution of any remaining assets to the Liquidating Trust Beneficiaries in accordance with the Liquidating Trust Waterfall. Distributions made after the Effective Date to Holders of Disputed Claims that are not Allowed Claims as of the Effective Date but which later become Allowed Claims shall be deemed to have been made on the Effective Date (other than for tax purposes, which shall be treated as described in Section 5.2 of this Trust Agreement).

4.3. ~~4.3.~~ Distributions.

(a) Generally. The Liquidating Trust (with the assistance of the Disbursing Agent(s) as necessary) shall make annual distributions to the Liquidating Trust Beneficiaries on account of their Liquidating Trust Interests pursuant to the Liquidating Trust Waterfall and only in accordance with the terms of the Plan, the Confirmation Order and this Trust Agreement and the Wind Down Budget, and only to the extent that the Liquidating Trust has sufficient Liquidating Trust Assets (or income and/or proceeds realized from Liquidating Trust Assets) to make such payments in accordance with and to the extent provided for in the Plan, the Confirmation Order and this Trust Agreement. The Liquidating Trustee, in consultation with the Liquidating Trust Advisory Board, shall make a determination of the amount of Cash available for distribution, which shall include the amount of unrestricted Cash then on hand (including any Cash received from the Debtor on the Effective Date, and treating any permissible investment as Cash for purposes of this Section 4.3 of this Trust Agreement), reduced by any such amounts that (i) are reasonably necessary to meet contingent liabilities and to maintain the value of the Liquidating Trust Assets pending their liquidation during the term of the Liquidating Trust, (ii) are determined to be necessary to pay or reserve for reasonably incurred or anticipated expenses (including, but not limited to, any Taxes imposed on or payable by the Debtor or the Liquidating Trust or in respect of the Liquidating Trust Assets), or (iii) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Liquidating Trust in accordance with the Plan and this Trust Agreement. The Liquidating Trustee shall then distribute available Cash, if any, to the holders of Liquidating Trust Interests in accordance with Liquidating Trust Waterfall.

(b) Date of Distributions. The Liquidating Trustee shall make distributions to Liquidating Trust Beneficiaries entitled to distributions from the Liquidating Trust as provided in the Plan and this Trust Agreement on such dates as it chooses, ~~in its reasonable discretion~~ in consultation with the Liquidating Trust Advisory Board; provided, however, that all such distributions shall be made in an expeditious and orderly manner.

(c) Delivery of Distributions.

(i) If any dispute arises as to the identity of a Liquidating Trust Beneficiary that is entitled to receive a distribution pursuant to the Plan, the Disbursing Agent may, in lieu of making such distribution to such person, make the distribution into an escrow account until the disposition thereof is determined by written agreement among the interested parties to such dispute.

(d) Disbursing Agent.

(i) Except as otherwise provided herein, the Disbursing Agent shall make distributions to Liquidating Trust Beneficiaries to the address set forth in the Register, which shall be (a) the addresses set forth on the respective proofs of Claim filed by such Liquidating Trust Beneficiaries, if applicable; (b) the addresses set forth on any written notices of address changes delivered to the Notice and Claims Agent or the Liquidating Trust, as applicable after the date of any related proof of Claim; or (c) at the address reflected in the Schedules or, if not reflected in the Schedules, then in the other records of the Debtor if no proof of Claim is filed and the Liquidating Trustee or the Debtor have not received a written notice of a change of address. The Liquidating Trustee shall have the absolute and unconditional right to rely on the information provided by the Debtor for purposes of notices and distributions under this Trust Agreement; *provided*, however, that the manner of such distributions shall be determined at the discretion of the Liquidating Trustee.

(ii) Distributions to Liquidating Trust Beneficiaries on account of Noteholder Claims. Liquidating Trust Beneficiaries that hold Liquidating Trust Interests on account of Noteholder Claims shall receive a distribution in accordance with the customary procedures of DTC. Distributions to such Liquidating Trust Beneficiaries shall be deemed completed when made to (or at the direction of) the Indenture Trustee, which shall hold or direct such distributions for the benefit of such Liquidating Trust Beneficiaries. The Indenture Trustee may transfer or direct the transfer of such distributions directly through the facilities of DTC (whether by means of book-entry exchange, free delivery, or otherwise) and will be entitled to recognize and deal for all purposes under the Plan and this Liquidating Trust Agreement with Liquidating Trust Beneficiaries that hold Liquidating Trust Interests on account of Noteholder Claims, to the extent consistent with the customary practices of DTC. The Indenture Trustee shall not incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct. If the Indenture Trustee is unable to make, or consents to the Liquidating Trustee making such distributions, then the Liquidating Trustee, with the Indenture Trustee's cooperation, shall make such distributions. The Indenture Trustee shall have no duties, obligations, or responsibilities with respect to any form of distribution to Liquidating Trust Beneficiaries that hold Liquidating Trust Interests on account of Noteholder Claims that is not DTC eligible, and the Liquidating Trustee shall make such distributions. For the avoidance of doubt, all such distributions referenced in this paragraph shall be subject to the Trustee Charging Lien.

(iii) ~~(ii)~~ Exculpation of Disbursing Agent. From and after the Effective Date, the Disbursing Agent, solely in its capacity as Disbursing Agent, shall be excused by all Entities, including Holders of Claims against the Debtor, Liquidating Trust Beneficiaries, and other parties in interest, from any and all Claims, Causes of Action, and other assertions of liability arising out of the discharge of the powers and duties conferred upon such Disbursing Agent by the Plan or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or applicable law, except for actions or omissions to act arising out of the gross negligence or willful misconduct, fraud, malpractice, criminal conduct, or *ultra vires* acts of such Disbursing Agent.

(iv) ~~(iii)~~ Rights and Powers of Disbursing Agent. The Disbursing Agent may (a) effect all actions and execute all agreements, instruments, and other documents necessary to carry out the provisions of the Plan; (b) make all distributions contemplated hereby; and (c) perform such other duties as may be required of the Disbursing Agent pursuant to the Plan.

(v) ~~(iv)~~ Expenses of Disbursing Agent. Except as otherwise ordered by the Bankruptcy Court, any reasonable and documented fees and expenses incurred by the Disbursing Agent acting in such capacity (including reasonable documented attorneys' fees and expenses) on or after the Effective Date shall be paid in accordance with the Wind-Down Budget from the Wind-Down Account in the ordinary course of business. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties. If the Disbursing Agent is otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Liquidating Trust.

(e) Undeliverable or Non-Negotiated Distributions. If any distribution to a Liquidating Trust Beneficiary (1) is returned as undeliverable for lack of a current address or otherwise; or (2) is not cashed or otherwise presented for collection by the Liquidating Trust Beneficiary within ninety (90) calendar days after the mailing of such distribution, the Liquidating Trustee shall file with the Bankruptcy Court the name and last known address of the Liquidating Trust Beneficiary of undeliverable distribution or uncashed distribution, as applicable. If, after the passage of thirty (30) calendar days after such Filing, the payment or distribution on the Allowed Claim still cannot be made, then (1) the Liquidating Trust Beneficiary shall cease to be entitled to the undeliverable distribution or uncashed distribution, which will revert to the Liquidating Trust; and (2) the Allowed Claim of such Holder shall be deemed disallowed and expunged for purposes of further distributions under the Plan and this Trust Agreement. Nothing contained in the Plan or this Trust Agreement shall require the Debtor, the Liquidating Trustee, or any Disbursing Agent to attempt to locate any Liquidating Trust Beneficiary.

(f) Manner of Payment under Plan. Any distributions to be made by or on behalf of the Debtor or the Liquidating Trustee (as applicable) pursuant to the Plan or this Trust Agreement shall be made by checks drawn on accounts maintained by the

Liquidating Trustee or by wire transfer if circumstances justify, at the option of the Liquidating Trustee.

(g) Foreign Currency Exchange Rate. As of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal*, on the Petition Date.

(h) Fractional Dollars. Notwithstanding any other provision of the Plan, the Disbursing Agent shall not be required to make distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment shall reflect a rounding of such fraction down to the nearest whole dollar.

(i) Satisfaction of Claims. Except as otherwise specifically provided in the Plan, distributions and deliveries to be made on account of Allowed Claims under the Plan shall be in complete and final satisfaction, settlement, and discharge of and exchange for such Allowed Claims.

(j) Minimum Distributions. No payment of Cash in an amount of less than one hundred U.S. dollars (\$100.00) shall be required to be made on account of any Allowed Claim. Such undistributed amount may instead be used in accordance with the Plan and this Trust Agreement. If the Cash available for the final distribution is less than the cost to distribute such funds, the Liquidating Trustee may donate such funds to a charitable organization that is (a) described in section 501(c)(3) of the IRC, (b) exempt from U.S. federal income tax under section 501(a) of the IRC, (c) not a “private foundation,” as defined in section 509(a) of the IRC, and (d) that is unrelated to the Liquidating Trust and any insider of the Liquidating Trustee.

(k) Allocation of Distributions between Principal and Interest. To the extent that any Allowed Claim entitled to a distribution under the Plan is based upon any obligation or instrument that is treated for U.S. federal income tax purposes as indebtedness of the Debtor and accrued but unpaid interest thereon, such distribution shall be allocated first to the principal amount of the Allowed Claim (as determined for U.S. federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Allowed Claim, to accrued but unpaid interest.

(l) Distributions Free and Clear. Except as otherwise provided in the Plan, any distribution or transfer made under this Trust Agreement, including distributions to any Liquidating Trust Beneficiary, shall be free and clear of any Liens, Claims, encumbrances, charges, and other interests, and no other entity shall have any interest, whether legal, beneficial, or otherwise, in property distributed or transferred pursuant to the Plan.

4.4. ~~4.4.~~ Compliance with Laws. Any and all distributions of the Liquidating Trust Assets shall be in compliance with applicable laws, including applicable federal and state tax and securities laws.

4.5. ~~4.5.~~ Fiscal Year. Except for the first and last years of the term of the Liquidating Trust, the fiscal year of the Liquidating Trust shall be the calendar year. For the first and last years of the term of the Liquidating Trust, the fiscal year of the Liquidating Trust shall be such portion of the calendar year that the Liquidating Trust is in existence.

4.6. ~~4.6.~~ Books and Records. The Liquidating Trust shall retain and preserve the Debtor's books, records, and files that shall have been delivered to or created by the Liquidating Trust, in such detail and for such period of time as may be necessary to enable it to make full and proper reports in respect thereof in accordance with the provisions of this Trust Agreement and applicable provisions of law, including applicable tax, securities and other federal and state laws. The Liquidating Trust Advisory Board shall have the right upon five (5) business days' notice to the Liquidating Trustee to inspect such books and records, subject to the Liquidating Trustee's right to deny access in a reasonable effort to preserve privileged or confidential information. Except as otherwise provided herein or in the Plan, nothing in this Trust Agreement requires the Liquidating Trustee to file any accounting or seek approval of any court with respect to the administration of the Liquidating Trust, or as a condition for making any payment or Distribution out of the Liquidating Trust Assets.

4.7. ~~4.7.~~ Liquidating Trust Insurance. The Liquidating Trustee is hereby authorized, but not required, to obtain all reasonable insurance coverage for itself, ~~its~~ the Liquidating Trust Advisory Board, and their agents, representatives, employees or independent contractors, including coverage with respect to the liabilities, duties and obligations of the Liquidating Trustee ~~and its, the Liquidating Trust Advisory Board, and their~~ agents, representatives, employees or independent contractors under this Trust Agreement and the Plan ("**Insurance Coverages**"). The cost of any such Insurance Coverage shall be an expense of the Liquidating Trust and paid out of the Wind-Down Account in accordance with the Wind-Down Budget.

4.8. ~~4.8.~~ Reports.

(a) The Liquidating Trustee shall, as soon as reasonably practicable and no later than 45 days following the end of each fiscal quarter during the term of the Liquidating Trust, deliver by electronic communication (including e-mail and Internet or intranet websites) to the Liquidating Trust ~~Beneficiaries~~ Advisory Board, and to each Liquidating Trust Beneficiary who has so requested from the Liquidating Trustee in writing, the following information: (i) the status of any Claims, Causes of Action, Retained Causes of Action, Transferred Causes of Action, and litigation involving the Liquidating Trust or the Liquidating Trust Assets, (ii) the costs and expenses of the Liquidating Trust that are incurred (including any taxes imposed on the Liquidating Trust or actual reasonable out-of-pocket fees and expenses incurred by Liquidating Trust Professionals in connection with the administration and liquidation of the Liquidating Trust Assets and preservation of books and records as provided in Section 4.6 of this Trust Agreement) during the preceding fiscal quarter and the remaining amount (if any) of the Wind-Down Account, (iii) the amounts listed in clause (ii) incurred since the Effective Date, (iv) the amount of Cash and other assets received by the Liquidating Trust

during the prior fiscal quarter, (v) the aggregate amount of Cash and other assets received by the Liquidating Trust since the Effective Date and (vi) the aggregate amount of distributions from the Liquidating Trust to the Liquidating Trust Beneficiaries since the Effective Date. The Liquidating Trustee shall also timely prepare, file, and distribute such additional statements, reports, and submissions as may be necessary to cause the Liquidating Trust and the Liquidating Trustee to be in compliance with applicable law. The Liquidating Trustee shall also provide the U.S. Trustee and the Bankruptcy Court the information and reports they may reasonably request concerning Trust administration.

## ARTICLE V~~ARTICLE V~~

### TAX MATTERS

#### 5.1. ~~5.1.~~ Liquidating Trustee's Tax Power for Debtor.

(a) For all taxable periods ended on or before the dissolution of the Debtor, the Liquidating Trustee shall have the same authority and responsibility in respect of all taxes of the Debtor (including as the common parent or other agent of any consolidated, combined, or unitary tax group of which the Debtor was the agent) and, to the same extent, as if the Liquidating Trustee was the Debtor.

(b) In furtherance of the transfer of the Liquidating Trust Assets to the Liquidating Trust on the Effective Date, the Liquidating Trust shall be entitled to all tax refunds of the Debtor (and the Liquidating Trust shall bear responsibility for all tax liabilities of the Debtor for taxable periods ended on or before the dissolution of the Debtor, to the extent not discharged by the Plan or provided for payment or otherwise satisfied in the Plan).

5.2. ~~5.2.~~ Treatment of Trust for Tax Purposes. The U.S. federal income tax classification of the Liquidating Trust shall be determined pursuant to subsections (a) or (b) below, as applicable.

(a) Disputed Claims Resolved Before Trust Election Date: If all Disputed Claims are resolved prior to the Trust Election Date, the Liquidating Trust shall be classified as a liquidating trust described in Treasury ~~Regulation Section~~Regulations section 301.7701-4(d) that is treated as a "grantor trust" for U.S. federal income tax purposes. On the Effective Date, the Debtor ~~will~~shall be deemed to have distributed to the Holders of Allowed Class 3, 4 and 5 Claims an undivided interest in the Liquidating Trust Assets and such Holders ~~will~~shall be deemed to have contributed such Liquidating Trust Assets to the Liquidating Trust in exchange for beneficial interests in the Liquidating Trust.

(b) Disputed Claims Unresolved Prior to Trust Election Date: If all Disputed Claims have not been resolved ~~by prior to~~ the Trust Election Date, then the Liquidating Trustee shall make the DOF Election and elect to treat the Disputed Claims Reserve as a "disputed ownership fund" as described in Treasury ~~regulations~~Regulations section 1.468B-9. The Liquidating Trustee shall file all income tax returns with respect

to any income attributable to the disputed ownership fund and shall pay the U.S. federal, state, and local income taxes attributable to such disputed ownership fund based on the items of income, deduction, credit, or loss allocable thereto. Any taxes imposed on the disputed ownership fund or its assets shall be paid out of the assets of the disputed ownership fund (including any assets of the Disputed Claims Reserve) and any subsequent distributions in respect of the allowance or disallowance of such claims shall be reduced accordingly. In the event, and to the extent, that any Cash in any disputed ownership fund is insufficient to pay the portion of any taxes attributable to taxable income arising from assets of the disputed ownership fund, assets of the disputed ownership fund (including those otherwise distributable) may be sold to pay such taxes. The undisputed portion of the Liquidating Trust Assets shall be treated as held in a grantor trust, with deemed distribution to and contribution from the Holders of Allowed Claims in Classes 3, 4, and 5 as described in the immediately preceding paragraph.

5.3. ~~5.3.~~ Tax Reporting.

(a) To the extent permitted by applicable law, all parties, including the Liquidating Trustee and any Liquidating Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes. The Debtor will provide information to the Liquidating Trustee as to its valuation determinations with respect to the Retained Causes of Action and Transferred Causes of Action on the Effective Date to facilitate consistent tax reporting by the Liquidating Trust. Any valuation shall be for tax reporting purposes only and shall not require the Debtor to undergo a separate analysis not already completed as of the filing date of the Plan.

(b) The Liquidating Trustee shall be responsible for payment, out of the Wind-Down Account, of any taxes imposed on the Liquidating Trust or its assets, including the Disputed Claims Reserve.

(c) As soon as reasonably practicable after the Liquidating Trust Assets are transferred to the Liquidating Trust, but in no event later than one hundred and twenty (120) days thereafter, the Liquidating Trust shall make a good faith valuation of the Liquidating Trust Assets, which may be based on the Debtor's valuation of the Liquidating Trust Assets if the Liquidating Trust determines in its sole discretion that the Debtor's valuation is materially accurate, and such valuation shall be used consistently by all parties for all U.S. federal income tax purposes. The Liquidating Trust shall also file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any Governmental Unit. In connection with the preparation of the valuation contemplated hereby and by the Plan, the Liquidating Trust shall be entitled to retain such professionals and advisors as the Liquidating Trust shall determine to be appropriate or necessary, and the Liquidating Trustee shall take such other actions in connection therewith as it determines to be appropriate or necessary. Such valuation shall be used consistently by such parties for all U.S. federal income tax purposes.

(d) As of the Effective Date, the Liquidating Trustee will be responsible for preparing and filing any tax forms or returns on behalf of the Debtor's

Estate and the Liquidating Trust (to the extent not the responsibility of the Purchasers); *provided*, however, that the Liquidating Trustee shall not be responsible for preparing or filing any tax forms for Holders of Interests in the Debtor (which Interests shall be cancelled pursuant to the Plan), but shall provide such Holders with any information reasonably required to prepare such forms. The Debtor and the Liquidating Trustee shall have the right to request an expedited determination of any tax liability pursuant to section 505 of the Bankruptcy Code, including on any unpaid liability of the Debtor's Estate or the Liquidating Trust for any tax incurred during the administration of the Chapter 11 Case.

(e) The Liquidating Trustee also ~~will~~shall annually send to each ~~holder of a~~ Liquidating Trust ~~Interest~~Beneficiary a separate statement ~~regarding the receipts and expenditures of the Liquidating Trust as relevant for U.S. federal income tax and/or Schedule K-1, as applicable, regarding the information necessary for tax reporting~~ purposes and ~~will~~shall instruct all such ~~holders~~beneficiaries to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such ~~holder's~~beneficiary's underlying beneficial ~~holders~~owners with instructions to utilize such information in preparing their U.S. federal income tax returns. The Liquidating Trustee shall also file (or cause to be filed) any other statement, return or disclosure relating to the Liquidating Trust that is required by any governmental unit.

#### 5.4. ~~5.4.~~ Tax Withholdings by Liquidating Trustee.

(a) The Liquidating Trustee shall (1) withhold, deduct, and pay over to the appropriate governmental authority any amount required to be withheld under U.S. federal, state, local, or foreign tax laws with respect to any distribution pursuant to this Trust Agreement and (2) comply with any reporting requirements imposed by any U.S. federal, state, local, or foreign taxing authority. The Liquidating Trustee may withhold all or the appropriate portion of any distribution due to any Liquidating Trust Beneficiary until such time as such Liquidating Trust Beneficiary provides the necessary information to comply with any withholding requirements of any governmental authority. Any tax withheld shall be treated as distributed and received by the applicable ~~beneficiary~~ Liquidating Trust Beneficiary for all purposes of this Trust Agreement and the Plan. If a ~~beneficiary~~Liquidating Trust Beneficiary fails to provide the information necessary to comply with any withholding requirements of any governmental authority on or before the day that is one year after the Effective Date of the Plan, then such beneficiary's distribution may be treated as unclaimed property in accordance with this Trust Agreement.

#### 5.5. ~~5.5.~~ IRS Forms.

(a) In connection with the Plan, to the extent applicable and not an obligation of the Purchasers under the Sale Documents, the Liquidating Trustee shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Liquidating Trustee shall be authorized to take all actions necessary to

comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms it believes are reasonable and appropriate. The Liquidating Trustee reserves the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances.

(b) As a condition precedent to receiving any distribution under this Plan, each Liquidating Trust Beneficiary that is entitled to a distribution under the Plan and this Trust Agreement must provide the Liquidating Trustee with the applicable executed IRS Form. An Allowed Claim of a Holder that fails to provide the applicable executed IRS Form or provide any other required information to effectuate a distribution within sixty (60) days after service (by first class mail) of a formal request for the same by the Liquidating Trustee shall be deemed disallowed and expunged for purposes of distributions under the Plan.

## ARTICLE VI ~~ARTICLE VI~~

### POWERS OF AND LIMITATIONS ON THE LIQUIDATING TRUSTEE

#### 6.1. ~~6.1.~~ Term of the Liquidating Trustee.

(a) The Liquidating Trustee will serve on and after the Effective Date in accordance with this Trust Agreement and the Plan, reporting to the Liquidating Trust Advisory Board to the extent required by this Trust Agreement and the Plan. Subject to Article VII of this Trust Agreement and Article IV of the Plan, the Liquidating Trustee shall hold office until the earlier to occur of (i) the termination of the Liquidating Trust in accordance with the terms set forth in this Trust Agreement and the Plan or (ii) the Liquidating Trustee's death, resignation, dissolution, incapacity or removal pursuant to this Trust Agreement. The duties, responsibilities and powers of the Liquidating Trustee shall terminate on the date the Liquidating Trust is wound up and dissolved in accordance with Delaware law pursuant to Section 3.1 of this Trust Agreement; *provided*, that Section 3.2 of this Trust Agreement, Section ~~8.29.2~~ of this Trust Agreement, Section ~~8.49.4~~ of this Trust Agreement, Section ~~8.59.5~~ of this Trust Agreement and Section ~~8.69.6~~ of this Trust Agreement shall survive such termination, dissolution and entry. References herein to the Liquidating Trustee shall refer to the individual or individuals serving as the Liquidating Trustee solely in its or their capacity as trustees hereunder.

#### 6.2. ~~6.2.~~ Responsibilities and Authority of the Liquidating Trustee.

(a) The responsibilities and authority of the Liquidating Trustee shall include the following rights and responsibilities, which shall be the exclusive rights and responsibilities of the Liquidating Trustee: (i) preserving and liquidating the Liquidating Trust Assets; (ii) administering and paying taxes, including, among other things, (1) filing tax returns (to the extent not the obligation of any Purchaser), and (2) representing

the interest and account of the Liquidating Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding, or audit; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Liquidating Trustee's performance of its duties under the Plan and this Trust Agreement; (iv) distributing information statements as required for U.S. federal income tax and other applicable tax purposes; (v) Filing an application for entry by the Bankruptcy Court of a final decree closing the Chapter 11 Case; (vi) making distributions to Retained Professionals for Allowed Professional Fee Claims and to Consenting Noteholder Professionals for Consenting Noteholder Fees and Expenses, including from the Professional Fee Reserve; (vii) making distributions to the Liquidating Trust Beneficiaries in accordance with the Plan and this Trust Agreement; and (viii) such other responsibilities as may be vested in the Liquidating Trustee pursuant to the Plan, this Trust Agreement, or an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of the Plan.

### 6.3. Actions Taken by the Liquidating Trustee.

(a) ~~(b)~~ The Liquidating Trustee may take any and all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan and this Trust Agreement, without the need for Bankruptcy Court approval (unless otherwise indicated) subject to and in accordance with the terms of the Plan and this Trust Agreement, including, but not limited to:

(i) ~~(1)~~ the execution and delivery of appropriate agreements or other documents of consolidation, conversion, disposition, transfer, or dissolution containing terms that are consistent with the terms of the Plan and this Trust Agreement and that satisfy the requirements of applicable law;

(ii) ~~(2)~~ the power to invest funds of the Liquidating Trust, and withdraw, make distributions, and pay taxes and other obligations owed by the Liquidating Trust from such funds in accordance with the Plan and this Trust Agreement; ~~(3) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Liquidating Trustee with respect to its responsibilities;~~

(iii) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Liquidating Trustee with respect to its responsibilities. For the avoidance of doubt, a law firm shall not be disqualified from serving as counsel to the Liquidating Trustee solely because of that law firm's prior retention by the Debtor, the Creditors' Committee, or a member of the Creditors' Committee, the Indenture Trustee, or the Consenting Noteholders;

(iv) ~~(4)~~ the execution and delivery of any appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right,

liability, debt, duty, or obligation on terms consistent with the Plan and this Trust Agreement; ~~(5) the power to pursue, prosecute, resolve, compromise and settle any Causes of Action that are transferred to the Liquidating Trust and Retained Causes of Action, without notice to or approval from the Bankruptcy Court;~~ ~~(6)~~

(v) the power to act on behalf of the Debtor, the Debtor's Estate or the Liquidating Trust in commencing, prosecuting, compromising, settling, or defending any litigation or rights (whether legal or equitable) pertaining to the Liquidating Trust Assets, including the Retained Causes of Action and Transferred Causes of Action, without notice to or approval from the Bankruptcy Court;

(vi) the ability to appear and have standing in the Bankruptcy Court (or any other court having jurisdiction over the Liquidating Trust Assets) to be heard with regard to Claim Objections and other matters that may affect or relate to the Liquidating Trust Assets;

(vii) file, prosecute, compromise or settle Claim Objections to Disputed Claims in accordance with the Plan without further approval of or application to the Bankruptcy Court (except to the extent required by this Trust Agreement, the Plan, or the Confirmation Order);

(viii) the filing of appropriate documents with the appropriate governmental authorities pursuant to applicable law; ~~(7)~~

(ix) the ability to protect and enforce the rights to the Liquidating Trust Assets vested in the Liquidating Trust by this Trust Agreement;

(x) the ability to oversee compliance with the Liquidating Trust's accounting, finance, and reporting obligations;

(xi) the powers set forth in Section 4.2(b) of this Trust Agreement;

(xii) ~~(8)~~ the power to ~~taken~~take any action as shall be necessary to administer the Chapter 11 Case (including, but not limited to, the winddown of the Debtor's 401(k) retirement plan); ~~and (9) any and all other actions that the Liquidating Trustee determines is necessary or appropriate to effectuate the Plan and this Trust Agreement.~~

(xiii) the power to pay any and all expenses and make all other payments in connection with administering the Liquidating Trust without further order of the Bankruptcy Court;

(xiv) the ability to open and maintain bank accounts in the name of the Liquidating Trust, draw checks and drafts thereon on the sole signature of the Liquidating Trustee, and terminate such accounts as the Liquidating Trustee deems appropriate;

(xv) in the event that the Liquidating Trustee determines that the Liquidating Trust Beneficiaries or the Liquidating Trust may, will, or have become subject to adverse tax consequences, in the Liquidating Trustee’s sole discretion, the power to take such actions that will, or are intended to, alleviate such adverse tax consequences;

(xvi) make Distributions to holders of Allowed Claims and deliver Distributions on account of the Liquidating Trust Interests or such other Distributions as may be authorized by Final Order of the Bankruptcy Court, this Trust Agreement, or the Plan to the Liquidating Trust Beneficiaries in accordance with this Trust Agreement; and

(xvii) any and all other actions that the Liquidating Trustee determines is necessary or appropriate to effectuate the Plan and this Trust Agreement, including, but not limited to, the exercise of the Debtor’s rights to conduct discovery and oral examination of any Person under Rule 2004 of the Federal Rules of Bankruptcy Procedure.

6.4. ~~6.3.~~ Limitations on Liquidating Trustee.

(a) The Liquidating Trustee shall, on behalf of the Liquidating Trust, hold the Liquidating Trust out as a trust in the process of liquidation and not as an investment company. The authority of the Liquidating Trustee shall be restricted to the liquidation of the Liquidating Trust Assets on behalf, and for the benefit, of the Liquidating Trust Beneficiaries and the distribution and application of the Liquidating Trust Assets for the purposes set forth in, and the conservation and protection of the Liquidating Trust Assets and the administration thereof in accordance with, the provisions of this Trust Agreement, the Plan and the Confirmation Order, and shall not take any action that would jeopardize (i) treatment of the Liquidating Trust as a “liquidating trust” that is a grantor trust for U.S. federal income tax purposes and (ii) if the DOF Election is made, treatment of the Disputed Claims Reserve as a “disputed ownership fund” for U.S. federal income tax purposes. The Liquidating Trustee shall not at any time, on behalf of the Liquidating Trust or the Liquidating Trust Beneficiaries, (i) enter into or engage in any trade or business, or (ii) take any actions that are not related, directly or indirectly, to the purposes of this Trust Agreement and the Liquidating Trust or the administration or implementation of the terms hereof.

(b) Notwithstanding anything in this Trust Agreement to the contrary, the Liquidating Trustee shall provide reasonable notice to the Liquidating Trust Advisory Board with respect to the following matters (the “Material Matters”):

(i) any incurrence of any cost, expense or fee in excess of \$[50,000] (covering services to be rendered or products utilized by the Liquidating Trustee within a one-month period);

(ii) determination of the timing of any Distribution to the Liquidating Trust Beneficiaries;

(iii) any determination to pursue or settle any Retained Causes of Action or Transferred Causes of Action;

(iv) the allowance or objection to any Claim more than \$100,000; and

(v) the dissolution of the Liquidating Trust.

In the event that the Liquidating Trust Advisory Board objects to the Liquidating Trustee's proposed course of action with respect to any Material Matter, the Liquidating Trust Advisory Board shall submit such matter to the Liquidating Trust Beneficiaries, and the Liquidating Trustee shall not pursue such proposed course of action if, within twenty (20) days following the submission of such matter to the Liquidating Trust Beneficiaries, the Majority Liquidating Trust Beneficiaries have not objected to the proposed course of action.

6.5. ~~6.4.~~ Compensation and Expenses of the Liquidating Trustee.

(a) The Liquidating Trustee shall be entitled to receive reasonable compensation in connection with its performance of its duties plus the reimbursement of reasonable out-of-pocket expenses. All reasonable and documented costs, expenses, and obligations, including filing fees, incurred by the Liquidating Trustee or the Liquidating Trust Professionals shall be paid from the Wind-Down Account, prior to any distribution to the Liquidating Trust Beneficiaries and without further Bankruptcy Court approval or order (subject to the limitations set forth in this Trust Agreement and the Plan).

6.6. ~~6.5.~~ Agents, Employees, and Professionals.

(a) The Liquidating Trustee, in consultation with the Liquidating Trust Advisory Board, shall have the right, without Court approval, to retain the services of attorneys, accountants, and other professionals and agents (the "**Liquidating Trust Professionals**"), to assist and advise the Liquidating Trustee in the performance of its duties, and to compensate and reimburse expenses of such professionals in accordance with the this Trust Agreement; *provided*, however, that it is understood that the Liquidating Trust intends to initially engage [•] as Primary Trust Counsel. None of the professionals that represented parties in interest in the Chapter 11 Case shall be precluded from being engaged by the Liquidating Trust solely on account of their service as a professional for such parties-in-interest prior to the Effective Date. The Liquidating Trustee may remove any Liquidating Trust Professional with or without Cause.

(b) The Primary Trust Counsel that is appointed in accordance with the terms of the Plan shall be considered a Liquidating Trust Professional for the purposes of this Trust Agreement and the Plan. Notwithstanding Section 6.7(a) of this Trust Agreement, in the event of the resignation, removal, bankruptcy or insolvency of the Primary Trust Counsel, a vacancy shall be deemed to exist, and a successor shall be appointed by the Liquidating Trustee in consultation with the Liquidating Trust Advisory Board.

(c) After the Effective Date, Liquidating Trust Professionals shall be required to submit reasonably detailed invoices on a monthly basis to the Liquidating Trustee and the Liquidating Trust Advisory Board, including in such invoices a description of the work performed, who performed such work, and if billing on an hourly basis, the hourly rate of such person, plus an itemized statement of expenses. In the event of any dispute concerning the entitlement to, or the reasonableness of any compensation and/or expenses of any Liquidating Trust Professionals, either the Liquidating Trustee or the affected party may ask the Bankruptcy Court to resolve the dispute. The Liquidating Trustee is authorized to pay compensation for services rendered or reimbursement of expenses incurred after the Effective Date in the ordinary course and without the need for Bankruptcy Court approval.

6.7. ~~6.6.~~ Investment of Liquidating Trust Monies. The Liquidating Trustee may, in consultation with the Liquidating Trust Advisory Board, invest Cash (including any earnings thereon or proceeds therefrom); *provided*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulations section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities. All monies and other assets received by the Liquidating Trustee as Liquidating Trust Assets (including the proceeds thereof as a result of investment in accordance with this Section 6.6 of this Trust Agreement) shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Liquidating Trust Beneficiaries, and shall not be segregated from other Liquidating Trust Assets, unless and to the extent required by the Plan.

6.8. ~~6.7.~~ Resident Trustee.

(a) The Resident Trustee has been appointed and hereby agrees to serve as the trustee of the Liquidating Trust solely for the purpose of complying with the requirement of Section 3807(a) of the Trust Act that the Liquidating Trust have one trustee, which, in the case of a natural person, is a resident of the State of Delaware, or which in all other cases, has its principal place of business in the State of Delaware. The duties and responsibilities of the Resident Trustee shall be limited solely to (i) accepting legal process served on the Liquidating Trust in the State of Delaware, (ii) the execution of any certificates required to be filed with the office of the Delaware Secretary of State that the Resident Trustee is required to execute under section 3811 of the Trust Act, and (iii) any other duties specifically allocated to the Resident Trustee in this Trust Agreement. Except as provided in the foregoing sentence, the Resident Trustee shall have no management responsibilities or owe any fiduciary duties to the Liquidating Trust, the Liquidating Trustee, the Liquidating Trust Advisory Board, or the Liquidating Trust Beneficiaries.

(b) By execution of this Trust Agreement, the Resident Trustee accepts the Liquidating Trust created herein. Except as otherwise expressly required by Section 6.106.7(a) of this Trust Agreement, the Resident Trustee shall not have any duty or liability with respect to the administration of the Liquidating Trust, the investment of the Liquidating Trust Assets or the Distribution of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries, and no such duties shall be implied. The Resident

Trustee shall not be liable for the acts or omissions of the Liquidating Trustee or the Liquidating Trust Advisory Board, nor shall the Resident Trustee be liable for supervising or monitoring the performance of the duties and obligations of the Liquidating Trustee or the Liquidating Trust Advisory Board under this Trust Agreement, except as expressly required by Section 6.106.7(a) of this Trust Agreement. The Resident Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder. The Resident Trustee shall not be personally liable under any circumstances, except for its own willful misconduct, bad faith, or gross negligence. Without limiting the foregoing:

(i) the Resident 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;

(ii) no provision of this Trust Agreement shall require the Resident 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 Resident 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;

(iii) the Resident Trustee shall not be personally liable for the validity or sufficiency of this Trust Agreement or for the due execution of this Trust Agreement by the other parties to this Trust Agreement;

(iv) the Resident 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;

(v) the Resident Trustee may request the Liquidating 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 Resident Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(vi) in the exercise or administration of the Liquidating Trust hereunder, the Resident Trustee (A) may act directly or through agents or attorneys pursuant to agreements entered into with any of them and (B) may consult with nationally recognized counsel selected by it in good faith and with due care 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; and

(vii) the Resident Trustee acts solely as Resident Trustee hereunder and not in its individual capacity, and all persons having any claim against the Resident Trustee by reason of the transactions contemplated by this Trust

Agreement shall look only to the Liquidating Trust Assets for payment or satisfaction thereof.

(c) The Resident Trustee shall be entitled to receive compensation out of the Wind-Down Account in accordance with the Wind-Down Budget for the services that the Resident Trustee performs in accordance with this Trust Agreement in accordance with such fee schedules as shall be agreed from time to time by the Resident Trustee and the Liquidating Trustee. The Resident Trustee may also consult with counsel (who may be counsel for the Liquidating Trust, counsel for the Resident Trustee, or counsel for both the Liquidating Trust and the Resident Trustee) with respect to those matters that relate to the Resident Trustee's role as the Delaware resident trustee of the Liquidating Trust, and the reasonable legal fees incurred in connection with such consultation shall be reimbursed out of the Wind-Down Budget to the Resident Trustee pursuant to this ~~Section 6.10~~Section 6.7(c) of this Trust Agreement on terms reasonably acceptable to the Liquidating Trust Advisory Board; *provided* that no such fees shall be reimbursed to the extent that they are incurred as a result of the Resident Trustee's gross negligence, bad faith or willful misconduct.

(d) The Resident Trustee shall serve for the duration of the Liquidating Trust or until the earlier of (i) the effective date of the Resident Trustee's resignation, or (ii) the effective date of the removal of the Resident Trustee. The Resident Trustee may resign at any time by giving 30 days' written notice to the Liquidating Trustee and the Liquidating Trust Advisory Board; *provided*, however, that such resignation shall not be effective until such time as a successor Resident Trustee has accepted appointment. The Resident Trustee may be removed at any time by the Liquidating Trustee or the Liquidating Trust Advisory Board, by providing 30 days' written notice to the Resident Trustee; *provided*, however, such removal shall not be effective until such time as a successor Resident Trustee has accepted appointment. Upon the resignation or removal of the Resident Trustee, the Liquidating Trustee shall appoint a successor Resident Trustee. If no successor Resident Trustee shall have been appointed and shall have accepted such appointment within 45 days after the giving of such notice of resignation or removal, the Resident Trustee may petition the Bankruptcy Court for the appointment of a successor Resident Trustee. Any successor Resident Trustee appointed pursuant to this ~~Section 6.8~~Section 6.7(d) of this Trust Agreement shall be eligible to act in such capacity in accordance with this Trust Agreement and, following compliance with this ~~Section 6.8~~Section 6.7(d) of this Trust Agreement, shall become fully vested with the rights, powers, duties, and obligations of its predecessor under this Trust Agreement, with like effect as if originally named as Resident Trustee. Any such successor Resident Trustee shall notify the Resident Trustee of its appointment by providing written notice to the Resident Trustee, and upon receipt of such notice, the Resident Trustee shall be discharged of its duties herein.

6.9. ~~6.8.~~ Fiduciary and Other Duties. Notwithstanding anything in the Plan or this Trust Agreement to the contrary, the Liquidating Trustee and the members of the Liquidating Trust Advisory Board shall always act in the best interests of the Liquidating Trust Beneficiaries and in furtherance of the purpose of the Liquidating Trust as set forth in Article IV.C of the Plan; *provided*, however, that the Liquidating Trustee

and the members of the Liquidating Trust Advisory Board shall not owe fiduciary obligations to (i) any defendants or potential defendants of Causes of Action ~~or~~, Retained Causes of Action, or Transferred Causes of Action in their capacities as such or (ii) any Holder of an Unliquidated or Disputed Claim, in their capacities as such, it being the intent of such fiduciary duties to ensure that the obligations of the Liquidating Trustee and the members of the Liquidating Trust Advisory Board are to maximize the value of the Liquidating Trust Assets, including the Causes of Action ~~and~~, Retained Causes of Action, and Transferred Causes of Action. Except for obligations expressly imposed on the Liquidating Trustee and the Liquidating Trust Advisory Board by this Trust Agreement, to the extent that, at law or in equity, the Liquidating Trustee or the Liquidating Trust Advisory Board has duties (including fiduciary duties) to the Liquidating Trust Beneficiaries or to any other person that is a party to or is otherwise bound by this Trust Agreement, such duties are hereby eliminated by this Trust Agreement to the fullest extent permitted by applicable law; *provided*, however, that this Trust Agreement does not eliminate the implied contractual covenant of good faith and fair dealing.

## ARTICLE VII ~~ARTICLE VII~~

### SUCCESSOR LIQUIDATING TRUSTEE

7.1. ~~7.1.~~ Resignation. The Liquidating Trustee may resign from the Liquidating Trust by giving prior written notice thereof to the Liquidating Trust Advisory Board or, in the event the Liquidating Trust Advisory Board is no longer in existence, the Liquidating Trust Beneficiaries, and, prior to the entry of a final decree closing the Chapter 11 Case, to the U.S. Trustee and Bankruptcy Court. Such resignation shall become effective on the earlier to occur of (a) the date specified in such written notice and (b) the effective date of the appointment of a successor Liquidating Trustee in accordance with Section 7.4 of this Trust Agreement and such successor's acceptance of such appointment in accordance with Section 7.5 of this Trust Agreement.

7.2. ~~7.2.~~ Removal. The Liquidating Trustee may be removed with or without cause at any time. ~~Any Liquidating Trust Beneficiary seeking to remove a Liquidating Trustee may motion for removal. If by~~ the Majority Liquidating Trust Beneficiaries ~~vote for removal, such removal.~~ Removal of the Liquidating Trustee shall be effective on the date specified in the resolution. Notwithstanding the removal of the Liquidating Trustee pursuant to this Section 7.2, the rights of the resigning Liquidating Trustee under this Trust Agreement with respect to acts or omissions occurring prior to the effectiveness of such removal will continue for the benefit of such resigning Liquidating Trustee following the effectiveness of such resignation. For the purposes of this Trust Agreement, "Majority Liquidating Trust Beneficiaries" means the Liquidating Trust Beneficiaries holding a majority of the aggregate amount of Allowed Claims of all Liquidating Trust Beneficiaries.

7.3. ~~7.3.~~ Effect of Resignation or Removal. The resignation, removal, incompetency, bankruptcy, or insolvency of the Liquidating Trustee shall not operate to

terminate the Liquidating Trust or to revoke any existing agency created pursuant to the terms of this Trust Agreement, the Plan, or the Confirmation Order or invalidate any action theretofore taken by the Liquidating Trustee. All fees and expenses properly incurred by the Liquidating Trustee prior to the resignation, incompetency or removal of the Liquidating Trustee shall be paid from the Wind-Down Account pursuant to the Wind-Down Budget, unless such fees and expenses are disputed by the Liquidating Trust Advisory Board, in which case the Bankruptcy Court shall resolve the dispute and any disputed fees and expenses of the predecessor Liquidating Trustee that are subsequently allowed by the Bankruptcy Court shall be paid from the Liquidating Trust Assets. In the event of the resignation or removal of the Liquidating Trustee, such Liquidating Trustee shall (a) promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the Liquidating Trust Advisory Board or the successor Liquidating Trustee or directed by the Bankruptcy Court to effect the termination of such Liquidating Trustee's capacity under this Trust Agreement, (b) promptly deliver to the Liquidating Trust Advisory Board and the successor Liquidating Trustee all documents, instruments, records and other writings related to the Liquidating Trust as may be in the possession of such Liquidating Trustee, and (c) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Liquidating Trustee.

~~7.4. -7.4. Appointment of Successor. Upon the resignation or dissolution of a Liquidating Trustee, the Liquidating Trustee shall have the authority to designate a successor Liquidating Trustee upon the consent of the Majority Liquidating Trust Beneficiaries.~~ Upon the death, resignation, dissolution, incapacity or removal of a Liquidating Trustee, the Majority Liquidating Trust Beneficiaries shall appoint, in consultation with the Liquidating Trust Advisory Board, shall have the authority to designate a successor Liquidating Trustee ~~on an interim or permanent basis, with the consent of the Majority Liquidating Trust Beneficiaries.~~

~~7.5. -7.5. Acceptance of Appointment by Successor Liquidating Trustee.~~ Any successor Liquidating Trustee so appointed shall consent to and accept in writing the terms of this Trust Agreement and agrees that the provisions of this Trust Agreement shall be binding upon and inure to the benefit of the successor Liquidating Trustee. Upon acceptance in writing, such successor Liquidating Trustee shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion and privileges of its predecessor in the Liquidating Trust with like effect as if originally named Liquidating Trustee and shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

## ARTICLE VIII

### LIQUIDATING TRUST ADVISORY BOARD

#### 8.1. Liquidating Trust Advisory Board.

(a) There is hereby established and created a special advisory board (the "Liquidating Trust Advisory Board") to monitor and oversee the Liquidating

Trustee and other activities required in connection with the management and distribution of the Liquidating Trust Assets, including the performance of the Liquidating Trustee's obligations under the Plan and this Trust Agreement.

(b) As of the Effective Date, the members of the Liquidating Trust Advisory Board shall be [•], [•] and [•]. Any or all members of the Liquidating Trust Advisory Board may resign from the Liquidating Trust Advisory Board at any time by written notice of resignation to the Liquidating Trustee. A member of the Liquidating Trust Advisory Board (i) shall be deemed to be immediately removed as a member of the Liquidating Trust Advisory Board in the event that a Liquidating Trust Advisory Board member (i) dies, resigns, or becomes incapacitated, or (ii) otherwise fails or refuses to serve and is removed pursuant to the terms of this Liquidating Trust Agreement. In the event of a Liquidating Trust Advisory Board member's resignation or removal, the Liquidating Trust Advisory Board, in consultation with the Liquidating Trustee, may, but is not required to, elect a replacement member. There shall be no minimum number of members of the Liquidating Trust Advisory Board to retain its function; provided, however, if there shall have been no Liquidating Trust Advisory Board for a period of thirty (30) consecutive days, then the Liquidating Trustee may, during such vacancy, and thereafter, ignore any reference in the Plan, this Trust Agreement, or the Confirmation Order to the Liquidating Trust Advisory Board, and all such references in the Plan, this Trust Agreement or the Confirmation Order shall be null and void. Any deadlock in a vote by the members of the Liquidating Trust Advisory Board may be broken by a vote cast by the Liquidating Trustee.

(c) The Liquidating Trustee shall provide the Liquidating Trust Advisory Board with such reports as set forth in Section 4.8. Each member of the Liquidating Trust Advisory Board shall be reimbursed by the Liquidating Trust from the Liquidating Trust Assets for its actual, reasonable, and documented out-of-pocket expenses incurred for serving on the Liquidating Trust Advisory Board; provided that each member of the Liquidating Trust Advisory Board shall not receive any reimbursement for the services of any attorney, accountant, and other professional and agent. Except as provided for in this Section 8.1(c) of this Trust Agreement, the members of the Liquidating Trust Advisory Board shall not be entitled to receive any other form of compensation for their services provided as such members. The Liquidating Trust Advisory Board may, but shall not be required to, adopt by-laws addressing the conduct of the Liquidating Trust Advisory Board.

(d) The Liquidating Trust Advisory Board, may, at any time, provide notice to the Liquidating Trust Beneficiaries that the Liquidating Trust Advisory Board recommends removal of the Liquidating Trustee by the Liquidating Trust Beneficiaries. Within ten (10) business days of providing such notice, the Liquidating Trust Beneficiaries shall vote on such matter, and the Liquidating Trustee shall be removed upon the vote in favor of removal by the Majority Liquidating Trust Beneficiaries pursuant to Section 7.2 of this Trust Agreement.

(e) The Liquidating Trust Advisory Board, any of the Liquidating Trust Advisory Board's members or designees, attorneys, accountants, or other

professionals, any duly designated agent or representative of the Liquidating Trust Advisory Board, and the respective employees of any of the foregoing, shall not be liable for any act or omission of any other member, designee, agent, or representative of the Liquidating Trust Advisory Board, nor shall any member be liable for any act or omission taken or to be taken in that member's capacity as a member of the Liquidating Trust Advisory Board, other than acts resulting from such member's intentional misconduct, willful misconduct, or gross negligence. The Liquidating Trust Advisory Board may, in connection with the performance of the Liquidating Trust Advisory Board's functions, and in the Liquidating Trust Advisory Board's sole and absolute discretion, consult with counsel, accountants, and any other professionals, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such counsel, accountants, or other professionals, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, the Liquidating Trust Advisory Board shall be under no obligation to consult with counsel, accountants or other professionals, and the Liquidating Trust Advisory Board's determinations to not do so shall not result in the imposition of liability on the Liquidating Trust Advisory Board or the Liquidating Trust Advisory Board's members or designees, unless such determination is based on intentional misconduct, willful misconduct, or gross negligence.

(f) In the event there is an act required to be taken pursuant to the terms of this Trust Agreement, the Plan or the Confirmation Order by the Liquidating Trust Advisory Board and the Liquidating Trust Advisory Board cannot act because of a voting deadlock, the deadlock shall be broken by the vote of the Liquidating Trustee. If the Liquidating Trustee determines not to vote, the matter shall be decided by the Bankruptcy Court by submission of a motion on proper notice.

## ARTICLE IX~~ARTICLE VIII~~

### RELIANCE, LIABILITY AND INDEMNIFICATION

9.1. ~~8.1.~~ Reliance by the Liquidating Trustee and the Members of the Liquidating Trust Advisory Board. Except as otherwise provided in this Trust Agreement, the Plan or the Confirmation Order, the Liquidating Trustee, the members of the Liquidating Trust Advisory Board and the Resident Trustee may rely and shall be protected in acting upon the advice of any Liquidating Trust Professional and/or upon any resolution, statement, instrument, opinion, report, notice, request, consent, order or other paper or document reasonably believed by the Liquidating Trustee, the Liquidating Trust Advisory Board and the Resident Trustee to be genuine and to have been signed or presented by the proper party or parties.

9.2. ~~8.2.~~ Liability to Third Persons. No Liquidating Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Liquidating Trust Assets or the affairs of the Liquidating Trustee. The Liquidating Trustee, the members of the Liquidating Trust Advisory Board, the Resident Trustee and the Liquidating Trust Professionals shall not be subject to any

personal liability whatsoever, in tort, contract or otherwise, to any person (including, in the case of the Liquidating Trustee and members of the Liquidating Trust Advisory Board, to any Liquidating Trust Professionals retained by the Liquidating Trustee in accordance with this Trust Agreement) in connection with the Liquidating Trust Assets or the affairs of the Liquidating Trust and shall not be liable with respect to any action taken or omitted to be taken in good faith, except for actions and omissions determined by a final order of the Bankruptcy Court to be due to their respective bad faith, gross negligence, intentional fraud, criminal conduct or willful misconduct, and all such persons shall look solely to the Liquidating Trust Assets for satisfaction of claims of any nature arising in connection with affairs of the Liquidating Trust. Other than as set forth in the Plan or in the Confirmation Order, nothing in this Section ~~8.29.2~~ of this Trust Agreement shall be deemed to release any Liquidating Trust Beneficiary from any actions or omissions occurring prior to the Effective Date.

9.3. ~~8.3.~~ Nonliability of Liquidating Trustee and Liquidating Trust Advisory Board for Acts of Others. Except as provided herein, nothing contained in this Trust Agreement, the Plan or the Confirmation Order shall be deemed to be an assumption by the Liquidating Trustee, the Liquidating Trust Advisory Board (or its members), the Resident Trustee or the Liquidating Trust Professionals of any of the liabilities, obligations or duties of the Debtor or shall be deemed to be or contain a covenant or agreement by the Liquidating Trustee to assume or accept any such liability, obligation or duty. Any successor Liquidating Trustee, Liquidating Trust Advisory Board member or Resident Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Liquidating Trustee hereunder, and any statement or representation made as to the assets comprising the Liquidating Trust Assets or as to any other fact bearing upon the prior administration of the Liquidating Trust, so long as it has a good faith basis to do so. The Liquidating Trustee, the Liquidating Trust Advisory Board members, and the Resident Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. The Liquidating Trustee or any successor Liquidating Trustee and the Liquidating Trust Advisory Board members shall not be liable for any act or omission of any predecessor Liquidating Trustee or Liquidating Trust Advisory Board member. No provision of this Trust Agreement shall require the Liquidating Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of his rights or powers hereunder if the Liquidating 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.

9.4. ~~8.4.~~ Exculpation. No Holder of a Claim or Interest, Liquidating Trust Beneficiary, or any other party in interest will have, or otherwise pursue, any claim or Cause of Action against the Liquidating Trustee, the members of the Liquidating Trust Advisory Board, the Resident Trustee, the Liquidating Trust, or the Liquidating Trust Professionals (for each of the foregoing, solely in the performance of their duties) for making payments and distributions in accordance with the Plan and this Trust Agreement or for fulfilling any functions incidental to implementing the provisions of the Plan or the this Trust Agreement, except for actions or omissions to act that are determined by final order of the Bankruptcy Court to have arisen out of their own respective intentional fraud,

criminal conduct, gross negligence or willful misconduct. Any action taken or omitted to be taken with the express approval of the Bankruptcy Court shall conclusively be deemed not to constitute gross negligence or willful misconduct.

9.5. ~~8.5.~~ Limitation of Liability. The Liquidating Trustee, the members of the Liquidating Trust Advisory Board, the Resident Trustee and the Liquidating Trust Professionals will not be liable for punitive, exemplary, consequential, special, or other damages for a breach of this Trust Agreement under any circumstances.

9.6. ~~8.6.~~ Indemnity. The Liquidating Trust shall indemnify and hold harmless (a) the Liquidating Trustee (solely in its capacity as such and in its capacity as officer and director of the Debtor), (b) members of the Liquidating Trust Advisory Board, (c) the Resident Trustee and (d) the Liquidating Trust Professionals ((a), (b) ~~and~~, (c) and (d) collectively, the “**Indemnified Parties**”), from and against and with respect to any and all liabilities, losses, damages, claims, costs, and expenses, including, but not limited to, attorneys’ fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, other than actions or omissions resulting from such Indemnified Party’s bad faith, willful misconduct (including, without limitation, actual fraud), or gross negligence, or the implementation or administration of the Plan or this Trust Agreement. To the extent that an Indemnified Party asserts a claim for indemnification as provided above, (y) any payment on account of such claim shall be paid solely from the Wind-Down Account and shall be entitled to a priority distribution therefrom, superior to any other rights (other than those rights of the Liquidating Trust Professionals) to receive a distribution from the Wind-Down Account, including the Liquidating Trust Beneficiaries and (z) the legal fees and related costs incurred by counsel to the Liquidating Trustee in monitoring and participating in the defense of such claims giving rise to the asserted right of indemnification shall be advanced to such Indemnified Party (and such Indemnified Party undertakes to repay such amounts if it ultimately shall be determined that such Indemnified Party is not entitled to be indemnified therefore) out of the Wind-Down Account or any insurance purchased using the Wind-Down Account, and paid with priority over distributions to Liquidating Trust Beneficiaries. This indemnification provision shall remain available to, and be binding upon, any former Liquidating Trustee or Resident Trustee or member of the Liquidating Trust Advisory Board, or the estate of any decedent of the Liquidating Trustee or Resident Trustee or member of the Liquidating Trust Advisory Board, and shall survive the termination of this Trust Agreement.

## ARTICLE X ~~ARTICLE IX~~

### MISCELLANEOUS PROVISIONS

10.1. ~~9.1.~~ Governing Law. Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent that any document to be entered into in connection herewith provides otherwise, the rights, duties, and obligations arising under this Trust Agreement shall be governed by, and construed and enforced in

accordance with, the Bankruptcy Code and, to the extent not inconsistent therewith, the laws of the State of Delaware, without giving effect to principles of conflicts of laws.

10.2. ~~9.2.~~ Jurisdiction. Subject to the proviso below, prior to the entry of a final decree closing the Chapter 11 Case, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction over the Liquidating Trust ~~and~~, the Liquidating Trustee and the Liquidating Trust Advisory Board, including the administration and activities of the Liquidating Trust ~~and~~, the Liquidating Trustee and the Liquidating Trust Advisory Board, and, pursuant to the Plan, the Bankruptcy Court has retained such jurisdiction; *provided*, however, that notwithstanding the foregoing, the Liquidating Trustee shall have power and authority to bring any action in any court of competent jurisdiction (including the Bankruptcy Court) to prosecute any Causes of Action ~~or~~, Retained Causes of Action, or Transferred Causes of Action assigned to the Liquidating Trust that are not otherwise subject to release or exculpation pursuant to the Plan.

10.3. ~~9.3.~~ Severability. In the event any provision of this Trust Agreement or the application thereof to any person or circumstances shall be determined by a final, non-appealable judgment or order to be invalid or unenforceable to any extent, the remainder of this Trust 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 Trust Agreement shall be valid and enforceable to the full extent permitted by law.

10.4. ~~9.4.~~ Notices. Any notice or other communication required or permitted to be made under this Trust Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally, by email, sent by nationally recognized overnight delivery service or mailed by first-class mail:

~~(a)~~

(a) ~~(b)~~ if to the Liquidating Trust, to:

[•]

with a copy to:

[•]

(b) if to the Liquidating Trust Advisory Board, to each of:

[•]

[•]

[•]

(c) if to the Resident Trustee, to:

[•]

(d) if to any Liquidating Trust Beneficiary, to the name and distribution address set forth in the Register with respect to such Liquidating Trust Beneficiary.

10.5. ~~9.5.~~ Headings. The headings contained in this Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Trust Agreement or of any term or provision of this Trust Agreement.

10.6. ~~9.6.~~ Controlling Document. In the event of any conflict between the terms and provisions in the Plan and the terms and provisions in the Disclosure Statement, the Plan Supplement, any other instrument or document created or executed pursuant to the Plan, or any order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), the Plan shall govern and control; *provided* that, in the event of a conflict between this Trust Agreement, on the one hand, and any of the Plan, the Plan Supplement or the Definitive Documents, on the other hand, this Trust Agreement shall govern and control in all respects relating to the operation and/or administration of the Liquidating Trust and/or indemnification of the Liquidating Trustee.

10.7. ~~9.7.~~ Entire Trust Agreement. This Trust Agreement (including the recitals and annex hereto), the Plan, and the Confirmation Order constitute the entire agreement by and among the parties and supersede all prior and contemporaneous agreements or understandings by and among the parties with respect to the subject matter of this Trust Agreement.

10.8. ~~9.8.~~ Cooperation. On the Effective Date, the Debtor shall promptly upon the request of the Liquidating Trustee (a) turn over or otherwise make available to the Liquidating Trust at no cost to the Liquidating Trust or the Liquidating Trustee, any books and records of the Debtor held by such professionals, and (b) subject to payment of reasonable and documented fees and expenses incurred by such professionals (i) make available information, including electronic records or documents, reasonably required by the Liquidating Trust to carry out its duties hereunder and (ii) otherwise reasonably cooperate with the Liquidating Trust in carrying out its duties

hereunder, subject, in the case of (a) and (b), to the confidentiality provisions herein to preserve the confidential nature of the Debtor's books and records.

10.9. ~~9.9.~~ Amendment and Waiver. ~~Any provision of this~~ This Trust Agreement may from time to time be amended ~~or waived,~~ supplemented or modified by the Liquidating Trustee, but only with (i) the approval of the Bankruptcy Court or (ii) the written consent of the Majority Liquidating Trust Beneficiaries; provided that any such amendment which alters the duties or liabilities of the Liquidating Trust Advisory Board shall also require the consent of the Liquidating Trust Advisory Board; provided further that any such amendment which alters the duties or liabilities of the Resident Trustee shall also require the consent of the Resident Trustee. The Liquidating Trustee shall provide the Liquidating Trust Advisory Board notice of any proposed amendment, supplement or modification to this Trust Agreement at least five (5) business day prior to the effective date of such amendment, supplement or modification; provided, however, that the Liquidating Trust Advisory Board may waive the notice period. Notwithstanding this Section ~~9.9~~10.9 of this Trust Agreement, any amendment to this Trust Agreement shall not be inconsistent with the Plan and the Confirmation Order and shall be consistent with the purpose and intention of the Liquidating Trust to liquidate in an expeditious but orderly manner the Liquidating Trust Assets in accordance with Treasury Regulations section 301.7701-4(d) and Section 1.2 of this Trust Agreement.

10.10. ~~9.10.~~ Confidentiality. The Liquidating Trustee, each member of the Liquidating Trust Advisory Board and each of ~~its~~their respective employees, members, agents, professionals and advisors, including the Liquidating Trust Professionals (each a “**Confidential Party**” and, collectively, the “**Confidential 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 Confidential Party, of or pertaining to any Debtor to which any of the Liquidating Trust Assets relates; *provided*, however, that such information may be disclosed if (a) it is now or in the future becomes generally available to the public other than as a result of a disclosure by the Confidential Parties or (b) such disclosure is required of the Confidential Parties pursuant to legal process including subpoena or other court order or other applicable laws or regulations. In the event that any Confidential Party is requested to divulge confidential information pursuant to this clause (b), such Confidential Party shall promptly, in advance of making such disclosure, provide reasonable notice of such required disclosure to the Liquidating Trustee (or the Liquidating Trust Advisory Board in case the Liquidating Trustee or the Resident Trustee is the disclosing party) to allow sufficient time to object to or prevent such disclosure through judicial or other means and shall cooperate reasonably with the Liquidating Trustee (or the Liquidating Trust Advisory Board, as applicable) in making any such objection, including appearing in any judicial or administrative proceeding in support of any objection to such disclosure.

10.11. ~~9.11.~~ Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, 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. The words herein and words of similar import refer to

this Trust Agreement as a whole and not to any particular Article, Section, or subdivision of this Trust Agreement. The term “including” shall mean “including, without limitation.”

10.12. ~~9.12.~~ Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same instrument. A portable document file (PDF) signature of any party shall be considered to have the same binding legal effect as an original signature.

10.13. ~~9.13.~~ Intention of Parties to Establish Liquidating Trust. This Trust Agreement is intended to create a liquidating trust within the meaning of Treasury Regulations section 301.7701-4(d) for U.S. federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Trust Agreement may be amended to comply with such U.S. federal income tax laws, which amendments may apply retroactively.

[Signature Page Follows]

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

**TRICIDA, INC.**

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

**LIQUIDATING TRUSTEE**

By: \_\_\_\_\_  
Name: [•]

**RESIDENT TRUSTEE**

[•], not in its individual capacity, but solely as Resident Trustee

By: \_\_\_\_\_  
Name: [•]

~~[SIGNATURE PAGE TO LIQUIDATING TRUST AGREEMENT]~~

[SIGNATURE PAGE TO LIQUIDATING TRUST AGREEMENT]

**EXHIBIT A**

**Notice of Transfer**

The undersigned Liquidating Trust Beneficiary (the “**Transferor**”) has agreed to transfer the Liquidating Trust Interests set forth below to the undersigned transferee (the “**Transferee**”).

Transferor Name:

Date Executed:

Amount and Type of Liquidating Trust Interests Transferred:

Notes Claim:

General Unsecured Claim (Allowed / Asserted):

Patheon Rejection Claim (~~Allowed / Asserted~~):

Transferee Name:

Transferee Address:

Transferee e-mail address:

**EXHIBIT E**

**Blackline of Contingent Payments Trust Agreement**

*Sidley Draft 5.5.2023*  
*Privileged & Confidential*

**CONTINGENT PAYMENTS TRUST AGREEMENT OF**

**TRICIDA CONTINGENT PAYMENTS TRUST**

**DATED AS OF [•], 2023**

**BY AND AMONG**

**[•] AS CONTINGENT PAYMENTS TRUSTEE,**

**[•] AS RESIDENT TRUSTEE,**

**and**

**THE DEBTOR HERETO**

**TABLE OF CONTENTS**

PAGE

~~ARTICLE~~ ARTICLE I

DECLARATION OF TRUST

1.1. Creation of Trust	2
1.2. Purpose of Contingent Payments Trust	2
1.3. Transfer of Contingent Payments Trust Assets	3
1.4. Appointment and Acceptance of Contingent Payments Trustee	<del>4</del> <u>5</u>
1.5. Administration of the Contingent Payments Trust Assets	5
1.6. Wind-Down Budget	<del>5</del> <u>6</u>
1.7. Reversionary Interests	<del>5</del> <u>6</u>
1.8. Incidents of Ownership	<del>5</del> <u>6</u>
1.9. Privileges	6

~~ARTICLE~~ ARTICLE II

CONTINGENT PAYMENTS TRUST BENEFICIARIES

2.1. Conflicting Claims	<del>6</del> <u>7</u>
2.2. Rights of Contingent Payments Trust Beneficiaries	7
2.3. Evidence of Contingent Payments Trust <del>Interest</del> <u>Interests</u>	7
2.4. Transfer of Contingent Payments Trust Interests	<del>7</del> <u>8</u>
2.5. Exemption from Registration	8
2.6. Limited Liability	<del>8</del> <u>9</u>

~~ARTICLE~~ ARTICLE III

DURATION AND TERMINATION OF CONTINGENT PAYMENTS TRUST

3.1. Dissolution of the Contingent Payments Trust	<del>8</del> <u>9</u>
---	-----------------------

~~ARTICLE~~ ARTICLE IV

ADMINISTRATION OF THE CONTINGENT PAYMENTS TRUST

4.1. Payment of Claims, Expenses, and Liabilities	9
4.2. Distributions	<del>9</del> <u>10</u>
4.3. Compliance with Laws	<del>12</del> <u>13</u>
4.4. Fiscal Year	<del>12</del> <u>13</u>
4.5. Books and Records	<del>12</del> <u>14</u>
<del>4.7.</del> <u>4.6.</u> Contingent Payments Trust Insurance	<del>13</del> <u>14</u>
<del>4.8</del> <u>4.7.</u> Reports	<del>13</del> <u>14</u>

~~ARTICLE~~ ARTICLE V

TAX MATTERS

5.1. Treatment of Trust for Tax Purposes.....	<del>13</del> <u>15</u>
5.2. Tax Reporting.....	<del>14</del> <u>15</u>
5.3. Tax Withholdings by Contingent Payments Trustee.....	<del>14</del> <u>16</u>
5.4. IRS Forms.....	<del>15</del> <u>16</u>

~~ARTICLE~~ ARTICLE VI

POWERS OF AND LIMITATIONS ON THE CONTINGENT PAYMENTS TRUSTEE

6.1. Term of the Contingent Payments Trustee.....	<del>15</del> <u>17</u>
6.2. Responsibilities and Authority of the Contingent Payments Trustee.....	<del>16</del> <u>17</u>
<u>6.3. Actions Taken by the Contingent Payments Trustee</u> .....	<u>18</u>
<del>6.3.</del> <u>6.4. Limitations on Contingent Payments Trustee</u> .....	<del>17</del> <u>19</u>
<del>6.4.</del> <u>6.5. Compensation and Expenses of the Contingent Payments Trustee</u> .....	<del>17</del> <u>20</u>
<del>6.5.</del> <u>6.6. Agents, Employees, and Professionals</u> .....	<del>17</del> <u>20</u>
<del>6.6.</del> <u>6.7. Investment of Contingent Payments Trust Monies</u> .....	<del>18</del> <u>21</u>
<del>6.7.</del> <u>6.8. Resident Trustee</u> .....	<del>18</del> <u>21</u>
<del>6.8.</del> <u>6.9. Fiduciary and Other Duties</u> .....	<del>20</del> <u>23</u>

~~ARTICLE~~ ARTICLE VII

SUCCESSOR CONTINGENT PAYMENTS TRUSTEE

7.1. Resignation.....	<del>21</del> <u>24</u>
7.2. Removal.....	<del>21</del> <u>24</u>
7.3. Effect of Resignation or Removal.....	<del>21</del> <u>24</u>
7.4. Appointment of Successor.....	<del>21</del> <u>25</u>
7.5. Acceptance of Appointment by Successor Contingent Payments Trustee.....	<del>22</del> <u>25</u>

~~ARTICLE~~ ARTICLE VIII

CONTINGENT PAYMENTS TRUST ADVISORY BOARD

<u>8.1. Contingent Payments Trust Advisory Board</u> .....	<u>25</u>
--	-----------

ARTICLE IX

RELIANCE, LIABILITY AND INDEMNIFICATION

<del>8.1</del> <u>9.1. Reliance by the Contingent Payments Trustee</u> <del>22</del> <u>and the Members of the Contingent Payments Trust</u> .....	
<del>8.2</del> <u>9.2. Liability to Third Persons</u> .....	<del>22</del> <u>27</u>

<del>8.3.</del> <u>9.3.</u> Nonliability of Contingent Payments Trustee <u>and Contingent Payments Trust Advisory Board</u> for Acts of Others.....	<del>22</del> <u>28</u>
<del>8.4.</del> <u>9.4.</u> Exculpation.....	<del>23</del> <u>28</u>
<del>8.5.</del> <u>9.5.</u> Limitation of Liability.....	<del>23</del> <u>29</u>
<del>8.6</del> <u>9.6.</u> Indemnity.....	<del>23</del> <u>29</u>

~~ARTICLE IX~~ARTICLE X

MISCELLANEOUS PROVISIONS

<del>9.1</del> <u>10.1.</u> Governing Law.....	<del>24</del> <u>29</u>
<del>9.2.</del> <u>10.2.</u> Jurisdiction.....	<del>24</del> <u>30</u>
<del>9.3.</del> <u>10.3.</u> Severability.....	<del>24</del> <u>30</u>
<del>9.4</del> <u>10.4.</u> Notices.....	<del>24</del> <u>30</u>
<del>9.5</del> <u>10.5.</u> Headings.....	<del>25</del> <u>31</u>
<del>9.6.</del> <u>10.6.</u> Controlling Document.....	<del>25</del> <u>31</u>
<del>9.7</del> <u>10.7.</u> Entire Trust Agreement.....	<del>25</del> <u>31</u>
<del>9.8.</del> <u>10.8.</u> Cooperation.....	<del>25</del> <u>31</u>
<del>9.9</del> <u>10.9.</u> Amendment and Waiver.....	<del>26</del> <u>31</u>
<del>9.10.</del> <u>10.10.</u> Confidentiality.....	<del>26</del> <u>32</u>
<del>9.11</del> <u>10.11.</u> Meanings of Other Terms.....	<del>26</del> <u>32</u>
<del>9.12.</del> <u>10.12.</u> Counterparts.....	<del>27</del> <u>33</u>
<del>9.13</del> <u>10.13.</u> Intention of Parties to Establish <del>Contingent Payments</del> <u>Grantor</u> Trust.....	<del>27</del> <u>33</u>

**CONTINGENT PAYMENTS TRUST AGREEMENT OF TRICIDA  
CONTINGENT PAYMENTS TRUST**

THIS CONTINGENT PAYMENTS TRUST AGREEMENT OF TRICIDA CONTINGENT PAYMENTS TRUST, dated as of [●], 2023 (this “**Trust Agreement**”), is by and among Tricida, Inc. (the “**Debtor**”), as debtor, [●], as trustee (together with any successor or additional trustee appointed under the terms of this Trust Agreement, including Section 6.1 of this Trust Agreement, the “**Contingent Payments Trustee**”), and [●] as the Delaware resident trustee (together with any successor Delaware resident trustee appointed under the terms of this Trust Agreement, the “**Resident Trustee**”), for the purpose of forming a statutory trust under and pursuant to the provisions of 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, the “**Trust Act**”) as contemplated by the Plan (the “**Contingent Payments Trust**”).<sup>1</sup>

**BACKGROUND**

A. On January 11, 2023 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Case**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”);

B. On February 22, 2023, the Bankruptcy Court approved the sale of various subsets of the Debtor’s Assets to the Purchasers pursuant to section 363 of the Bankruptcy Code by entry of the Sale Order, as defined in the Plan;

C. On March 27, 2023, the Debtor filed the *Third Amended Chapter 11 Plan of Liquidation for Tricida, Inc.* [D.I. 328] and the *Fourth Amended Disclosure Statement for Chapter 11 Plan of Liquidation for Tricida, Inc.* [D.I. 329];

D. On [●], 2023, the Bankruptcy Court entered an order confirming the Plan [D. I. [●]] (the “**Confirmation Order**”), which became effective on [●], 2023 (the “**Effective Date**”);

E. The Plan provides for, among other things, the creation of an investment trust on the Effective Date for the purpose of facilitating direct investment in the Contingent Payments Trust Assets in accordance with section 301.7701-4(c) of the regulations promulgated under the Internal Revenue Code of 1986, as amended (the “**IRC**,” and such regulations, the “**Treasury Regulations**”). The Contingent Payments Trust is established and is effective for the benefit of either (i) the Contingent Payments Holding Trust or (ii) Holders of Noteholder Claims, Allowed Patheon Rejection Claims

---

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the *Chapter 11 Plan of Liquidation for Tricida, Inc.*, as confirmed by the Confirmation Order (as defined below) (including all exhibits thereto, as the same may be further amended, modified, or supplemented from time to time, the “**Plan**”).

and Allowed General Unsecured Claims (as applicable, the “**Contingent Payments Trust Beneficiaries**”); and

F. The duties and powers of the Contingent Payments Trustee shall include all powers necessary to administer the Contingent Payments Trust Assets, including, without limitation, the duties and powers listed in the Plan.

## AGREEMENT

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

### ARTICLE I~~ARTICLE I~~

## DECLARATION OF TRUST

1.1. ~~1.1.~~ Creation of Trust. The Debtor, the Contingent Payments Trustee, and the Resident Trustee, pursuant to the Plan and the Confirmation Order, and in accordance with the applicable provisions of chapter 11 of the Bankruptcy Code, hereby create the Contingent Payments Trust, which shall bear the name “Tricida Contingent Payments Trust.” In connection with the exercise of the Contingent Payments Trustee’s power hereunder, the Contingent Payments Trustee may use this name or such variation thereof as the Contingent Payments Trustee sees fit. On the Effective Date, the Contingent Payments Trust shall be established pursuant to this Trust Agreement.

1.2. ~~1.2.~~ Purpose of Contingent Payments Trust.

(a) The Contingent Payments Trust shall be established for the purpose of: (i) preserving and administering the assets of the Contingent Payments Trust; (ii) administering and paying taxes, including, among other things, (1) filing tax returns, and (2) representing the interest and account of the Contingent Payments Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding, or audit; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Contingent Payments Trustee’s performance of its duties under the Plan and this Trust Agreement; (iv) making distributions to the Contingent Payments Trust Beneficiaries in accordance with the terms of the Plan and this Trust Agreement; and (v) such other responsibilities or powers as may be vested in or assumed by the Contingent Payments Trustee pursuant to the Plan, this Trust Agreement, or by an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of this Plan, with no objective to continue or engage in the conduct of a trade or business, except, in each case, if such action would be prohibited by Section 1.2(b) or any other provision of this Trust Agreement. The Contingent Payments Trust shall be classified as an investment trust described in Treasury Regulations section 301.7701-4(c) that is also treated a grantor trust for U.S. federal income tax purposes, as described in Article IV.E.1. of the Plan and Section 5.1 herein, and, to the extent permitted by applicable law, for state and local

income tax purposes. To the extent permitted by applicable law, all parties, including the Contingent Payments Trustee and any Contingent Payments Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes. From and after the Effective Date, the Contingent Payments Trustee shall act as the exclusive representative of the Estate for all purposes set forth in Article IV.D.3 of the Plan.

(b) The Contingent Payments Trust shall not take any action that could cause the Contingent Payments Trust to be treated other than as a grantor trust for U.S. federal income tax purposes. Without limiting the generality of the foregoing, nothing in this Trust Agreement (including, for the avoidance of doubt, Section 1.2(a)) shall be construed to give the Trustee the power to vary the investment of the Contingent Payments Trust Beneficiaries within the meaning of Treasury Regulations section 301.7701-4(c) or similar provisions of the Treasury Regulations, nor shall the Trustee take any action that would vary the investment of the Contingent Payments Trust Beneficiaries.

1.3. ~~1.3.~~ Transfer of Contingent Payments Trust Assets.

(a) ~~On~~ Pursuant to the Plan and the Confirmation Order, on the Effective Date ~~and upon establishment of the Contingent Payments Trust,~~ all right, title, and interest in and to the Contingent Payments Trust Assets shall be deemed to have been irrevocably transferred, assigned, conveyed and delivered by the Debtor to the Contingent Payments Trust free and clear of all encumbrances, liens and Claims of any Person, in trust for the benefit of the Contingent Payments Trust Beneficiaries for the uses and purposes stated therein and herein. The Contingent Payments Trust hereby accepts all such Contingent Payments Trust Assets free and clear of any and all liens and claims and agrees to hold and administer the Contingent Payments Trust Assets and the remainder of the Contingent Payments Trust for the benefit of the Contingent Payments Trust Beneficiaries, subject to the terms and conditions of this Trust Agreement. For the avoidance of doubt, upon the transfer of the Contingent Payments Trust Assets, ~~which~~ the Contingent Payments Trust shall succeed to all of the Debtor's right, title, and interest in and to the Contingent Payments Trust Assets, and the Debtor will have no further interest in or with respect to the Contingent Payments Trust Assets or the Contingent Payments Trust. The Contingent Payments Trust Assets shall include, for the avoidance of doubt, (i) the Debtor's right to receive the Contingent Payments and (ii) Cash in an amount as set forth in the Wind-Down Budget to fund the Wind-Down Account (as defined herein), shall be deemed transferred to the Contingent Payments Trust without any further action of the Debtor or any managers, employees, officers, directors, members, partners, shareholders, agents, advisors, or representatives of the Debtor. Pursuant to section 1141(b) and 1141(c) of the Bankruptcy Code, all transfers to the Contingent Payments Trust shall be made free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as may be otherwise provided in the Plan. For all U.S. federal income tax purposes, and, to the extent permitted by applicable law, for state and local income tax purposes, all parties (including, without limitation, the Debtor, the Contingent Payments Trustee, and the Contingent Payments Trust Beneficiaries) shall treat the transfer of the Contingent Payments Trust Assets to the Contingent Payments Trust in

accordance with the terms herein as described in ~~Section~~Section 5.1 of this Trust Agreement.

(b) Upon transfer of the Contingent Payments Trust Assets to the Contingent Payments Trust, the Debtor and its predecessors, successors, and assigns shall be released from all liability with respect to the delivery thereof and shall have no reversionary or further interest in or with respect to the Contingent Payments Trust Assets or the Contingent Payments Trust. Notwithstanding the foregoing, for purposes of section 553 of the Bankruptcy Code, the transfer of the Contingent Payments Trust Assets to the Contingent Payments Trust shall not affect the mutuality of obligations that otherwise may have existed prior to the effectuation of such transfer.

(c) Nothing in this Trust Agreement alters the rights and obligations of the Debtor (and its Estate) and the Debtor's insurers (and third-party claims administrators) under the Insurance Policies or modifies the coverage or benefits provided thereunder or the terms and conditions thereof or diminishes or impairs the enforceability of the Insurance Policies. The Debtor shall be deemed to have assumed only the D&O Policies, and any Insurance Policy other than a D&O Policy shall be deemed terminated on the Effective Date. Except as otherwise provided in the Plan, proceeds payable under any Insurance Policy shall be in accordance with the provisions of the applicable Insurance Policy. Except as set forth in Article IX of the Plan, nothing in the Plan or this Trust Agreement shall constitute or be deemed a waiver of any Cause of Action (including, for the avoidance of doubt, any Retained Cause of Action) that the Debtor or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained in the Plan or this Trust Agreement be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

(d) Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan and this Trust Agreement, including, without limitation, the transfer of the Contingent Payments Trust Assets to the Contingent Payments Trust, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation all such instruments or other documents governing or evidencing such transfers without the payment of any such tax, recordation fee, or governmental assessment.

(e) The Contingent Payments Trust Assets and all other property held from time to time by the Contingent Payments Trust under this Trust Agreement and any earnings, including interest, on any of the foregoing shall be held and be applied by the Contingent Payments Trustee in accordance with the terms of this Trust Agreement, the Plan and the Confirmation Order for the benefit of the Contingent Payments Trust

Beneficiaries, and for no other party, subject to the further covenants, conditions and terms set forth in this Trust Agreement, the Plan and the Confirmation Order.

(f) The Debtor ~~and~~<sup>2</sup> the Contingent Payments Trustee and the Contingent Payments Trust Advisory Board, and any party under the control of such parties, hereby agree to execute any documents or other instruments and shall take all other steps as necessary to cause title to the Contingent Payments Trust Assets to be transferred to the Contingent Payments Trust in accordance with this Trust Agreement, the Plan and the Confirmation Order.

1.4. ~~1.4.~~ Appointment and Acceptance of Contingent Payments Trustee.

(a) The Contingent Payments Trustee has been selected by the Majority Consenting Noteholders in consultation with the Official Committee of Unsecured Creditors appointed in the Tricida, Inc, bankruptcy case. On the Effective Date, the Contingent Payments Trustee shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to serve as the trustee and administrator of the Contingent Payments Trust established pursuant to Article IV.D of the Plan and this Trust Agreement. The Contingent Payments Trustee shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan and this Trust Agreement. The Debtor shall file a notice prior to the Confirmation Hearing designating the Person or Entity selected as the Contingent Payments Trustee. The appointment of the Contingent Payments Trustee shall be approved in the Confirmation Order and such appointment shall be effective in accordance with the terms of Article IV.D.3(a) of the Plan. The ~~initial~~ Contingent Payments Trustee shall serve in such capacity, pursuant to the terms of this Trust Agreement and the Plan, until the resignation or discharge of such trustee and the appointment of a successor Contingent Payments Trustee in accordance with the terms of this Trust Agreement and the Plan.

(b) The Contingent Payments Trustee accepts the Contingent Payments Trust created by this Trust Agreement in accordance with the terms of the Plan, the Confirmation Order and this Trust Agreement and the grant, assignment, transfer, conveyance and delivery to the Contingent Payments Trust, on behalf, and for the benefit, of the Contingent Payments Trust Beneficiaries, by the Debtor of all of its respective rights, titles and interests in the Contingent Payments Trust Assets, upon and subject to the terms and conditions set forth herein, in the Plan and in the Confirmation Order. The Contingent Payments Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purpose of the Contingent Payments Trust and not otherwise. The Contingent Payments Trustee shall have the authority to bind the Contingent Payments Trust in accordance with, and within the limitations set forth in this Trust Agreement, but shall for all purposes hereunder be acting in the capacity as Contingent Payments Trustee, and not individually.

1.5. ~~1.5.~~ Administration of the Contingent Payments Trust Assets. The Contingent Payments Trustee shall administer the Contingent Payments Trust and shall make timely distributions of all proceeds received in respect of the Contingent Payments

Trust Assets in accordance with the terms of this Trust Agreement, the Plan and the Confirmation Order. The Contingent Payments Trustee shall preserve and administer the Contingent Payments Trust Assets in an effort to maximize net recoveries, and the Contingent Payments Trustee shall be entitled to take into consideration the risks, timing, and costs of potential actions in making determinations as to the maximization of recoveries; *provided*, that the determinations and actions of the Contingent Payments Trustee shall in all cases be subject to the limitations provided in Treasury Regulations section 301.7701-4(c) and this Trust Agreement. The Contingent Payments Trustee may incur any reasonable and necessary expenses in connection with the liquidation and conversion of the Contingent Payments Trust Assets into Cash or in connection with the administration of the Contingent Payments Trust.

1.6. ~~1.6.~~ Wind-Down Budget. On the Effective Date, pursuant to the Wind-Down Budget, the Debtor shall transfer funds into an account held by the Contingent Payments Trust (the “**Wind-Down Account**”), which funds shall be used for all reasonable activities and expenses to be incurred in administering the Contingent Payments Trust, including but not limited to the fees and expenses of the Contingent Payments Trust Professionals, as defined in Section 6.5 below. From time to time, the Contingent Payments Trustee shall determine whether the Cash in the Wind-Down Budget exceeds the amount of Cash needed to fund the Wind-Down Budget and may distribute any such excess Cash in accordance with the terms of the Plan and this Trust Agreement.

1.7. ~~1.7.~~ Reversionary Interests. In no event shall any of the Contingent Payments Trust Assets revert to or be distributed to the Debtor.

1.8. ~~1.8.~~ Incidents of Ownership. The Contingent Payments Trust Beneficiaries shall be the sole beneficiaries of the Contingent Payments Trust, and the Contingent Payments Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein, in the Plan and in the Confirmation Order, including those powers set forth in Section 6.2 of this Trust Agreement.

1.9. ~~1.9.~~ Privileges.

(a) In connection with the vesting and transfer of the Contingent Payments Trust Assets, the Contingent Payments Trustee shall stand in the same position as the Debtor with respect to any claim the Debtor and/or its Estate may have as to an attorney-client privilege, work-product doctrine, or any other privilege or confidentiality protections attaching to any documents or communications (whether written or oral) relating to the Contingent Payments Trust Assets, and the Contingent Payments Trustee shall succeed to all rights of the Debtor and/or its Estate to hold, preserve, assert, be the beneficiary of or waive any such privilege or protection (collectively, “**Privileges**”). As of the Effective Date, all Privileges of the Debtor relating to the Contingent Payments Trust Assets shall be deemed transferred, assigned, and delivered by the Debtor to the Contingent Payments Trust, without waiver or release, and shall vest with the Contingent Payments Trust. No such Privilege shall be waived by disclosures to the Contingent

Payments Trustee of the Debtor's documents, information, or communication subject to attorney-client privilege, work product protections, or other immunities (including those related to common interest or joint defense with third parties), or protections from disclosure held by the Debtor. The Debtor's Privileges relating to the Contingent Payments Trust Assets will remain subject to the rights of third parties under applicable law, including any rights arising from the common interest doctrine, the joint defense doctrine, joint attorney-client representation, or any agreement; *provided*, that prior to waiving such privilege, the Contingent Payments Trustee shall provide such third party with any written notice to the extent required by any joint defense or common interest agreements as of the Petition Date. Any and all work product created by or on behalf of the Contingent Payments Trustee, the Contingent Payments Trust Professionals, and their respective agents, representatives, and employees shall be deemed confidential to the extent that such work product is not protected by the attorney-client privilege, attorney work-product doctrine, or any other applicable privilege.

## ARTICLE II~~ARTICLE H~~

### CONTINGENT PAYMENTS TRUST BENEFICIARIES

2.1. ~~2.1.~~ Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to the beneficial interest of a Contingent Payments Trust Beneficiary under this Trust Agreement, or if there is any disagreement between the assignees, transferees, heirs, representatives, or legatees succeeding to all or a part of such an interest resulting in adverse claims or demands being made in connection with such interest, then, in any of such events, the Contingent Payments Trustee shall be entitled, in its sole discretion, to refuse to comply with any such conflicting claims or demands.

2.2. ~~2.2.~~ Rights of Contingent Payments Trust Beneficiaries. **"Contingent Payments Trust Interests"** means a non-certified beneficial interest in the Contingent Payments Trust granted, in accordance with the Plan, either to the Contingent Payments Holding Trust or to Holders of a Noteholder Claim, an Allowed Patheon Rejection Claim, or an Allowed General Unsecured Claims, which shall entitle such Holders to distributions from the Contingent Payments Trust in accordance with the Plan. Each Contingent Payments Trust Beneficiary shall be entitled to participate in the rights and benefits due to a Contingent Payments Trust Beneficiary hereunder. Contingent Payments Trust Interests are hereby declared and shall be in all respects personal property. No surviving spouse, heir or devisee of any deceased Contingent Payments Trust Beneficiary shall have any right of dower, homestead or inheritance, or of partition, or any other right, statutory or otherwise, in the Contingent Payments Trust Assets, but the whole title to the Contingent Payments Trust Assets shall be vested in the Contingent Payments Trust and the sole interest of the Contingent Payments Trust Beneficiaries shall be the rights and benefits given to such person under this Trust Agreement, the Confirmation Order and the Plan. For the avoidance of doubt, the Contingent Payments Trust (with the assistance of the Disbursing Agent(s) (as defined herein) necessary) shall

make Distributions to the Contingent Payments Trust Beneficiaries only in accordance with the Plan and this Trust Agreement.

2.3. ~~2.3.~~ Evidence of Contingent Payments Trust Interests. The Contingent Payments Trustee shall maintain at all times a register of the names, distribution addresses and amounts of Contingent Payments Trust Beneficiaries (the “**Register**”). If Holders of Noteholder Claims, an Allowed Patheon Rejection Claim, or Allowed General Unsecured Claims (as of the Effective Date, or as may be Allowed thereafter pursuant to the Plan and this Trust Agreement) are treated as Contingent Payments Trust Beneficiaries pursuant to the Plan, the Register shall include the names, distribution addresses and amounts of such Holders of Allowed Claims, and shall be based on the list of Holders of Claims maintained by the Notice and Claims Agent as of the Effective Date and prepared in accordance with the provisions of the Plan and the Confirmation Order. The initial Register shall be delivered to the Contingent Payments Trustee by the Debtor. All references in this Trust Agreement to Contingent Payments Trust Beneficiaries shall be read to mean holders of record as set forth in the Register maintained by the Contingent Payments Trustee and, to the extent Holders of Noteholder Claims are beneficiaries, may include Holders of Noteholder Claims who are beneficial holders of Claims in Class 3, who hold their position through a broker, bank, or other nominee. The Contingent Payments Trustee shall cause the Register to be kept at its office or at such other place or places as may be designated by the Contingent Payments Trustee from time to time. The Contingent Payments Trustee shall, upon the written request of a Contingent Payments Trust Beneficiary, provide reasonably adequate documentary evidence of such Contingent Payments Trust Beneficiary’s Contingent Payments Trust Interest, as indicated in the Register. For the avoidance of doubt, ownership of a Contingent Payments Trust Interest will not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except the book entry system.

2.4. ~~2.4.~~ Transfer of Contingent Payments Trust Interests. Subject to Section 2.5, the ~~The~~ Contingent Payments Trust Interests shall be fully transferable and the Contingent Payments Trust shall recognize any such transfer of ~~Claims~~ Contingent Payments Trust Interests occurring after the Effective Date; *provided*, that (i) any such transferor and transferee must provide written notice, in the form attached hereto as Exhibit A, to the Contingent Payments Trustee within five (5) business date of such transfer, and (ii) any transfer or assignment of a Contingent Payments Trust Interest by will, intestate succession or otherwise by operation of law shall not be effective against or binding upon the Contingent Payments Trust unless and until such transfer or assignment is recorded in the Register, which shall be completed as soon as practicable. The entries in the Register shall be conclusive absent manifest error, and the Contingent Payments Trust and the Contingent Payments Trustee shall treat each person whose name is recorded in the Register pursuant to the terms of this Trust Agreement as the owner of Contingent Payments Trust Interests indicated therein for all purposes of this Trust Agreement, notwithstanding notice to the contrary.

~~2.5.~~ Exemption from Registration. Exemption from Registration. The Contingent Payments Trust Interests have not been registered pursuant to the Securities

Act of 1933, as amended (the “Securities Act”), or any state securities law, and shall not be listed for public trading on any securities exchange. The parties hereto intend that the rights of the holders of Contingent Payments Trust Interests shall not be “securities” under applicable laws, but none of the parties hereto represents or warrants that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemption from registration provided by Section 1145 of the Bankruptcy Code and by other applicable law to apply to their issuance under the Plan. The Contingent Payments Trust shall not be required to file reports with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on account of any transfer. No transfer of a Contingent Payments Trust Interests that causes the Contingent Payments Trust to be required to file reports with the Securities and Exchange Commission pursuant to Sections 13 or 15(d) of the Exchange Act shall be permitted and any such transfer shall be void *ab initio*. In order to prevent the Contingent Payments Trust from becoming subject to such reporting requirements, the Contingent Payments Trustee may impose certain transfer restrictions designed to maintain the Contingent Payments Trust as non-reporting entity, and the Contingent Payments Trust Agreement may be amended pursuant to Section 10.9 to make such changes as are deemed necessary or appropriate to ensure that the Contingent Payments Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the Trust Indenture Act of 1939, as amended, or the Investment Company Act of 1940, as amended.

2.6. ~~2.6. Limited Liability.~~ No provision of this Trust Agreement, the Plan or the Confirmation Order, and no mere enumeration herein of the rights or privileges of any Contingent Payments Trust Beneficiary, shall give rise to any liability of such Contingent Payments Trust Beneficiary solely in its capacity as such, whether such liability is asserted by the Debtor, creditors, successors, representatives, employees, or equity interest holders of the Debtor, or by any other person. Contingent Payments Trust Beneficiaries are deemed to receive the Distributions of Contingent Payments Trust Assets in accordance with the terms of this Trust Agreement, the Plan, and the Confirmation Order in exchange for their Allowed Claims without further obligation or liability of any kind, but subject to the provisions of this Trust Agreement.

### ARTICLE III~~ARTICLE III~~

#### **DURATION AND TERMINATION OF CONTINGENT PAYMENTS TRUST**

3.1. ~~3.1. Dissolution of the Contingent Payments Trust.~~ The Contingent Payments Trust shall be dissolved upon the earlier of (i) the distribution of all distributable Contingent Payments Trust Assets (and any income and/or proceeds realized therefrom) to the Contingent Payments Trust Beneficiaries (ii) such other time as may be determined by the Contingent Payments Trustee, with the consent of the Controlling Contingent Payments Trust Beneficiaries. Except as otherwise specifically provided herein, upon dissolution of the Contingent Payments Trust, the Contingent Payments Trustee shall have no further duties or obligations hereunder and this Trust Agreement

shall terminate other than the provisions that expressly survive termination. ~~The “Controlling Contingent Payments Trust Beneficiaries” means, (i) the Contingent Payments Holding Trust or, upon resolution of all Disputed Claims and the transfer by the Contingent Payments Holding Trust of its interests in the Contingent Payments Trust to the Holders of Noteholder Claims, Allowed Patheon Rejection Claims and Allowed General Unsecured Claims, (ii) the Contingent Payments Trust Beneficiaries holding a majority of the aggregate amount of Allowed Claims of all Contingent Payments Trust Beneficiaries.~~

#### ARTICLE IV ~~ARTICLE IV~~

### ADMINISTRATION OF THE CONTINGENT PAYMENTS TRUST

4.1. ~~4.1.~~ Payment of Claims, Expenses, and Liabilities. The Contingent Payments Trustee shall use the funds in the Wind-Down Account to administer the Contingent Payments Trust, including paying taxes, filing tax returns, funding payroll, and other employee costs, providing for the purchase of errors and omissions insurance and/or other forms of indemnification for the Contingent Payments Trustee, in each case, to the extent applicable, and for all such items and other costs of administering the Plan and the Contingent Payments Trust. The Contingent Payments Trustee may establish and administer any other necessary reserves that may be required under the Plan or this Trust Agreement. Notwithstanding anything to the contrary contained in the Plan or this Trust Agreement other than Section 1.2(b) of this Trust Agreement, the Contingent Payments Trustee may make transfers of Cash between the accounts and reserves established under the Plan to satisfy Claims and other obligations in accordance with the Plan and the Wind-Down Budget.

#### 4.2. ~~4.2.~~ Distributions.

(a) Generally. The Contingent Payments Trustee (with the assistance of the Disbursing Agent(s) as necessary) shall make distributions to the Contingent Payments Trust Beneficiaries on account of their Contingent Payments Trust Interests only in accordance with the terms of the Plan, the Confirmation Order, this Trust Agreement and the Wind Down Budget, and only to the extent that the Contingent Payments Trust has sufficient income and/or proceeds realized from Contingent Payments Trust Assets or excess Cash in the Wind Down Account pursuant to Section 1.6 of this Trust Agreement to make such payments in accordance with and to the extent provided for in the Plan, the Confirmation Order and this Trust Agreement. The Contingent Payments Trustee, in consultation with the Contingent Payments Trust Advisory Board, shall make a determination of the amount of Cash available for distribution, which shall include the amount of unrestricted Cash then on hand (including any Cash received from the Debtor on the Effective Date, and treating any permissible investment as Cash for purposes of this Section 4.3 of this Trust Agreement), reduced by any such amounts that (i) are reasonably necessary to meet contingent liabilities and to maintain the value of the Contingent Payments Trust Assets, (ii) are determined to be necessary to pay or reserve for reasonably incurred or anticipated expenses (including,

but not limited to, any Taxes imposed on or payable by the Debtor or the Contingent Payments Trust or in respect of the Contingent Payments Trust Assets), or (iii) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Contingent Payments Trust in accordance with the Plan and this Trust Agreement. The Contingent Payments Trustee shall then distribute available Cash, if any, to the Contingent Payments Trust Beneficiaries.

(b) Date of Distributions. The Contingent Payments Trustee shall make distributions to Contingent Payments Trust Beneficiaries entitled to distributions from the Contingent Payments Trust as provided in the Plan and this Trust Agreement on such dates as it chooses, in ~~its reasonable discretion~~ consultation with the Contingent Payments Trust Advisory Board; *provided*, however, that any such distributions shall be made in an expeditious and orderly manner following the receipt of any Contingent Payment or any determination that the Wind Down Account holds excess Cash in accordance with Section 1.6 of this Trust Agreement.

(c) Delivery of Distributions. If any dispute arises as to the identity of a Contingent Payments Trust Beneficiary that is entitled to receive a distribution pursuant to the Plan, the Disbursing Agent may, in lieu of making such distribution to such person, make the distribution into an escrow account until the disposition thereof is determined by written agreement among the interested parties to such dispute.

(d) Disbursing Agent.

(i) Except as otherwise provided herein, the Disbursing Agent shall make distributions to Contingent Payments Trust Beneficiaries to the address set forth in the Register, which shall be (a) the addresses set forth on the respective proofs of Claim filed by such Contingent Payments Trust Beneficiaries, if applicable; (b) the addresses set forth on any written notices of address changes delivered to the Notice and Claims Agent or the Contingent Payments Trust, as applicable after the date of any related proof of Claim; or (c) at the address reflected in the Schedules or, if not reflected in the Schedules, then in the other records of the Debtor if no proof of Claim is filed and the Contingent Payments Trustee or the Debtor have not received a written notice of a change of address. The Contingent Payments Trustee shall have the absolute and unconditional right to rely on the information provided by the Debtor for purposes of notices and distributions under this Trust Agreement; *provided*, however, that the manner of such distributions shall be determined at the discretion of the Contingent Payments Trustee.

(ii) Distributions to Contingent Payments Trust Beneficiaries on account of Noteholder Claims. Contingent Payments Trust Beneficiaries that hold Contingent Payments Trust Interests on account of Noteholder Claims shall receive a distribution in accordance with the customary procedures of DTC. Distributions to such Contingent Payments Trust Beneficiaries shall be deemed completed when made to (or at the direction of) the Indenture Trustee, which shall hold or direct such distributions for the benefit of such Contingent Payments

Trust Beneficiaries. The Indenture Trustee may transfer or direct the transfer of such distributions directly through the facilities of DTC (whether by means of book-entry exchange, free delivery, or otherwise) and will be entitled to recognize and deal for all purposes under the Plan and this Contingent Payments Trust Agreement with Contingent Payments Trust Beneficiaries that hold Contingent Payments Trust Interests on account of Noteholder Claims, to the extent consistent with the customary practices of DTC. The Indenture Trustee shall not incur any liability whatsoever on account of any distributions under the Plan except for gross negligence or willful misconduct. If the Indenture Trustee is unable to make, or consents to the Contingent Payments Trustee making such distributions, then the Contingent Payments Trustee, with the Indenture Trustee's cooperation, shall make such distributions. The Indenture Trustee shall have no duties, obligations, or responsibilities with respect to any form of distribution to Contingent Payments Trust Beneficiaries that hold Contingent Payments Trust Interests on account of Noteholder Claims that is not DTC eligible, and the Contingent Payments Trustee shall make such distributions. For the avoidance of doubt, all such distributions referenced in this paragraph shall be subject to the Trustee Charging Lien.

(iii) ~~(ii)~~ Exculpation of Disbursing Agent. From and after the Effective Date, the Disbursing Agent, solely in its capacity as Disbursing Agent, shall be exculpated by all Entities, including Holders of Claims against the Debtor, Contingent Payments Trust Beneficiaries, and other parties in interest, from any and all Claims, Causes of Action, and other assertions of liability arising out of the discharge of the powers and duties conferred upon such Disbursing Agent by the Plan or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan, or applicable law, except for actions or omissions to act arising out of the gross negligence or willful misconduct, fraud, malpractice, criminal conduct, or *ultra vires* acts of such Disbursing Agent.

(iv) ~~(iii)~~ Rights and Powers of Disbursing Agent. The Disbursing Agent may (a) effect all actions and execute all agreements, instruments, and other documents necessary to carry out the provisions of the Plan; (b) make all distributions contemplated hereby; and (c) perform such other duties as may be required of the Disbursing Agent pursuant to the Plan.

(v) ~~(iv)~~ Expenses of Disbursing Agent. Except as otherwise ordered by the Bankruptcy Court, any reasonable and documented fees and expenses incurred by the Disbursing Agent acting in such capacity (including reasonable documented attorneys' fees and expenses) on or after the Effective Date shall be paid in accordance with the Wind-Down Budget from the Wind-Down Account in the ordinary course of business. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties. If the Disbursing Agent is otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Contingent Payments Trust.

(e) Undeliverable or Non-Negotiated Distributions. If any distribution to a Contingent Payments Trust Beneficiary (1) is returned as undeliverable for lack of a current address or otherwise; or (2) is not cashed or otherwise presented for collection by the Contingent Payments Trust Beneficiary within ninety (90) calendar days after the mailing of such distribution, the Contingent Payments Trustee shall file with the Bankruptcy Court the name and last known address of the Contingent Payments Trust Beneficiary of undeliverable distribution or uncashed distribution, as applicable. If, after the passage of thirty (30) calendar days after such Filing, the payment or distribution on the Allowed Claim still cannot be made, then (1) the Contingent Payments Trust Beneficiary shall cease to be entitled to the undeliverable distribution or uncashed distribution, which will revert to the Contingent Payments Trust; and (2) the Allowed Claim of such Holder shall be deemed disallowed and expunged for purposes of further distributions under the Plan and this Trust Agreement. Nothing contained in the Plan or this Trust Agreement shall require the Debtor, the Contingent Payments Trustee, or any Disbursing Agent to attempt to locate any Contingent Payments Trust Beneficiary.

(f) Manner of Payment under Plan. Any distributions to be made by or on behalf of the Debtor or the Contingent Payments Trustee (as applicable) pursuant to the Plan or this Trust Agreement shall be made by checks drawn on accounts maintained by the Contingent Payments Trustee or by wire transfer if circumstances justify, at the option of the Contingent Payments Trustee.

(g) Foreign Currency Exchange Rate. As of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal*, on the Petition Date.

(h) Fractional Dollars. Notwithstanding any other provision of the Plan, the Disbursing Agent shall not be required to make distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment shall reflect a rounding of such fraction down to the nearest whole dollar.

(i) Satisfaction of Claims. Except as otherwise specifically provided in the Plan, distributions and deliveries to be made on account of Allowed Claims under the Plan shall be in complete and final satisfaction, settlement, and discharge of and exchange for such Allowed Claims.

(j) Minimum Distributions. No payment of Cash in an amount of less than one hundred U.S. dollars (\$100.00) shall be required to be made on account of any Allowed Claim. Such undistributed amount may instead be used in accordance with the Plan and this Trust Agreement. If the Cash available for the final distribution is less than the cost to distribute such funds, the Contingent Payments Trustee may donate such funds to a charitable organization that is (a) described in section 501(c)(3) of the IRC, (b) exempt from U.S. federal income tax under section 501(a) of the IRC, (c) not a

“private foundation,” as defined in section 509(a) of the IRC, and (d) that is unrelated to the Contingent Payments Trust and any insider of the Contingent Payments Trustee.

(k) Allocation of Distributions between Principal and Interest. To the extent that any Allowed Claim entitled to a distribution under the Plan is based upon any obligation or instrument that is treated for U.S. federal income tax purposes as indebtedness of the Debtor and accrued but unpaid interest thereon, such distribution shall be allocated first to the principal amount of the Allowed Claim (as determined for U.S. federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Allowed Claim, to accrued but unpaid interest.

(l) Distributions Free and Clear. Except as otherwise provided in the Plan, any distribution or transfer made under this Trust Agreement, including distributions to any Contingent Payments Trust Beneficiary, shall be free and clear of any Liens, Claims, encumbrances, charges, and other interests, and no other entity shall have any interest, whether legal, beneficial, or otherwise, in property distributed or transferred pursuant to the Plan.

4.3. ~~4.3.~~ Compliance with Laws. Any and all distributions of the Contingent Payments Trust Assets shall be in compliance with applicable laws, including applicable federal and state tax and securities laws.

4.4. ~~4.4.~~ Fiscal Year. Except for the first and last years of the term of the Contingent Payments Trust, the fiscal year of the Contingent Payments Trust shall be the calendar year. For the first and last years of the term of the Contingent Payments Trust, the fiscal year of the Contingent Payments Trust shall be such portion of the calendar year that the Contingent Payments Trust is in existence.

~~4.5. Books and Records.~~ The Books and Records. To the extent applicable, the Contingent Payments Trust shall retain and preserve the Debtor’s books, records, and files that relate to the Contingent Payments Trust Assets that shall have been delivered to or created by the Contingent Payments Trust, in such detail and for such period of time as may be necessary to enable it to make full and proper reports in respect thereof in accordance with the provisions of this Trust Agreement and applicable provisions of law, including applicable tax, securities and other federal and state laws. The Contingent Payments Trust Advisory Board shall have the right upon five (5) business days’ notice to the Contingent Payments Trustee to inspect such books and records, subject to the Contingent Payments Trustee’s right to deny access in a reasonable effort to preserve privileged or confidential information. Except as otherwise provided herein or in the Plan, nothing in this Trust Agreement requires the Contingent Payments Trustee to file any accounting or seek approval of any court with respect to the administration of the Contingent Payments Trust, or as a condition for making any payment or Distribution out of the Contingent Payments Trust Assets.

4.6. ~~4.7.~~ Contingent Payments Trust Insurance. The Contingent Payments Trustee is hereby authorized, but not required, to obtain all reasonable insurance coverage for itself, ~~its~~ the Contingent Payments Trust Advisory Board, and their

agents, representatives, employees or independent contractors, including coverage with respect to the liabilities, duties and obligations of the Contingent Payments Trustee ~~and its, the Contingent Payments Trust Advisory Board, and their~~ agents, representatives, employees or independent contractors under this Trust Agreement and the Plan (“**Insurance Coverages**”). The cost of any such Insurance Coverage shall be an expense of the Contingent Payments Trust and paid out of the Wind-Down Account in accordance with the Wind-Down Budget.

4.7. ~~4.8.~~ Reports.

(a) The Contingent Payments Trustee shall, as soon as reasonably practicable and no later than 45 days following the end of each fiscal quarter during the term of the Contingent Payments Trustee, deliver by electronic communication (including e-mail and Internet or intranet websites) to the Contingent Payments Trust ~~Beneficiaries Advisory Board, and to each Contingent Payments Trust Beneficiary who has so requested from the Liquidating Trustee in writing,~~ the following information: (i) the costs and expenses of the Contingent Payments Trust that are incurred (including any taxes imposed on the Contingent Payments Trust or actual reasonable out-of-pocket fees and expenses incurred by Contingent Payments Trust Professionals in connection with the administration and liquidation of the Contingent Payments Trust Assets) during the preceding fiscal quarter and the remaining amount (if any) of the Wind-Down Account, (ii) the amounts listed in clause (i) incurred since the Effective Date, (iii) the amount of Cash and other assets received by the Contingent Payments Trust during the prior fiscal quarter, (iv) the aggregate amount of Cash and other assets received by the Contingent Payments Trust since the Effective Date and (v) the aggregate amount of distributions from the Contingent Payments Trust to the Contingent Payments Trust Beneficiaries since the Effective Date. The Contingent Payments Trustee shall also timely prepare, file, and distribute such additional statements, reports, and submissions as may be necessary to cause the Contingent Payments Trust and the Contingent Payments Trustee to be in compliance with applicable law. The Contingent Payments Trustee shall also provide the U.S. Trustee and the Bankruptcy Court the information and reports they may reasonably request concerning Trust administration.

ARTICLE V ~~ARTICLE V~~

**TAX MATTERS**

5.1. ~~5.1.~~ Treatment of Trust for Tax Purposes. The Contingent Payments Trust is intended to be classified as an investment trust described in Treasury Regulations section 301.7701-4(c) that is treated as a grantor trust for U.S. federal income tax purposes. On the Effective Date, if all Disputed Claims are resolved prior to the Trust Election Date, then the Debtor shall be deemed to have distributed pro rata undivided interests in the Contingent Payments Trust Assets to Holders of Noteholder Claims, Allowed Patheon Rejection Claims or Allowed General Unsecured Claims and such Holders shall be deemed to have contributed such Contingent Payments Trust Assets to the Contingent Payments Trust in exchange for beneficial interests in the

Contingent Payments Trust. If all Disputed Claims are not resolved prior to the Trust Election Date, then the Debtor shall be deemed to have distributed the Contingent Payments Trust Assets to the Contingent Payments Holding Trust and the Contingent Payments Holding Trust shall be deemed to have contributed the Contingent Payments Trust Assets to the Contingent Payments Trust in exchange for its beneficial interest in the Contingent Payments Trust.

5.2. ~~5.2.~~ Tax Reporting.

(a) To the extent permitted by applicable law, all parties, including the Contingent Payments Trustee, any Contingent Payments Trust Beneficiaries and all Holders of Noteholder Claims, Allowed Patheon Rejection Claims and Allowed General Unsecured Claims, shall report consistently with the foregoing for all applicable tax reporting purposes.

(b) The Contingent Payments Trustee shall be responsible for payment, out of the Wind-Down Account, of any taxes imposed on the Contingent Payments Trust or its assets.

(c) As soon as reasonably practicable after the Contingent Payments Trust Assets are transferred to the Contingent Payments Trust, but in no event later than one hundred and twenty (120) days thereafter, the Contingent Payments Trustee shall make a good faith valuation of the Contingent Payments Trust Assets, which may be based on the Debtor's valuation of the Contingent Payments Trust Assets if the Contingent Payments Trustee determines in its sole discretion that the Debtor's valuation is materially accurate, and such valuation shall be used consistently by all parties for all U.S. federal income tax purposes. The Contingent Payments Trustee shall also file (or cause to be filed) any other statements, returns, or disclosures relating to the Contingent Payments Trust that are required by any Governmental Unit. In connection with the preparation of the valuation contemplated hereby and by the Plan, the Contingent Payments Trustee shall be entitled to retain such professionals and advisors as the Contingent Payments Trustee shall determine to be appropriate or necessary, and the Contingent Payments Trustee shall take such other actions in connection therewith as it determines to be appropriate or necessary. Such valuation shall be used consistently by such parties for all U.S. federal income tax purposes.

(d) The Contingent Payments Trustee shall annually send to each Contingent Payments Trust Beneficiary a separate statement and/or Schedule K-1, as applicable, regarding the information necessary for tax reporting purposes and shall instruct all such beneficiaries to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such beneficiary's underlying beneficial owners with instructions to utilize such information in preparing their U.S. federal income tax returns. The Contingent Payments Trustee shall also file (or cause to be filed) any other statement, return or disclosure relating to the Contingent Payments Trust that is required by any governmental unit.

5.3. ~~5.3.~~ Tax Withholdings by Contingent Payments Trustee.

(a) The Contingent Payments Trustee shall (1) withhold, deduct, and pay over to the appropriate governmental authority any amount required to be withheld under U.S. federal, state, local, or foreign tax laws with respect to any distribution pursuant to this Trust Agreement and (2) comply with any reporting requirements imposed by any U.S. federal, state, local, or foreign taxing authority. The Contingent Payments Trustee may withhold all or the appropriate portion of any distribution due to any Contingent Payments Trust Beneficiary until such time as such Contingent Payments Trust Beneficiary provides the necessary information to comply with any withholding requirements of any governmental authority. Any tax withheld shall be treated as distributed and received by the applicable Contingent Payments Trust Beneficiary for all purposes of this Trust Agreement and the Plan. If a Contingent Payments Trust Beneficiary fails to provide the information necessary to comply with any withholding requirements of any governmental authority on or before the day that is one year after the Effective Date of the Plan, then such beneficiary's distribution may be treated as unclaimed property in accordance with this Trust Agreement.

5.4. ~~5.4.~~ IRS Forms.

(a) In connection with the Plan, to the extent applicable and not an obligation of the Purchasers under the Sale Documents, the Contingent Payments Trustee shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Contingent Payments Trustee shall be authorized to take all actions necessary to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms it believes are reasonable and appropriate. The Contingent Payments Trustee reserves the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances.

(b) As a condition precedent to receiving any distribution under this Plan, each Contingent Payments Trust Beneficiary that is entitled to a distribution under the Plan and this Trust Agreement must provide the Contingent Payments Trustee an applicable executed IRS Form. An Allowed Claim of a Holder that fails to provide an applicable executed IRS Form or provide any other required information to effectuate a distribution within sixty (60) days after service (by first class mail) of a formal request for the same by the Contingent Payments Trustee shall be deemed disallowed and expunged for purposes of distributions under the Plan.

ARTICLE VI ~~ARTICLE VI~~

**POWERS OF AND LIMITATIONS ON THE CONTINGENT PAYMENTS TRUSTEE**

6.1. ~~6.1.~~ Term of the Contingent Payments Trustee.

(a) The Contingent Payments Trustee will serve on and after the Effective Date in accordance with [this Trust Agreement and the Plan, reporting to the Contingent Payments Trust Advisory Board to the extent required by this Trust Agreement and the Plan](#). Subject to Article VII of this Trust Agreement and Article IV of the Plan, the Contingent Payments Trustee shall hold office until the earlier to occur of (i) the termination of the Contingent Payments Trust in accordance with the terms set forth in this Trust Agreement and the Plan or (ii) the Contingent Payments Trustee's death, resignation, dissolution, incapacity or removal pursuant to this Trust Agreement. The duties, responsibilities and powers of the Contingent Payments Trustee shall terminate on the date the Contingent Payments Trust is wound up and dissolved in accordance with Delaware law pursuant to Section 3.1 of this Trust Agreement; *provided*, that Section ~~8.29.2~~ of this Trust Agreement, Section ~~8.49.4~~ of this Trust Agreement, Section ~~8.59.5~~ of this Trust Agreement and Section ~~8.69.6~~ of this Trust Agreement shall survive such termination, dissolution and entry. References herein to the Contingent Payments Trustee shall refer to the individual, individuals, or entity serving as the Contingent Payments Trustee solely in its or their capacity as trustees hereunder.

6.2. ~~6.2.~~ Responsibilities and Authority of the Contingent Payments Trustee.

(a) The responsibilities and authority of the Contingent Payments Trustee shall include the following rights and responsibilities, which shall be the exclusive rights and responsibilities of the Contingent Payments Trustee: (i) preserving and administering the Contingent Payments Trust, (ii) administering and paying taxes, including, among other things, (1) filing tax returns, and (2) representing the interest and account of the Contingent Payments Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding, or audit; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Contingent Payments Trustee's performance of its duties under the Plan and this Trust Agreement; (iv) distributing information statements as required for U.S. federal income tax and other applicable tax purposes; (v) making distributions to the Contingent Payments Trust Beneficiaries in accordance with the Plan and this Trust Agreement; and (vi) such other responsibilities as may be vested in the Contingent Payments Trustee pursuant to the Plan, this Trust Agreement, or an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of the Plan.

6.3. Actions Taken by the Contingent Payments Trustee.

(a) ~~(b)~~ The Contingent Payments Trustee may take any and all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan and this Trust Agreement, without the need for Bankruptcy Court approval (unless otherwise indicated), including, but not limited to ~~;~~:

(i) ~~(1)~~ the execution and delivery of appropriate agreements or other documents of consolidation, conversion, disposition, transfer, or dissolution containing terms that are consistent with the terms of the Plan and this Trust Agreement and that satisfy the requirements of applicable law;

(ii) ~~(2)~~ the power to invest funds of the Contingent Payments Trust, and withdraw, make distributions, and pay taxes and other obligations owed by the Contingent Payments Trust from such funds in accordance with the Plan and this Trust Agreement;

(iii) ~~(3)~~ the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Contingent Payments Trustee with respect to its responsibilities. For the avoidance of doubt, a law firm shall not be disqualified from serving as counsel to the Contingent Payments Trustee solely because of that law firm's prior retention by the Debtor, the Creditors' Committee, or a member of the Creditors' Committee, the Indenture Trustee, or the Consenting Noteholders;

(iv) ~~(4)~~ the execution and delivery of any appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, duty, or obligation on terms consistent with the Plan and this Trust Agreement; ~~(5)~~

(v) the ability to appear and have standing in the Bankruptcy Court (or any other court having jurisdiction over the Contingent Payments Trust Assets) to be heard with regard to any matters that may affect or relate to the Contingent Payments Trust Assets;

(vi) the filing of appropriate documents with the appropriate governmental authorities pursuant to applicable law; ~~(6)~~

(vii) the ability to protect and enforce the rights to the Contingent Payments Trust Assets vested in the Contingent Payments Trust by this Trust Agreement;

(viii) the ability to oversee compliance with the Contingent Payments Trust's accounting, finance, and reporting obligations;

(ix) the powers set forth in Section 4.2(b) of this Trust Agreement; ~~and~~  
~~(7)~~

(x) the power to pay any and all expenses and make all other payments in connection with administering the Contingent Payments Trust without further order of the Bankruptcy Court;

(xi) the ability to open and maintain bank accounts in the name of the Contingent Payments Trust, draw checks and drafts thereon on the sole signature of the Contingent Payments Trustee, and terminate such accounts as the Contingent Payments Trustee deems appropriate;

(xii) in the event that the Contingent Payments Trustee determines that the Contingent Payments Trust Beneficiaries or the Contingent Payments Trust may, will, or have become subject to adverse tax consequences, in the Contingent Payments Trustee's sole discretion, the power to take such actions that will, or are intended to, alleviate such adverse tax consequences;

(xiii) make Distributions to holders of Allowed Claims and deliver Distributions on account of the Contingent Payments Trust Interests or such other Distributions as may be authorized by Final Order of the Bankruptcy Court, this Trust Agreement, or the Plan to the Contingent Payments Trust Beneficiaries in accordance with this Trust Agreement; and

(xiv) any and all other actions that the Contingent Payments Trustee determines is necessary or appropriate to effectuate the Plan and this Trust Agreement.

6.4. ~~6.3.~~ Limitations on Contingent Payments Trustee.

(a) The Contingent Payments Trustee shall, on behalf of the Contingent Payments Trust, protect and conserve the assets of the Trust. In construing the provisions of this Trust Agreement, the presumption shall be in favor of a grant of power to the Contingent Payments Trustee, but subject, for the avoidance of doubt, to the restrictions, prohibitions and limitations expressly set forth in Sections 1.2 and 1.3 and otherwise in this Trust Agreement. The Contingent Payments Trustee shall not at any time, on behalf of the Contingent Payments Trust or the Contingent Payments Trust Beneficiaries, (i) enter into or engage in any trade or business, or (ii) take any actions that are not related, directly or indirectly, to the purposes of this Trust Agreement and the Contingent Payments Trust or the administration or implementation of the terms hereof.

(b) Notwithstanding anything in this Trust Agreement to the contrary, the Contingent Payments Trustee shall provide reasonable notice to the Contingent Payments Trust Advisory Board with respect to the following matters (the "Material Matters"):

(i) any incurrence of any cost, expense or fee in excess of \$[50,000] (covering services to be rendered or products utilized by the Contingent Payments Trustee within a one month period);

(ii) determination of the timing of any Distribution to the Contingent Payments Trust Beneficiaries;

(iii) the dissolution of the Contingent Payments Trust.

In the event that the Contingent Payments Trust Advisory Board objects to the Contingent Payments Trustee's proposed course of action with respect to any Material Matter, the Contingent Payments Trust Advisory Board shall submit such matter to the Contingent Payments Trust Beneficiaries, and the Contingent Payments Trustee shall not pursue such proposed course of action if, within twenty (20) days following the submission of such matter to the Contingent Payments Trust Beneficiaries, the Controlling Contingent Payments Trust Beneficiaries have not objected to the proposed course of action.

6.5. ~~6.4.~~ Compensation and Expenses of the Contingent Payments Trustee.

(a) The Contingent Payments Trustee shall be entitled to receive reasonable compensation in connection with its performance of its duties plus the reimbursement of reasonable out-of-pocket expenses. All reasonable and documented costs, expenses, and obligations, including filing fees, incurred by the Contingent Payments Trustee or the Contingent Payments Trust Professionals shall be paid from the Wind-Down Account, prior to any distribution to the Contingent Payments Trust Beneficiaries and without further Bankruptcy Court approval or order (subject to the limitations set forth in this Trust Agreement and the Plan).

6.6. ~~6.5.~~ Agents, Employees, and Professionals.

(a) The Contingent Payments Trustee, in consultation with the Contingent Payments Trust Advisory Board, shall have the right, without Court approval, to retain the services of attorneys, accountants, and other professionals and agents (the "**Contingent Payments Trust Professionals**"), to assist and advise the Contingent Payments Trustee in the performance of its duties, and to compensate and reimburse expenses of such professionals in accordance with the this Trust Agreement; *provided*, however, that it is understood that the Contingent Payments Trust intends to initially engage [•] as Primary Trust Counsel. None of the professionals that represented parties in interest in the Chapter 11 Case shall be precluded from being engaged by the Contingent Payments Trust solely on account of their service as a professional for such parties-in-interest prior to the Effective Date. The Contingent Payments Trustee may remove any Contingent Payments Trust Professional with or without Cause.

(b) The Primary Trust Counsel that is appointed in accordance with the terms of the Plan shall be considered a Contingent Payments Trust Professional for the purposes of this Trust Agreement and the Plan. Notwithstanding Section 6.7(a) of this Trust Agreement, in the event of the resignation, removal, bankruptcy or insolvency of the Primary Trust Counsel, a vacancy shall be deemed to exist, and a successor shall

be appointed by the Contingent Payments Trustee in consultation with the Contingent Payments Trust Advisory Board.

(c) After the Effective Date, Contingent Payments Trust Professionals shall be required to submit reasonably detailed invoices on a monthly basis to the Contingent Payments Trustee and the Contingent Payments Trust Advisory Board, including in such invoices a description of the work performed, who performed such work, and if billing on an hourly basis, the hourly rate of such person, plus an itemized statement of expenses. In the event of any dispute concerning the entitlement to, or the reasonableness of any compensation and/or expenses of any Contingent Payments Trust Professionals, either the Contingent Payments Trustee or the affected party may ask the Bankruptcy Court to resolve the dispute. The Contingent Payments Trustee is authorized to pay compensation for services rendered or reimbursement of expenses incurred after the Effective Date in the ordinary course and without the need for Bankruptcy Court approval.

6.7. ~~6.6.~~ Investment of Contingent Payments Trust Monies. The Contingent Payments Trustee may, in consultation with the Contingent Payments Trust Advisory Board, invest Cash (including any earnings thereon or proceeds therefrom); *provided*, that such investments are investments permitted to be made by an “investment trust” within the meaning of Treasury Regulations section 301.7701-4(c), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities. All monies and other assets received by the Contingent Payments Trust as Contingent Payments Trust Assets (including the proceeds thereof as a result of investment in accordance with this Section 6.6 of this Trust Agreement) shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Contingent Payments Trust Beneficiaries, and shall not be segregated from other Contingent Payments Trust Assets, unless and to the extent required by the Plan.

6.8. ~~6.7.~~ Resident Trustee.

(a) The Resident Trustee has been appointed and hereby agrees to serve as the trustee of the Contingent Payments Trust solely for the purpose of complying with the requirement of Section 3807(a) of the Trust Act that the Contingent Payments Trust have one trustee, which, in the case of a natural person, is a resident of the State of Delaware, or which in all other cases, has its principal place of business in the State of Delaware. The duties and responsibilities of the Resident Trustee shall be limited solely to (i) accepting legal process served on the Contingent Payments Trust in the State of Delaware, (ii) the execution of any certificates required to be filed with the office of the Delaware Secretary of State that the Resident Trustee is required to execute under section 3811 of the Trust Act, and (iii) any other duties specifically allocated to the Resident Trustee in this Trust Agreement. Except as provided in the foregoing sentence, the Resident Trustee shall have no management responsibilities or owe any fiduciary duties to the Contingent Payments Trust, the Contingent Payments Trustee, the Contingent Payments Trust Advisory Board, or the Contingent Payments Trust Beneficiaries.

(b) By execution of this Trust Agreement, the Resident Trustee accepts the Contingent Payments Trust created herein. Except as otherwise expressly required by Section 6.7(a) of this Trust Agreement, the Resident Trustee shall not have any duty or liability with respect to the administration of the Contingent Payments Trust, the investment of the Contingent Payments Trust Assets or the Distribution of the Contingent Payments Trust Assets to the Contingent Payments Trust Beneficiaries, and no such duties shall be implied. The Resident Trustee shall not be liable for the acts or omissions of the Contingent Payments Trustee or the Contingent Payments Trust Advisory Board, nor shall the Resident Trustee be liable for supervising or monitoring the performance of the duties and obligations of the Contingent Payments Trustee or the Contingent Payments Trust Advisory Board under this Trust Agreement, except as expressly required by Section 6.7(a) of this Trust Agreement. The Resident Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder. The Resident Trustee shall not be personally liable under any circumstances, except for its own willful misconduct, bad faith, or gross negligence. Without limiting the foregoing:

(i) the Resident 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;

(ii) no provision of this Trust Agreement shall require the Resident 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 Resident 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;

(iii) the Resident Trustee shall not be personally liable for the validity or sufficiency of this Trust Agreement or for the due execution of this Trust Agreement by the other parties to this Trust Agreement;

(iv) the Resident 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;

(v) the Resident Trustee may request the Contingent Payments 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 Resident Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(vi) in the exercise or administration of the Contingent Payments Trust hereunder, the Resident Trustee (A) may act directly or through agents or attorneys pursuant to agreements entered into with any of them and (B) may consult with nationally recognized counsel selected by it in good faith and with

due care 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; and

(vii) the Resident Trustee acts solely as Resident Trustee hereunder and not in its individual capacity, and all persons having any claim against the Resident Trustee by reason of the transactions contemplated by this Trust Agreement shall look only to the Contingent Payments Trust Assets for payment or satisfaction thereof.

(c) The Resident Trustee shall be entitled to receive compensation out of the Wind-Down Account in accordance with the Wind-Down Budget for the services that the Resident Trustee performs in accordance with this Trust Agreement in accordance with such fee schedules as shall be agreed from time to time by the Resident Trustee and the Contingent Payments Trustee. The Resident Trustee may also consult with counsel (who may be counsel for the Contingent Payments Trust, counsel for the Resident Trustee, or counsel for both the Contingent Payments Trust and the Resident Trustee) with respect to those matters that relate to the Resident Trustee's role as the Delaware resident trustee of the Contingent Payments Trust, and the reasonable legal fees incurred in connection with such consultation shall be reimbursed out of the Wind-Down Budget to the Resident Trustee pursuant to this Section 6.7(c) of this Trust Agreement on terms reasonably acceptable to the Contingent Payments Trust Advisory Board; *provided* that no such fees shall be reimbursed to the extent that they are incurred as a result of the Resident Trustee's gross negligence, bad faith or willful misconduct.

(d) The Resident Trustee shall serve for the duration of the Contingent Payments Trust or until the earlier of (i) the effective date of the Resident Trustee's resignation, or (ii) the effective date of the removal of the Resident Trustee. The Resident Trustee may resign at any time by giving 30 days' written notice to the Contingent Payments Trustee and the Contingent Payments Trust Advisory Board; *provided*, however, that such resignation shall not be effective until such time as a successor Resident Trustee has accepted appointment. The Resident Trustee may be removed at any time by the Contingent Payments Trustee or the Contingent Payments Trust Advisory Board, by providing 30 days' written notice to the Resident Trustee; *provided*, however, such removal shall not be effective until such time as a successor Resident Trustee has accepted appointment. Upon the resignation or removal of the Resident Trustee, the Contingent Payments Trustee shall appoint a successor Resident Trustee. If no successor Resident Trustee shall have been appointed and shall have accepted such appointment within 45 days after the giving of such notice of resignation or removal, the Resident Trustee may petition the Bankruptcy Court for the appointment of a successor Resident Trustee. Any successor Resident Trustee appointed pursuant to this Section 6.7(d) of this Trust Agreement shall be eligible to act in such capacity in accordance with this Trust Agreement and, following compliance with this Section 6.7(d) of this Trust Agreement, shall become fully vested with the rights, powers, duties, and obligations of its predecessor under this Trust Agreement, with like effect as if originally named as Resident Trustee. Any such successor Resident Trustee shall notify the Resident Trustee of its appointment by providing written notice to the Resident Trustee,

and upon receipt of such notice, the Resident Trustee shall be discharged of its duties herein.

~~6.8. Fiduciary and Other Duties.~~ Fiduciary and Other Duties.

Notwithstanding anything in the Plan or this Trust Agreement to the contrary, the Contingent Payments Trustee and the members of the Contingent Payments Trust Advisory Board shall always act in the best interests of the Contingent Payments Trust Beneficiaries and in furtherance of the purpose of the Contingent Payments Trust as set forth in Article IV.D of the Plan. Except for obligations expressly imposed on the Contingent Payments Trustee and the Contingent Payments Trust Advisory Board by this Trust Agreement, to the extent that, at law or in equity, the Contingent Payments Trustee or the Contingent Payments Trust Advisory Board has duties (including fiduciary duties) to the Contingent Payments Trust Beneficiaries or to any other person that is a party to or is otherwise bound by this Trust Agreement, such duties are hereby eliminated by this Trust Agreement to the fullest extent permitted by applicable law; *provided*, however, that this Trust Agreement does not eliminate the implied contractual covenant of good faith and fair dealing.

ARTICLE VII ~~ARTICLE VII~~

**SUCCESSOR CONTINGENT PAYMENTS TRUSTEE**

~~7.1. Resignation.~~ Resignation. The Contingent Payments Trustee may resign from the Contingent Payments Trust by giving prior written notice thereof to the Contingent Payments Trust Advisory Board or, in the event the Contingent Payments Trust Advisory Board is no longer in existence, the Contingent Payments Trust Beneficiaries, and, prior to the entry of a final decree closing the Chapter 11 Case, to the U.S. Trustee and Bankruptcy Court. Such resignation shall become effective on the earlier to occur of (a) the date specified in such written notice and (b) the effective date of the appointment of a successor Contingent Payments Trustee in accordance with Section 7.4 of this Trust Agreement and such successor's acceptance of such appointment in accordance with Section 7.5 of this Trust Agreement.

~~7.2. Removal.~~ Removal. The Contingent Payments Trustee may be removed with or without cause at any time. ~~Any Contingent Payments Trust Beneficiary seeking to remove a Contingent Payments Trustee may motion for removal. If by the Controlling Contingent Payments Trust Beneficiaries vote for removal, such removal.~~ Removal of the Contingent Payments Trustee shall be effective on the date specified in the resolution. Notwithstanding the removal of the Contingent Payments Trustee pursuant to this Section 7.2, the rights of the resigning Contingent Payments Trustee under this Trust Agreement with respect to acts or omissions occurring prior to the effectiveness of such removal will continue for the benefit of such resigning Contingent Payments Trustee following the effectiveness of such resignation. The "Controlling Contingent Payments Trust Beneficiaries" means, (i) the Contingent Payments Holding Trust or, (ii) upon resolution of all Disputed Claims and the transfer by the Contingent Payments Holding Trust of its interests in the Contingent Payments Trust to

the Holders of Noteholder Claims, Allowed Patheon Rejection Claims and Allowed General Unsecured Claims, the Contingent Payments Trust Beneficiaries holding a majority of the aggregate amount of Allowed Claims of all Contingent Payments Trust Beneficiaries.

7.3. ~~7.3.~~ Effect of Resignation or Removal. The resignation, removal, incompetency, bankruptcy, or insolvency of the Contingent Payments Trustee shall not operate to terminate the Contingent Payments Trust or to revoke any existing agency created pursuant to the terms of this Trust Agreement, the Plan, or the Confirmation Order or invalidate any action theretofore taken by the Contingent Payments Trustee. All fees and expenses properly incurred by the Contingent Payments Trustee prior to the resignation, incompetency or removal of the Contingent Payments Trustee shall be paid from the Wind-Down Account pursuant to the Wind-Down Budget, unless such fees and expenses are disputed by the Contingent Payments Trust Advisory Board, in which case the Bankruptcy Court shall resolve the dispute and any disputed fees and expenses of the predecessor Contingent Payments Trustee that are subsequently allowed by the Bankruptcy Court shall be paid from the Contingent Payments Trust Assets. In the event of the resignation or removal of the Contingent Payments Trustee, such Contingent Payments Trustee shall (a) promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the Contingent Payments Trust Advisory Board or the successor Contingent Payments Trustee or directed by the Bankruptcy Court to effect the termination of such Contingent Payments Trustee's capacity under this Trust Agreement, (b) promptly deliver to the Contingent Payments Trust Advisory Board and the successor Contingent Payments Trustee all documents, instruments, records and other writings related to the Contingent Payments Trust as may be in the possession of such Contingent Payments Trustee, and (c) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Contingent Payments Trustee.

7.4. ~~7.4.~~ Appointment of Successor. ~~Upon the resignation or dissolution of a Contingent Payments Trustee, the Contingent Payments Trustee shall have the authority to designate a successor Contingent Payments Trustee upon the consent of the Controlling Contingent Payments Trust Beneficiaries.~~ Upon the death, resignation, dissolution, incapacity or removal of a Contingent Payments Trustee, the Controlling Contingent Payments Trust Beneficiaries ~~shall appoint,~~ in consultation with the Contingent Payments Trust Advisory Board, shall have the authority to designate a successor Contingent Payments Trustee ~~on an interim or permanent basis, with the consent of the Controlling Contingent Payments Trust Beneficiaries.~~

7.5. ~~7.5.~~ Acceptance of Appointment by Successor Contingent Payments Trustee. Any successor Contingent Payments Trustee so appointed shall consent to and accept in writing the terms of this Trust Agreement and agrees that the provisions of this Trust Agreement shall be binding upon and inure to the benefit of the successor Contingent Payments Trustee. Upon acceptance in writing, such successor Contingent Payments Trustee shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion and privileges of its predecessor in the Contingent Payments Trust with like effect as if originally named Contingent Payments

Trustee and shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

## ARTICLE VIII

### CONTINGENT PAYMENTS TRUST ADVISORY BOARD

#### 8.1. Contingent Payments Trust Advisory Board.

(a) There is hereby established and created a special advisory board (the “Contingent Payments Trust Advisory Board”) to monitor and oversee the Contingent Payments Trustee and other activities required in connection with the management and distribution of the Contingent Payments Trust Assets, including the performance of the Contingent Payments Trustee’s obligations under the Plan and this Trust Agreement.

(b) As of the Effective Date, the members of the Contingent Payments Trust Advisory Board shall be [•], [•] and [•]. Any or all members of the Contingent Payments Trust Advisory Board may resign from the Contingent Payments Trust Advisory Board at any time by written notice of resignation to the Contingent Payments Trustee. A member of the Contingent Payments Trust Advisory Board shall be deemed to be immediately removed as a member of the Contingent Payments Trust Advisory Board in the event that a Contingent Payments Trust Advisory Board member (i) dies, resigns, or becomes incapacitated, or (ii) otherwise fails or refuses to serve and is removed pursuant to the terms of this Contingent Payments Trust Agreement. In the event of a Contingent Payments Trust Advisory Board member’s resignation or removal, the Contingent Payments Trust Advisory Board, in consultation with the Contingent Payments Trustee, may, but is not required to, elect a replacement member. There shall be no minimum number of members of the Contingent Payments Trust Advisory Board to retain its function; provided, however, if there shall have been no Contingent Payments Trust Advisory Board for a period of thirty (30) consecutive days, then the **Contingent Payments Trustee may**, during such vacancy, and thereafter, ignore any reference in the Plan, this Trust Agreement, or the Confirmation Order to the Contingent Payments Trust Advisory Board, and all such references in the Plan, this Trust Agreement or the Confirmation Order shall be null and void. Any deadlock in a vote by the members of the Contingent Payments Trust Advisory Board may be broken by a vote cast by the Contingent Payments Trustee.

(c) The **Contingent Payments Trustee** shall provide the Contingent Payments Trust Advisory Board with such reports as set forth in Section 4.8. Each member of the Contingent Payments Trust Advisory Board shall be reimbursed by the Contingent Payments Trust from the Contingent Payments Trust Assets for its actual, reasonable, and documented out-of-pocket expenses incurred for serving on the Contingent Payments Trust Advisory Board; *provided* that each member of the Contingent Payments Trust Advisory Board shall not receive any reimbursement for the services of any attorney, accountant, and other professional and agent. **Except as**

provided for in this Section 8.1(c) of this Trust Agreement, the members of the Contingent Payments Trust Advisory Board shall not be entitled to receive any other form of compensation for their services provided as such members. The Contingent Payments Trust Advisory Board may, but shall not be required to, adopt by-laws addressing the conduct of the Contingent Payments Trust Advisory Board.

(d) The Contingent Payments Trust Advisory Board, may, at any time, provide notice to the Contingent Payments Trust Beneficiaries that the Contingent Payments Trust Advisory Board recommends removal of the Contingent Payments Trustee by the Contingent Payments Trust Beneficiaries. Within ten (10) business days of providing such notice, the Contingent Payments Trust Beneficiaries shall vote on such matter, and the Contingent Payments Trustee shall be removed upon the vote in favor of removal by the Controlling Contingent Payments Trust Beneficiaries pursuant to Section 7.2 of this Trust Agreement.

(e) The Contingent Payments Trust Advisory Board, any of the Contingent Payments Trust Advisory Board's members or designees, attorneys, accountants, or other professionals, any duly designated agent or representative of the Contingent Payments Trust Advisory Board, and the respective employees of any of the foregoing, shall not be liable for any act or omission of any other member, designee, agent, or representative of the Contingent Payments Trust Advisory Board, nor shall any member be liable for any act or omission taken or to be taken in that member's capacity as a member of the Contingent Payments Trust Advisory Board, other than acts resulting from such member's intentional misconduct, willful misconduct, or gross negligence. The Contingent Payments Trust Advisory Board may, in connection with the performance of the Contingent Payments Trust Advisory Board's functions, and in the Contingent Payments Trust Advisory Board's sole and absolute discretion, consult with counsel, accountants, and any other professionals, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such counsel, accountants, or other professionals, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, the Contingent Payments Trust Advisory Board shall be under no obligation to consult with counsel, accountants or other professionals, and the Contingent Payments Trust Advisory Board's determinations to not do so shall not result in the imposition of liability on the Contingent Payments Trust Advisory Board or the Contingent Payments Trust Advisory Board's members or designees, unless such determination is based on intentional misconduct, willful misconduct, or gross negligence.

(f) In the event there is an act required to be taken pursuant to the terms of this Trust Agreement, the Plan or the Confirmation Order by the Contingent Payments Trust Advisory Board and the Contingent Payments Trust Advisory Board cannot act because of a voting deadlock, the deadlock shall be broken by the vote of the Contingent Payments Trustee. If the Contingent Payments Trustee determines not to vote, the matter shall be decided by the Bankruptcy Court by submission of a motion on proper notice.

~~ARTICLE VIII~~  
ARTICLE IX

**RELIANCE, LIABILITY AND INDEMNIFICATION**

9.1. ~~8.1.~~ Reliance by the Contingent Payments Trustee and the Members of the Contingent Payments Trust Advisory Board. Except as otherwise provided in this Trust Agreement, the Plan or the Confirmation Order, the Contingent Payments Trustee, the members of the Contingent Payments Trust Advisory Board and the Resident Trustee may rely and shall be protected in acting upon the advice of any Contingent Payments Trust Professional and/or upon any resolution, statement, instrument, opinion, report, notice, request, consent, order or other paper or document reasonably believed by the Contingent Payments Trustee, the Contingent Payments Trust Advisory Board and the Resident Trustee to be genuine and to have been signed or presented by the proper party or parties.

9.2. ~~8.2.~~ Liability to Third Persons. No Contingent Payments Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Contingent Payments Trust Assets or the affairs of the Contingent Payments Trustee. The Contingent Payments Trustee, the members of the Contingent Payments Trust Advisory Board, the Resident Trustee and the Contingent Payments Trust Professionals shall not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person (including, in the case of the Contingent Payments Trustee and members of the Contingent Payments Trust Advisory Board, to any Contingent Payments Trust Professionals retained by the Contingent Payments Trustee in accordance with this Trust Agreement) in connection with the Contingent Payments Trust Assets or the affairs of the Contingent Payments Trust and shall not be liable with respect to any action taken or omitted to be taken in good faith, except for actions and omissions determined by a final order of the Bankruptcy Court to be due to their respective bad faith, gross negligence, intentional fraud, criminal conduct or willful misconduct, and all such persons shall look solely to the Contingent Payments Trust Assets for satisfaction of claims of any nature arising in connection with affairs of the Contingent Payments Trust. Other than as set forth in the Plan or in the Confirmation Order, nothing in this Section ~~8.29.2~~ of this Trust Agreement shall be deemed to release any Contingent Payments Trust Beneficiary from any actions or omissions occurring prior to the Effective Date.

9.3. ~~8.3.~~ Nonliability of Contingent Payments Trustee and Contingent Payments Trust Advisory Board for Acts of Others. Except as provided herein, nothing contained in this Trust Agreement, the Plan or the Confirmation Order shall be deemed to be an assumption by the Contingent Payments Trustee, the Contingent Payments Trust Advisory Board (or its members), the Resident Trustee or the Contingent Payments Trust Professionals of any of the liabilities, obligations or duties of the Debtor or shall be deemed to be or contain a covenant or agreement by the Contingent Payments Trustee to assume or accept any such liability, obligation or duty. Any successor Contingent Payments Trustee, Contingent Payments Trust Advisory Board member or Resident Trustee may accept and rely upon any accounting made by or on behalf of any

predecessor Contingent Payments Trustee hereunder, and any statement or representation made as to the assets comprising the Contingent Payments Trust Assets or as to any other fact bearing upon the prior administration of the Contingent Payments Trust, so long as it has a good faith basis to do so. The Contingent Payments Trustee, the Contingent Payments Trust Advisory Board members, and the Resident Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. The Contingent Payments Trustee or any successor Contingent Payments Trustee and the Contingent Payments Trust Advisory Board members shall not be liable for any act or omission of any predecessor Contingent Payments Trustee or Contingent Payments Trust Advisory Board member. No provision of this Trust Agreement shall require the Contingent Payments Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of his rights or powers hereunder if the Contingent Payments 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.

~~8.4. Exculpation.~~Exculpation. No Holder of a Claim or Interest, Contingent Payments Trust Beneficiary, or any other party in interest will have, or otherwise pursue, any claim or Cause of Action against the Contingent Payments Trustee, the members of the Contingent Payments Trust Advisory Board, the Resident Trustee, the Contingent Payments Trust, or the Contingent Payments Trust Professionals (for each of the foregoing, solely in the performance of their duties) for making payments and distributions in accordance with the Plan and this Trust Agreement or for fulfilling any functions incidental to implementing the provisions of the Plan or the this Trust Agreement, except for actions or omissions to act that are determined by final order of the Bankruptcy Court to have arisen out of their own respective intentional fraud, criminal conduct, gross negligence or willful misconduct. Any action taken or omitted to be taken with the express approval of the Bankruptcy Court shall conclusively be deemed not to constitute gross negligence or willful misconduct.

9.5. ~~8.5. Limitation of Liability.~~ The Contingent Payments Trustee, the members of the Contingent Payments Trust Advisory Board, the Resident Trustee and the Contingent Payments Trust Professionals will not be liable for punitive, exemplary, consequential, special, or other damages for a breach of this Trust Agreement under any circumstances.

~~8.6. Indemnity.~~Indemnity. The Contingent Payments Trust shall indemnify and hold harmless (a) the Contingent Payments Trustee (solely in its capacity as such and in its capacity as officer and director of the Debtor), (b) members of the Contingent Payments Trust Advisory Board, (c) the Resident Trustee and ~~(ed)~~ the Contingent Payments Trust Professionals ((a), (b) ~~and~~, (c) and (d) collectively, the “**Indemnified Parties**”), from and against and with respect to any and all liabilities, losses, damages, claims, costs, and expenses, including, but not limited to, attorneys’ fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, other than actions or omissions resulting from such Indemnified Party’s bad faith, willful misconduct (including, without limitation, actual fraud), or gross negligence, or the implementation or administration of the Plan or this Trust Agreement.

To the extent that an Indemnified Party asserts a claim for indemnification as provided above, (y) any payment on account of such claim shall be paid solely from the Wind-Down Account and shall be entitled to a priority distribution therefrom, superior to any other rights (other than those rights of the Contingent Payments Trust Professionals) to receive a distribution from the Wind-Down Account, including the Contingent Payments Trust Beneficiaries and (z) the legal fees and related costs incurred by counsel to the Contingent Payments Trustee in monitoring and participating in the defense of such claims giving rise to the asserted right of indemnification shall be advanced to such Indemnified Party (and such Indemnified Party undertakes to repay such amounts if it ultimately shall be determined that such Indemnified Party is not entitled to be indemnified therefore) out of the Wind-Down Account or any insurance purchased using the Wind-Down Account, and paid with priority over distributions to the Contingent Payments Trust Beneficiaries. This indemnification provision shall remain available to, and be binding upon, any former Contingent Payments Trustee or Resident Trustee or member of the Contingent Payments Trust Advisory Board, or the estate of any decedent of the Contingent Payments Trustee or Resident Trustee or member of the Contingent Payments Trust Advisory Board, and shall survive the termination of this Trust Agreement.

## ~~ARTICLE X~~ ~~ARTICLE IX~~

### MISCELLANEOUS PROVISIONS

10.1. ~~9.1. Governing Law.~~ Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent that any document to be entered into in connection herewith provides otherwise, the rights, duties, and obligations arising under this Trust Agreement shall be governed by, and construed and enforced in accordance with, the Bankruptcy Code and, to the extent not inconsistent therewith, the laws of the State of Delaware, without giving effect to principles of conflicts of laws.

~~9.2. Jurisdiction.~~ Jurisdiction. Subject to the proviso below, prior to the entry of a final decree closing the Chapter 11 Case, the parties agree that the Bankruptcy Court shall have exclusive jurisdiction over the Contingent Payments Trust ~~and~~ the Contingent Payments Trustee and the Contingent Payments Trust Advisory Board, including the administration and activities of the Contingent Payments Trust ~~and~~ the Contingent Payments Trustee and the Contingent Payments Trust Advisory Board, and, pursuant to the Plan, the Bankruptcy Court has retained such jurisdiction.

~~9.3. Severability.~~ Severability. In the event any provision of this Trust Agreement or the application thereof to any person or circumstances shall be determined by a final, non-appealable judgment or order to be invalid or unenforceable to any extent, the remainder of this Trust 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 Trust Agreement shall be valid and enforceable to the full extent permitted by law.

~~9.4. Notices.~~Notices. Any notice or other communication required or permitted to be made under this Trust Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally, by email, sent by nationally recognized overnight delivery service or mailed by first-class mail:

(a) if to the Contingent Payments Trust, to:

[•]

with a copy to:

[•]

(b) if to the Contingent Payments Trust Advisory Board, to each of:

[•]

[•]

[•]

(c) ~~(b)~~ if to the Resident Trustee, to:

[•]

(d) ~~(e)~~ if to any Contingent Payments Trust Beneficiary, to the name and distribution address set forth in the Register with respect to such Contingent Payments Trust Beneficiary.

~~9.5. Headings.~~Headings. The headings contained in this Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Trust Agreement or of any term or provision of this Trust Agreement.

10.6. ~~9.6.~~Controlling Document. In the event of any conflict between the terms and provisions in the Plan and the terms and provisions in the Disclosure Statement, the Plan Supplement, any other instrument or document created or executed pursuant to the Plan, or any order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), the Plan shall govern and control; *provided* that, in the event of a conflict between this Trust Agreement, on the one hand, and any of the Plan, the Plan Supplement or the Definitive Documents, on the other hand, this Trust Agreement shall govern and control in all respects relating to the operation and/or administration of the Contingent Payments Trust and/or indemnification of the Contingent Payments Trustee.

10.7. ~~9.7.~~ Entire Trust Agreement. This Trust Agreement (including the recitals and annex hereto), the Plan, and the Confirmation Order constitute the entire agreement by and among the parties and supersede all prior and contemporaneous agreements or understandings by and among the parties with respect to the subject matter of this Trust Agreement.

~~9.8. Cooperation.~~ Cooperation. On the Effective Date, the Debtor shall promptly upon the request of the Contingent Payments Trustee (a) turn over or otherwise make available to the Contingent Payments Trust at no cost to the Contingent Payments Trust or the Contingent Payments Trustee, any books and records of the Debtor held by such professionals that relate to the Contingent Payments Trust Assets, and (b) subject to payment of reasonable and documented fees and expenses incurred by such professionals (i) make available information, including electronic records or documents, reasonably required by the Contingent Payments Trust to carry out its duties hereunder and (ii) otherwise reasonably cooperate with the Contingent Payments Trustee in carrying out its duties hereunder, subject, in the case of (a) and (b), to the confidentiality provisions herein to preserve the confidential nature of the Debtor's books and records.

10.9. ~~9.9.~~ Amendment and Waiver. ~~This Except as provided otherwise in this Section 9.9 of this Trust Agreement, any provision of this Trust Agreement may be amended or waived, including amendments necessary to implement the provisions of the Plan, by the~~ may from time to time be amended, supplemented or modified by the Contingent Payments Trustee, but only with (i) the approval of the Bankruptcy Court or (ii) the written consent of the Controlling Contingent Payments Trust Beneficiaries; provided that any such amendment which alters the duties or liabilities of the Contingent Payments Holding Trustee shall Trust Advisory Board shall also require the consent of the Contingent Payments ~~Holding Trustee;~~ Trust Advisory Board; *provided further* that any such amendment which alters the duties or liabilities of the Resident Trustee shall also require the consent of the Resident Trustee. The Contingent Payments Trustee shall provide the Contingent Payments Trust Advisory Board notice of any proposed amendment, supplement or modification to this Trust Agreement at least five (5) business day prior to the effective date of such amendment, supplement or modification; provided, however, that the Contingent Payments Trust Advisory Board may waive the notice period. Notwithstanding this Section ~~9.9~~10.9 of this Trust Agreement, (a) any amendment to this Trust Agreement shall not be inconsistent with the Plan and the Confirmation Order and shall not be permitted if such amendment or waiver would permit the Contingent Payments Trustee to vary the investment of Contingent Payments Trust Beneficiaries (within the meaning of Treasury Regulations section 301.7701-4(c)) or would otherwise adversely affect the status of the Contingent Payments Trust as a grantor trust for U.S. federal income tax purposes, (b) the Contingent Payments Trustee may, without the approval of the Controlling Contingent Payments Trust Beneficiaries or the Resident Trustee, amend the provisions of the Contingent Payments Trust Agreement if the Contingent Payments Trust is advised at any time by its accountants or legal counsel that the amendments made are necessary to ensure that the Contingent Payments Trust's status as a grantor trust will be respected for U.S. federal income tax purposes and (c) the Contingent Payments Trustee may, without the approval of the Controlling Contingent Payments Trust Beneficiaries or the Resident Trustee, amend the provisions

of the Contingent Payments Trust Agreement to the extent necessary to implement the provisions of the Plan.

~~9.10. Confidentiality.~~Confidentiality. The Contingent Payments Trustee, each member of the Contingent Payments Trust Advisory Board, and each of ~~its~~their respective employees, members, agents, professionals and advisors, including the Contingent Payments Trust Professionals (each a “**Confidential Party**” and, collectively, the “**Confidential 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 Confidential Party, of or pertaining to any Debtor to which any of the Contingent Payments Trust Assets relates; *provided*, however, that such information may be disclosed if (a) it is now or in the future becomes generally available to the public other than as a result of a disclosure by the Confidential Parties or (b) such disclosure is required of the Confidential Parties pursuant to legal process including subpoena or other court order or other applicable laws or regulations. In the event that any Confidential Party is requested to divulge confidential information pursuant to this clause (b), such Confidential Party shall promptly, in advance of making such disclosure, provide reasonable notice of such required disclosure to the Contingent Payments Trustee (or the Contingent Payments Trust Advisory Board in case the Contingent Payments Trustee or the Resident Trustee is the disclosing party) to allow sufficient time to object to or prevent such disclosure through judicial or other means and shall cooperate reasonably with the Contingent Payments Trustee (or the Contingent Payments Trust Advisory Board, as applicable) in making any such objection, including appearing in any judicial or administrative proceeding in support of any objection to such disclosure.

~~9.11. Meanings of Other Terms.~~Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, 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. The words herein and words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section, or subdivision of this Trust Agreement. The term “including” shall mean “including, without limitation.”

~~9.12. Counterparts.~~Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same instrument. A portable document file (PDF) signature of any party shall be considered to have the same binding legal effect as an original signature.

10.13. ~~9.13.~~Intention of Parties to Establish **Contingent Payments Grantor** Trust. This Trust Agreement is intended to create an investment trust that is treated as a grantor trust for U.S. federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Trust

Agreement may be amended to comply with such U.S. federal income tax laws, which amendments may apply retroactively.

[Signature Page Follows]

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

**TRICIDA, INC.**

By: \_\_\_\_\_

Name:

Title:

**CONTINGENT PAYMENTS TRUSTEE**

By: \_\_\_\_\_

Name: [•]

**RESIDENT TRUSTEE**

[•], not in its individual capacity, but solely as Resident Trustee

By: \_\_\_\_\_

Name: [•]

**EXHIBIT A**

**Notice of Transfer**

The undersigned Contingent Payments Trust Beneficiary (the “**Transferor**”) has agreed to transfer the Contingent Payments Trust Interest set forth below to the undersigned transferee (the “**Transferee**”).

Transferor Name:

Date Executed:

Amount and Type of Contingent Payments Trust Interest Transferred:

Notes Claim:

General Unsecured Claim (Allowed / Asserted):

Patheon Rejection Claim (~~Allowed / Asserted~~):

Transferee Name:

Transferee Address:

Transferee e-mail address:

**EXHIBIT F**

**Blackline of Contingent Payments Holding Trust Agreement**

*Sidley Draft 5.4.2023*  
*Privileged & Confidential*

**CONTINGENT PAYMENTS HOLDING TRUST AGREEMENT OF**

**TRICIDA CONTINGENT PAYMENTS HOLDING TRUST**

**DATED AS OF [•], 2023**

**BY AND AMONG**

**[•] AS CONTINGENT PAYMENTS HOLDING TRUSTEE,**

**[•] AS RESIDENT TRUSTEE,**

**and**

**THE DEBTOR HERETO**

**TABLE OF CONTENTS**

PAGE

ARTICLE I

DECLARATION OF TRUST

1.1.	Creation of Trust.....	2
1.2.	Purpose of Contingent Payments Holding Trust.....	2
1.3.	Transfer of Contingent Payments <u>Holding</u> Trust <del>Interest</del> <u>Assets to the</u> <u>Contingent Payments Holdings Trust</u> .....	3
1.4.	Appointment and Acceptance of Contingent Payments Holding Trustee.....	5
1.5.	Wind-Down Budget.....	<del>56</del>
1.6.	Reversionary Interests.....	<del>56</del>
1.7.	Incidents of Ownership.....	<del>56</del>
1.8.	Privileges.....	6

ARTICLE II

CONTINGENT PAYMENTS HOLDING TRUST BENEFICIARIES

2.1.	Conflicting Claims.....	<del>67</del>
2.2.	Rights of Contingent Payments <u>Holding</u> Trust Beneficiaries.....	7
2.3	<u>Evidence of Contingent Payments Holding Trust Interests</u> .....	7
2.4	<u>Transfer of Contingent Payments Holding Trust Interests</u> .....	8
2.5	<u>Exemption from Registration</u> .....	8
<del>2.3.</del>	<u>2.6</u> Limited Liability.....	<del>78</del>

ARTICLE III

DURATION AND TERMINATION OF CONTINGENT PAYMENTS HOLDING TRUST

3.1.	Dissolution of the Contingent Payments Holding Trust.....	<del>79</del>
3.2.	Continuance of Contingent Payments Holding Trust for Winding Up.....	<del>89</del>

ARTICLE IV

ADMINISTRATION OF THE CONTINGENT PAYMENTS HOLDING TRUST

4.1.	Payment of Claims, Expenses, and Liabilities.....	<del>810</del>
4.2.	Distributions.....	<del>810</del>
4.3.	Compliance with Laws.....	<del>911</del>
4.4.	Fiscal Year.....	<del>911</del>
4.5.	Contingent Payments Holding Trust Insurance.....	<del>911</del>
4.6.	Reports.....	<del>1011</del>

ARTICLE V

TAX MATTERS

5.1-	Treatment of Trust for Tax Purposes	<del>10</del> <u>12</u>
5.2-	Tax Reporting	<del>11</del> <u>13</u>
5.3-	Tax Withholdings by Contingent Payments Holding Trustee	<del>12</del> <u>14</u>
5.4-	IRS Forms	<del>13</del> <u>14</u>

ARTICLE VI

POWERS OF AND LIMITATIONS ON THE CONTINGENT PAYMENTS HOLDING TRUSTEE

6.1-	Term of the Contingent Payments Holding Trustee	<del>13</del> <u>15</u>
6.2-	Responsibilities and Authority of the Contingent Payments Holding Trustee	<del>14</del> <u>15</u>
<u>6.3</u>	<u>Actions Taken by the Contingent Payments Holding Trustee</u>	<u>16</u>
<del>6.3-</del>	<del>6.4</del> Limitations on Contingent Payments Holding Trustee	<del>14</del> <u>17</u>
<del>6.4-</del>	<del>6.5</del> Compensation and Expenses of the Contingent Payments Holding Trustee	<del>15</del> <u>18</u>
<del>6.5-</del>	<del>6.6</del> Agents, Employees, and Professionals	<del>15</del> <u>18</u>
<del>6.6-</del>	<del>6.7</del> Investment of Contingent Payments Holding Trust Monies	<del>16</del> <u>19</u>
<del>6.7-</del>	<del>6.8</del> Resident Trustee	<del>16</del> <u>19</u>
<del>6.8-</del>	<del>6.9</del> Fiduciary and Other Duties	<del>18</del> <u>22</u>

ARTICLE VII

SUCCESSOR CONTINGENT PAYMENTS HOLDING TRUSTEE

7.1-	Resignation	<del>19</del> <u>22</u>
7.2-	Removal	<del>19</del> <u>23</u>
7.3-	Effect of Resignation or Removal	<del>19</del> <u>23</u>
7.4-	Appointment of Successor	<del>20</del> <u>23</u>
7.5-	Acceptance of Appointment by Successor Contingent Payments Holding Trustee	<del>20</del> <u>24</u>

ARTICLE VIII

CONTINGENT PAYMENTS HOLDING TRUST ADVISORY BOARD

<u>8.1</u>	<u>Contingent Payments Holding Trust Advisory Board</u>	<u>24</u>
------------	---	-----------

ARTICLE IX

RELIANCE, LIABILITY AND INDEMNIFICATION

<del>8.1.</del>	<u>9.1</u> Reliance by the Contingent Payments Holding Trustee <del>and the</del> <u>Members of the Contingent Payments Holding Trust Advisory Board</u> .....	<del>20</del> <u>26</u>
<del>8.2.</del>	<u>9.2</u> Liability to Third Persons.....	<del>20</del> <u>26</u>
<del>8.3.</del>	<u>9.3</u> Nonliability of Contingent Payments Holding Trustee <del>and Contingent</del> <u>Payments Holding Trust Advisory Board</u> for Acts of Others.....	<del>21</del> <u>27</u>
<del>8.4.</del>	<u>9.4</u> Exculpation.....	<del>21</del> <u>27</u>
<del>8.5.</del>	<u>9.5</u> Limitation of Liability.....	<del>22</del> <u>28</u>
<del>8.6.</del>	<u>9.6</u> Indemnity.....	<del>22</del> <u>28</u>

ARTICLE ~~IX~~X

MISCELLANEOUS PROVISIONS

<del>9.1.</del>	<u>10.1</u> Governing Law.....	<del>22</del> <u>28</u>
<del>9.2.</del>	<u>10.2</u> Jurisdiction.....	<del>23</del> <u>29</u>
<del>9.3.</del>	<u>10.3</u> Severability.....	<del>23</del> <u>29</u>
<del>9.4.</del>	<u>10.4</u> Notices.....	<del>23</del> <u>29</u>
<del>9.5.</del>	<u>10.5</u> Headings.....	<del>23</del> <u>30</u>
<del>9.6.</del>	<u>10.6</u> Controlling Document.....	<del>23</del> <u>30</u>
<del>9.7.</del>	<u>10.7</u> Entire Trust Agreement.....	<del>24</del> <u>30</u>
<del>9.8.</del>	<u>10.8</u> Cooperation.....	<del>24</del> <u>30</u>
<del>9.9.</del>	<u>10.9</u> Amendment and Waiver.....	<del>24</del> <u>30</u>
<del>9.10.</del>	<u>10.10</u> Confidentiality.....	<del>24</del> <u>31</u>
<del>9.11.</del>	<u>10.11</u> Meanings of Other Terms.....	<del>25</del> <u>31</u>
<del>9.12.</del>	<u>10.12</u> Counterparts.....	<del>25</del> <u>31</u>
<del>9.13.</del>	<u>10.13</u> Intention of Parties to Establish <del>Contingent Payment</del> <del>Holding</del> <u>Liquidating</u> Trust <del>Trust</del> .....	<del>25</del> <u>32</u>

**CONTINGENT PAYMENTS HOLDING TRUST AGREEMENT OF TRICIDA  
CONTINGENT PAYMENTS HOLDING TRUST**

THIS CONTINGENT PAYMENTS HOLDING TRUST AGREEMENT OF TRICIDA CONTINGENT PAYMENTS HOLDING TRUST, dated as of [●], 2023 (this “**Trust Agreement**”), is by and among Tricida, Inc. (the “**Debtor**”), as debtor, [●], as liquidating trustee (together with any successor or additional trustee appointed under the terms of this Trust Agreement, including Section 6.1 of this Trust Agreement, the “**Contingent Payments Holding Trustee**”), and [●] as the Delaware resident trustee (together with any successor Delaware resident trustee appointed under the terms of this Trust Agreement, the “**Resident Trustee**”), for the purpose of forming a statutory trust under and pursuant to the provisions of 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, the “**Trust Act**”) as contemplated by the Plan (the “**Contingent Payments Holding Trust**”).<sup>1</sup>

**BACKGROUND**

A. On January 11, 2023 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Case**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”);

B. On February 22, 2023, the Bankruptcy Court approved the sale of various subsets of the Debtor’s Assets to the Purchasers pursuant to section 363 of the Bankruptcy Code by entry of the Sale Order, as defined in the Plan;

C. On March 27, 2023, the Debtor filed the *Third Amended Chapter 11 Plan of Liquidation for Tricida, Inc.* [D.I. 328] and the *Fourth Amended Disclosure Statement for Chapter 11 Plan of Liquidation for Tricida, Inc.* [D.I. 329];

D. On [●], 2023, the Bankruptcy Court entered an order confirming the Plan [D. I. [●]] (the “**Confirmation Order**”), which became effective on [●], 2023 (the “**Effective Date**”);

E. The Plan provides for, among other things, the creation of a trust on the Effective Date for the purpose of liquidating and administering the assets of the Contingent Payments Holding Trust (the “**Contingent Payments Holding Trust Assets**”) and making distributions on account thereof to Holders of Noteholder Claims, Allowed Patheon Rejection Claims or Allowed General Unsecured Claims (the “**Contingent Payments Holding Trust Beneficiaries**”) in accordance with the terms of

---

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the *Chapter 11 Plan of Liquidation for Tricida, Inc.*, as confirmed by the Confirmation Order (as defined below) (including all exhibits thereto, as the same may be further amended, modified, or supplemented from time to time, the “**Plan**”).

this Trust Agreement and the Plan. The Contingent Payments Holding Trust is intended to be treated as a liquidating trust in accordance with section 301.7701-4(d) of the regulations promulgated under the Internal Revenue Code of 1986, as amended (the “IRC,” and such regulations, the “**Treasury Regulations**”), with no objective to continue or engage in the conduct of a trade or business. The further classification of the Contingent Payments Holding Trust for tax purposes shall depend on whether all Disputed Claims are resolved prior to the Trust Election Date. If all Disputed Claims are resolved prior to the Trust Election Date, the Contingent Payments Holding Trust is intended to qualify as a “grantor trust” as to which the Contingent Payments Holding Trust Beneficiaries shall be treated as grantors and owners for U.S. federal income tax purposes and, to the extent permitted by applicable law, for state and local income tax purposes. If all Disputed Claims are not resolved prior to the Trust Election Date, the Contingent Payments Holding Trust is intended to be treated as a “complex trust” in accordance with Subpart C of Part I of Subchapter J of the IRC. The Contingent Payments Holding Trust is established and is effective for the benefit of the Contingent Payments Holding Trust Beneficiaries; and

F. The duties and powers of the Contingent Payments Holding Trustee shall include all powers necessary to administer the Contingent Payments Holding Trust prior to the Contingent Payments Holding Trust’s dissolution upon resolution of the Disputed Claims as set forth in Article IV.E of the Plan, including, without limitation, the duties and powers listed in the Plan.

## AGREEMENT

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

## ARTICLE I

### DECLARATION OF TRUST

1.1 ~~1.1.~~ Creation of Trust. The Debtor, the Contingent Payments Holding Trustee, and the Resident Trustee, pursuant to the Plan and the Confirmation Order, and in accordance with the applicable provisions of chapter 11 of the Bankruptcy Code, hereby create the Contingent Payments Holding Trust, which shall bear the name “Tricida Contingent Payments Holding Trust.” In connection with the exercise of the Contingent Payments Holding Trustee’s power hereunder, the Contingent Payments Holding Trustee may use this name or such variation thereof as the Contingent Payments Holding Trustee sees fit. On the Effective Date, the Contingent Payments Holding Trust shall be established pursuant to this Trust Agreement.

1.2 ~~1.2.~~ Purpose of Contingent Payments Holding Trust. The Contingent Payments Holding Trust shall be established for the purpose of: (i) liquidating and administering the assets of the Contingent Payments Holding Trust and making distributions on account thereof; (ii) administering and paying taxes, including, among other things, (1) filing tax returns, and (2) representing the interest and account of the

Contingent Payments Holding Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding, or audit; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Contingent Payments Holding Trustee's performance of its duties under the Plan and this Trust Agreement; (iv) making distributions to the Contingent Payments Holding Trust Beneficiaries in accordance with the terms of the Plan and this Trust Agreement; and (v) such other responsibilities or powers as may be vested in or assumed by the Contingent Payments Holding Trustee pursuant to the Plan, this Trust Agreement, or by an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of this Plan, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Contingent Payments Holding Trust, in accordance with Treasury Regulations section 301.7701-4(d). The Contingent Payments Holding Trust shall qualify either as a "grantor trust," if all Disputed Claims are resolved prior to the Trust Election Date, or a "complex trust," if all Disputed Claims are not resolved prior to the Trust Election Date, for U.S. federal income tax purposes, as described in Article IV.E.1. of the Plan and Section 5.1 herein, and, to the extent permitted by applicable law, for state and local income tax purposes. To the extent permitted by applicable law, all parties, including the Contingent Payments Holding Trustee and any Contingent Payments Holding Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes. From and after the Effective Date, the Contingent Payments Holding Trustee shall act as the exclusive representative of the Estate for all purposes set forth in Article IV.D.2(b) of the Plan.

1.3 ~~1.3.~~ Transfer of Contingent Payments Holding Trust Assets to the Contingent Payments Holdings Trust.

(a) ~~On~~ Pursuant to the Plan and the Confirmation Order, on the Effective Date ~~and upon establishment~~, all right, title, and interest in and to the Contingent Payments Holding Trust Assets shall be deemed to have been irrevocably transferred, assigned, conveyed and delivered by the Debtor to the Contingent Payments Holding Trust free and clear of all encumbrances, liens and Claims of any Person, in trust for the benefit of the Contingent Payments Holding Trust; Beneficiaries for the uses and purposes stated therein and herein. The Contingent Payments Holding Trust hereby accepts all such Contingent Payments Holding Trust Assets free and clear of any and all liens and claims and agrees to hold and administer the Contingent Payments Holding Trust Assets and the remainder of the Contingent Payments Holding Trust for the benefit of the Contingent Payments Holding Trust Beneficiaries, subject to the terms and conditions of this Trust Agreement. For the avoidance of doubt, upon the transfer of the Contingent Payments Holding Trust Assets, ~~which~~ the Contingent Payments Holding Trust shall succeed to all of the Debtor's right, title, and interest in and to the Contingent Payments Holding Trust Assets, and the Debtor will have no further interest in or with respect to the Contingent Payments Holding Trust Assets or the Contingent Payments Holding Trust. The Contingent Payments Holding Trust Assets shall include, for the avoidance of doubt, (i) the Contingent Payments Holding Trust Interest and (ii) Cash in an amount as set forth in the Wind-Down Budget to fund the Wind-Down Account (as defined herein), shall be deemed transferred to the Contingent Payments Holding Trust without any further action

of the Debtor or any managers, employees, officers, directors, members, partners, shareholders, agents, advisors, or representatives of the Debtor. Pursuant to section 1141(b) and 1141(c) of the Bankruptcy Code, all transfers to the Contingent Payments Holding Trust shall be made free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as may be otherwise provided in the Plan. For all U.S. federal income tax purposes, and, to the extent permitted by applicable law, for state and local income tax purposes, all parties (including, without limitation, the Debtor, the Contingent Payments Holding Trustee, and the Contingent Payments Holding Trust Beneficiaries) shall treat the transfer of any of the Contingent Payments Holding Trust Assets to the Contingent Payments Holding Trust Beneficiaries in accordance with the terms herein as described in Section 5.1 of this Trust Agreement.

(b) Upon transfer of the Contingent Payments Holding Trust Assets to the Contingent Payments Holding Trust, the Debtor and its predecessors, successors, and assigns shall be released from all liability with respect to the delivery thereof and shall have no reversionary or further interest in or with respect to the Contingent Payments Holding Trust Assets or the Contingent Payments Holding Trust. Notwithstanding the foregoing, for purposes of section 553 of the Bankruptcy Code, the transfer of the Contingent Payments Holding Trust Assets to the Contingent Payments Holding Trust shall not affect the mutuality of obligations that otherwise may have existed prior to the effectuation of such transfer.

(c) Nothing in this Trust Agreement alters the rights and obligations of the Debtor (and its Estate) and the Debtor's insurers (and third-party claims administrators) under the Insurance Policies or modifies the coverage or benefits provided thereunder or the terms and conditions thereof or diminishes or impairs the enforceability of the Insurance Policies. The Debtor shall be deemed to have assumed only the D&O Policies, and any Insurance Policy other than a D&O Policy shall be deemed terminated on the Effective Date. Except as otherwise provided in the Plan, proceeds payable under any Insurance Policy shall be in accordance with the provisions of the applicable Insurance Policy. Except as set forth in Article IX of the Plan, nothing in the Plan or this Trust Agreement shall constitute or be deemed a waiver of any Cause of Action (including, for the avoidance of doubt, any Retained Cause of Action) that the Debtor or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained in the Plan or this Trust Agreement be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

(d) Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan and this Trust Agreement, including, without limitation, the transfer of the Contingent Payments Holding Trust Assets to the Contingent Payments Holding Trust, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation all such instruments or other documents governing or evidencing such

transfers without the payment of any such tax, recordation fee, or governmental assessment.

(e) The Contingent Payments Holding Trust Assets and all other property held from time to time by the Contingent Payments Holding Trust under this Trust Agreement and any earnings, including interest, on any of the foregoing shall be held and be applied by the Contingent Payments Holding Trustee in accordance with the terms of this Trust Agreement, the Plan and the Confirmation Order for the benefit of the Contingent Payments Holding Trust Beneficiaries, and for no other party, subject to the further covenants, conditions and terms set forth in this Trust Agreement, the Plan and the Confirmation Order.

(f) The Debtor ~~and~~, the Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Advisory Board, and any party under the control of such parties, hereby agree to execute any documents or other instruments and shall take all other steps as necessary to cause title to the Contingent Payments Holding Trust Assets to be transferred to the Contingent Payments Holding Trust in accordance with this Trust Agreement, the Plan and the Confirmation Order.

1.4 ~~1.4.~~ Appointment and Acceptance of Contingent Payments Holding Trustee.

(a) The Contingent Payments Holding Trustee has been selected by the Majority Consenting Noteholders in consultation with the Official Committee of Unsecured Creditors appointed in the Tricida, Inc, bankruptcy case. On the occurrence of the Effective Date, the Contingent Payments Holding Trustee shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to serve as the trustee and administrator of the Contingent Payments Holding Trust established pursuant to Article IV.D. of the Plan and this Trust Agreement. The Contingent Payments Holding Trustee shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan and this Trust Agreement. The Debtor shall file a notice prior to the Confirmation Hearing designating the Person or Entity selected as the Contingent Payments Holding Trustee. The appointment of the Contingent Payments Holding Trustee shall be approved in the Confirmation Order and such appointment shall be effective in accordance with the terms of Article IV.D of the Plan. The ~~initial~~ Contingent Payments Holding Trustee shall serve in such capacity, pursuant to the terms of this Trust Agreement and the Plan, until the resignation or discharge of such trustee and the appointment of a successor Contingent Payments Holding Trustee in accordance with the terms of this Trust Agreement and the Plan.

(b) The Contingent Payments Holding Trustee accepts the Contingent Payments Holding Trust created by this Trust Agreement in accordance with the terms of the Plan, the Confirmation Order and this Trust Agreement and the grant, assignment, transfer, conveyance and delivery to the Contingent Payments Holding Trust, on behalf, and for the benefit, of the Contingent Payments Holding Trust Beneficiaries, by the Debtor of all of its respective rights, titles and interests in the Contingent Payments Holding Trust Assets, upon and subject to the terms and conditions set forth herein, in the

Plan and in the Confirmation Order. The Contingent Payments Holding Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purpose of the Contingent Payments Holding Trust and not otherwise. The Contingent Payments Holding Trustee shall have the authority to bind the Contingent Payments Holding Trust in accordance with, and within the limitations set forth in this Trust Agreement, but shall for all purposes hereunder be acting in the capacity as Contingent Payments Holding Trustee, and not individually.

1.5 ~~1.5.~~ Wind-Down Budget. On the Effective Date, pursuant to the Wind-Down Budget, the Debtor shall transfer funds into an account held by the Contingent Payments Holding Trust (the "**Wind-Down Account**"), which funds shall be used for all reasonable activities and expenses to be incurred in administering the Contingent Payments Holding Trust, including but not limited to the fees and expenses of the Contingent Payments Holding Trust Professionals, as defined in Section 6.5 below.

1.6 ~~1.6.~~ Reversionary Interests. In no event shall the Contingent Payments Holding Trust Assets revert to or be distributed to the Debtor.

1.7 ~~1.7.~~ Incidents of Ownership. The Contingent Payments Holding Trust Beneficiaries shall be the sole beneficiaries of the Contingent Payments Holding Trust, and the Contingent Payments Holding Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein, in the Plan and in the Confirmation Order, including those powers set forth in Section 6.2 of this Trust Agreement.

1.8 ~~1.8.~~ Privileges.

(a) In connection with the vesting and transfer of the Contingent Payments Holding Trust Assets, the Contingent Payments Holding Trustee shall stand in the same position as the Debtor with respect to any claim the Debtor and/or its Estate may have as to an attorney-client privilege, work-product doctrine, or any other privilege or confidentiality protections attaching to any documents or communications (whether written or oral) relating to the Contingent Payments Holding Trust Assets, and the Contingent Payments Holding Trustee shall succeed to all rights of the Debtor and/or its Estate to hold, preserve, assert, be the beneficiary of or waive any such privilege or protection (collectively, "**Privileges**"). As of the Effective Date, all Privileges of the Debtor relating to the Contingent Payments Holding Trust Assets shall be deemed transferred, assigned, and delivered by the Debtor to the Contingent Payments Holding Trust, without waiver or release, and shall vest with the Contingent Payments Holding Trust. No such Privilege shall be waived by disclosures to the Contingent Payments Holding Trustee of the Debtor's documents, information, or communication subject to attorney-client privilege, work product protections, or other immunities (including those related to common interest or joint defense with third parties), or protections from disclosure held by the Debtor. The Debtor's Privileges relating to the Contingent Payments Holding Trust Assets will remain subject to the rights of third parties under applicable law, including any rights arising from the common interest doctrine, the joint defense doctrine, joint attorney-client representation, or any agreement; *provided*, that

prior to waiving such privilege, the Contingent Payments Holding Trustee shall provide such third party with any written notice to the extent required by any joint defense or common interest agreements as of the Petition Date. Any and all work product created by or on behalf of the Contingent Payments Holding Trustee, the Contingent Payments Holding Trust Professionals, and their respective agents, representatives, and employees shall be deemed confidential to the extent that such work product is not protected by the attorney-client privilege, attorney work-product doctrine, or any other applicable privilege.

## ARTICLE II

### CONTINGENT PAYMENTS HOLDING TRUST BENEFICIARIES

2.1 ~~2.1. Conflicting Claims.~~ If any conflicting claims or demands are made or asserted with respect to the beneficial interest of a Contingent Payments Holding Trust Beneficiary under this Trust Agreement, or if there is any disagreement between the assignees, transferees, heirs, representatives, or legatees succeeding to all or a part of such an interest resulting in adverse claims or demands being made in connection with such interest, then, in any of such events, the Contingent Payments Holding Trustee shall be entitled, in its sole discretion, to refuse to comply with any such conflicting claims or demands.

2.2 ~~2.2. Rights of Contingent Payments Holding Trust Beneficiaries.~~ Each Contingent Payments Holding Trust Beneficiary shall be entitled to participate in the rights and benefits due to a Contingent Payments Holding Trust Beneficiary hereunder. The Contingent Payments Holding Trust Assets are hereby declared and shall be in all respects personal property. No surviving spouse, heir or devisee of any deceased Contingent Payments Holding Trust Beneficiary shall have any right of dower, homestead or inheritance, or of partition, or any other right, statutory or otherwise, in the Contingent Payments Holding Trust Interest, but the whole title to the Contingent Payments Holding Trust Assets shall be vested in the Contingent Payments Holding Trust and the sole interest of the Contingent Payments Holding Trust Beneficiaries shall be the rights and benefits given to such person under this Trust Agreement, the Confirmation Order and the Plan.

2.3 Evidence of Contingent Payments Holding Trust Interests. The Contingent Payments Holding Trustee shall maintain at all times a register of the names, distribution addresses and amounts of Contingent Payments Holding Trust Beneficiaries (the “Register”). The Register shall include the names, distribution addresses and amounts of Holders of Allowed Claims, and shall be based on the list of Holders of Claims maintained by the Notice and Claims Agent as of the Effective Date and prepared in accordance with the provisions of the Plan and the Confirmation Order. The initial Register shall be delivered to the Contingent Payments Holding Trustee by the Debtor. All references in this Trust Agreement to Contingent Payments Holding Trust Beneficiaries shall be read to mean holders of record as set forth in the Register maintained by the Contingent Payments Holding Trustee and, to the extent Holders of

Noteholder Claims are beneficiaries, may include Holders of Noteholder Claims who are beneficial holders of Claims in Class 3, who hold their position through a broker, bank, or other nominee. The Contingent Payments Holding Trustee shall cause the Register to be kept at its office or at such other place or places as may be designated by the Contingent Payments Holding Trustee from time to time. The Contingent Payments Holding Trustee shall, upon the written request of a Contingent Payments Holding Trust Beneficiary, provide reasonably adequate documentary evidence of such Contingent Payments Holding Trust Beneficiary's Contingent Payments Holding Trust Interest, as indicated in the Register. For the avoidance of doubt, ownership of a Contingent Payments Holding Trust Interest will not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except the book entry system.

2.4 Transfer of Contingent Payments Holding Trust Interests. Subject to Section 2.5, the Contingent Payments Holding Trust Interests shall be fully transferable and the Contingent Payments Holding Trust shall recognize any such transfer of Contingent Payments Holding Trust Interests occurring after the Effective Date; provided, that (i) any such transferor and transferee must provide written notice, in the form attached hereto as Exhibit A, to the Contingent Payments Holding Trustee within five (5) business date of such transfer, and (ii) any transfer or assignment of a Contingent Payments Holding Trust Interest by will, intestate succession or otherwise by operation of law shall not be effective against or binding upon the Contingent Payments Holding Trust unless and until such transfer or assignment is recorded in the Register, which shall be completed as soon as practicable. The entries in the Register shall be conclusive absent manifest error, and the Contingent Payments Holding Trust and the Contingent Payments Holding Trustee shall treat each person whose name is recorded in the Register pursuant to the terms of this Trust Agreement as the owner of Contingent Payments Holding Trust Interests indicated therein for all purposes of this Trust Agreement, notwithstanding notice to the contrary.

2.5 Exemption from Registration. The Contingent Payments Holding Trust Interests have not been registered pursuant to the Securities Act of 1933, as amended (the "Securities Act"), or any state securities law, and shall not be listed for public trading on any securities exchange. The parties hereto intend that the rights of the holders of Contingent Payments Holding Trust Interests shall not be "securities" under applicable laws, but none of the parties hereto represents or warrants that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemption from registration provided by Section 1145 of the Bankruptcy Code and by other applicable law to apply to their issuance under the Plan. The Contingent Payments Holding Trust shall not be required to file reports with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), on account of any transfer. No transfer of a Contingent Payments Holding Trust Interests that causes the Contingent Payments Holding Trust to be required to file reports with the Securities and Exchange Commission pursuant to Sections 13 or 15(d) of the Exchange Act shall be permitted and any such transfer shall be void *ab initio*. In order to prevent the Contingent Payments Holding Trust from becoming subject to such reporting requirements, the Contingent Payments Holding

Trustee may impose certain transfer restrictions designed to maintain the Contingent Payments Holding Trust as non-reporting entity, and the Contingent Payments Holding Trust Agreement may be amended pursuant to Section 10.9 to make such changes as are deemed necessary or appropriate to ensure that the Contingent Payments Holding Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the Trust Indenture Act of 1939, as amended, or the Investment Company Act of 1940, as amended.

2.6 ~~2.3.~~ Limited Liability. No provision of this Trust Agreement, the Plan or the Confirmation Order, and no mere enumeration herein of the rights or privileges of any Contingent Payments Holding Trust Beneficiary, shall give rise to any liability of such Contingent Payments Holding Trust Beneficiary solely in its capacity as such, whether such liability is asserted by the Debtor, creditors, successors, representatives, employees, or equity interest holders of the Debtor, or by any other person.

### ARTICLE III

#### DURATION AND TERMINATION OF CONTINGENT PAYMENTS HOLDING TRUST

3.1 ~~3.1.~~ Dissolution of the Contingent Payments Holding Trust. The Contingent Payments Holding Trust shall be dissolved upon the earlier of (a) the distribution of the Contingent Payments Holding Trust Assets to the Contingent Payments Holding Trust Beneficiaries in accordance with Section 4.2 of this Trust Agreement; and (b) the fifth anniversary of the creation of the Contingent Payments Holding Trust; *provided* that, if warranted by the facts and circumstances involved in administering the Contingent Payments Holding Trust, upon application to, and if approved by, the Bankruptcy Court upon a finding that such extension is necessary or appropriate for purposes of administering the Contingent Payments Holding Trust, the term of the Contingent Payments Holding Trust may be extended by the Contingent Payments Holding Trustee for a specified term; *provided further* that, in no event shall the Contingent Payments Holding Trust be dissolved later than five years from the creation of such Contingent Payments Holding Trust unless the Bankruptcy Court, upon motion within the six-month period prior to the fifth anniversary of such creation (or within the six-month period prior to the end of any extension period), determines that a fixed period extension (not to exceed three years, together with any prior extensions, without a favorable private letter ruling from the Internal Revenue Service (the “IRS”) or an opinion of counsel satisfactory to the Contingent Payments Holding Trustee that any further extension would not adversely affect the status of the trust as a liquidating trust for U.S. federal income tax purposes) is necessary to administer the Contingent Payments Holding Trust. ~~“Majority Contingent Payments Holding Trust Beneficiaries” means the Contingent Payments Holding Trust Beneficiaries holding a majority of the aggregate amount of Allowed Claims of all Contingent Payments Holding Trust Beneficiaries.~~ Upon dissolution of the Contingent Payments Holding Trust, the

Contingent Payments Holding Trust Assets shall be distributed to the Contingent Payments Holding Trust Beneficiaries in accordance with the terms of the Plan.

3.2 ~~3.2.~~ Continuance of Contingent Payments Holding Trust for Winding Up. After the termination of the Contingent Payments Holding Trust and for the purpose of liquidation and winding up the affairs of the Contingent Payments Holding Trust, the Contingent Payments Holding Trustee shall continue to act as such until its duties have been fully performed, including such post-distribution tasks as necessary to wind up the affairs of the Contingent Payments Holding Trust. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the Contingent Payments Holding Trust and final distribution of the Contingent Payments Holding Trust Assets, the Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Advisory Board shall have no further duties or obligations hereunder and this Trust Agreement shall terminate other than the provisions that expressly survive termination.

#### ARTICLE IV

##### ADMINISTRATION OF THE CONTINGENT PAYMENTS HOLDING TRUST

4.1 ~~4.1.~~ Payment of Claims, Expenses, and Liabilities. The Contingent Payments Holding Trustee shall use the funds in the Wind-Down Account to administer the Contingent Payments Holding Trust, including paying taxes, filing tax returns, funding payroll, and other employee costs, providing for the purchase of errors and omissions insurance and/or other forms of indemnification for the Contingent Payments Holding Trustee, in each case, to the extent applicable, and for all such items and other costs of administering the Plan and the Contingent Payments Holding Trust. The Contingent Payments Holding Trustee may establish and administer any other necessary reserves that may be required under the Plan or this Trust Agreement. Notwithstanding anything to the contrary contained in the Plan or this Trust Agreement, the Contingent Payments Holding Trustee may make transfers of Cash between the accounts and reserves established under the Plan to satisfy Claims and other obligations in accordance with the Plan and the Wind-Down Budget.

##### 4.2 ~~4.2.~~ Distributions.

(a) Generally. The Contingent Payments Holding Trust shall distribute the Contingent Payments Holding Trust Assets (and any income and/or proceeds realized therefrom) to the Contingent Payments Holding Trust Beneficiaries in accordance with the terms of the Plan, the Confirmation Order and this Trust Agreement; *provided*, for the avoidance of doubt, that the Contingent Payments Holding Trust shall be required to distribute its interests in the Contingent Payments Trust to the Contingent Payments Holding Trust Beneficiaries upon the resolution of the Disputed Claims.

(b) Date of Distributions. The Contingent Payments Holding Trustee shall make distributions of the Contingent Payments Holding Trust Assets as provided in the Plan and this Trust Agreement on such dates as it chooses, in ~~its reasonable discretion~~ consultation with the Contingent Payments Holding Trust Advisory Board;

*provided*, however, that any such distribution shall be made in an expeditious and orderly manner following the resolution of the Disputed Claims.

(c) Undeliverable or Non-Negotiated Distributions. If any distribution to a Contingent Payments Holding Trust Beneficiary is returned as undeliverable for lack of a current address or otherwise, the Contingent Payments Holding Trustee shall file with the Bankruptcy Court the name and last known address of the Contingent Payments Holding Trust Beneficiary of undeliverable distribution. If, after the passage of thirty (30) calendar days after such Filing, the distribution of the Contingent Payments Holding Trust Interest still cannot be made, then (1) the Contingent Payments Holding Trust Beneficiary shall cease to be entitled to the undeliverable distribution, which will revert to the Contingent Payments Holding Trust; and (2) the Allowed Claim of such Holder shall be deemed disallowed and expunged for purposes of further distributions under the Plan and this Trust Agreement. Nothing contained in the Plan or this Trust Agreement shall require the Debtor or the Contingent Payments Holding Trustee to attempt to locate any Contingent Payments Holding Trust Beneficiary.

(d) Foreign Currency Exchange Rate. As of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal*, on the Petition Date.

(e) Satisfaction of Claims. Except as otherwise specifically provided in the Plan, distributions and deliveries to be made on account of Allowed Claims under the Plan shall be in complete and final satisfaction, settlement, and discharge of and exchange for such Allowed Claims.

4.3 ~~4.3.~~ Compliance with Laws. Any distribution of the Contingent Payments Holding Trust Assets shall be in compliance with applicable laws, including applicable federal and state tax and securities laws.

4.4 ~~4.4.~~ Fiscal Year. Except for the first and last years of the term of the Contingent Payments Holding Trust, the fiscal year of the Contingent Payments Holding Trust shall be the calendar year. For the first and last years of the term of the Contingent Payments Holding Trust, the fiscal year of the Contingent Payments Holding Trust shall be such portion of the calendar year that the Contingent Payments Holding Trust is in existence.

4.5 ~~4.5.~~ Contingent Payments Holding Trust Insurance. The Contingent Payments Holding Trustee is hereby authorized, but not required, to obtain all reasonable insurance coverage for itself, ~~its~~ the Contingent Payments Holding Trust Advisory Board, and their agents, representatives, employees or independent contractors, including coverage with respect to the liabilities, duties and obligations of the Contingent Payments Holding Trustee ~~and its,~~ the Contingent Payments Holding Trust Advisory Board, and their agents, representatives, employees or independent contractors under this Trust Agreement and the Plan (“**Insurance Coverages**”). The cost of any such Insurance

Coverage shall be an expense of the Contingent Payments Holding Trust and paid out of the Wind-Down Account in accordance with the Wind-Down Budget.

4.6 ~~4.6.~~ Reports.

(a) The Contingent Payments Holding Trustee shall, as soon as reasonably practicable and no later than 45 days following the end of each fiscal quarter during the term of the Contingent Payments Holding Trust, deliver by electronic communication (including e-mail and Internet or intranet websites) to the Contingent Payments Holding Trust ~~Beneficiaries~~ Advisory Board, and to each Contingent Payments Holding Trust Beneficiary who has so requested from the Contingent Payments Holding Trustee in writing, the following information: (i) the costs and expenses of the Contingent Payments Holding Trust that are incurred (including any taxes imposed on the Contingent Payments Holding Trust) or actual reasonable out-of-pocket fees and expenses incurred by Contingent Payments Holding Trust Professionals in connection with the administration and liquidation of the Contingent Payments Holding Trust Assets during the preceding fiscal quarter and the remaining amount (if any) of the Wind-Down Account, (ii) the amounts listed in clause (i) incurred since the Effective Date, (iii) the amount of Cash and other assets received by the Contingent Payments Holding Trust during the prior fiscal quarter, (iv) the aggregate amount of Cash and other assets received by the Contingent Payments Holding Trust since the Effective Date and (v) the aggregate amount of distributions from the Contingent Payments Holding Trust to the Contingent Payments Holding Trust Beneficiaries since the Effective Date. In the event that the Contingent Payments Holding Trustee receives notice regarding the status of Disputed Claims pursuant to Section IV.E.2 of the Plan, it shall take the actions as described in Section 5.1 of this Trust Agreement. The Contingent Payments Holding Trustee shall also timely prepare, file, and distribute such additional statements, reports, and submissions as may be necessary to cause the Contingent Payments Holding Trust and the Contingent Payments Holding Trustee to be in compliance with applicable law. The Contingent Payments Holding Trustee shall also provide the U.S. Trustee and the Bankruptcy Court the information and reports they may reasonably request concerning Trust administration.

## ARTICLE V

### TAX MATTERS

5.1 ~~5.1.~~ Treatment of ~~Trusts~~ Trust for Tax Purposes. The Contingent Payments Holding Trust is intended to be treated as a liquidating trust in accordance with Treasury Regulations section 301.7701-4(d). The further U.S. federal income tax classification of the Contingent Payments Holding Trust shall be determined pursuant to subsections (a) or (b) below, as applicable. Such further classification shall depend on whether the Contingent Payments Holding Trustee has received notice from the Liquidating Trustee pursuant to Section IV.E.2 of the Plan that all Disputed Claims have been resolved. In no event shall the Contingent Payments Holding Trustee file an election to treat any portion of the Contingent Payments Holding Trust Assets as a “disputed ownership fund” as described in Treasury Regulations section 1.468B-9.

(a) Disputed Claims Resolved Before Trust Election Date: If the Contingent Payments Holding Trust receives notice that all Disputed Claims are resolved prior to the Trust Election Date, the Contingent Payments Holding Trust shall be classified as a “grantor trust” for U.S. federal income tax purposes as to which the Contingent Payments Holding Trust Beneficiaries are treated as grantors and owners. On the Effective Date, the Debtor shall be deemed to have distributed to the Contingent Payments Holding Trust Beneficiaries an undivided interest in the Contingent Payments Holding Trust Assets and such Holders shall be deemed to have immediately contributed such Contingent Payments Holding Trust Assets to the Contingent Payments Holding Trust in exchange for undivided interests in the Contingent Payments Holding Trust Assets. Following receipt of such notice of the resolution of all Disputed Claims prior to the Trust Election Date, the Contingent Payments Holding Trustee shall distribute the interests in the Contingent Payments Holding Trust Assets *pro rata* to the Contingent Payments Holding Trust Beneficiaries and, following such distribution, shall dissolve.

(b) Disputed Claims Unresolved Prior to Trust Election Date: If the Contingent Payments Holding Trustee receives notice that all Disputed Claims have not been resolved prior to the Trust Election Date, then the Contingent Payments Holding Trustee shall file its U.S. federal income tax return as a “complex trust” in accordance with Subpart C of Part I of Subchapter J of the IRC. To the extent allowed by applicable law, the Contingent Payments Holding Trustee shall have the power, in its sole and absolute discretion, to (i) cause all or any part of the capital gains of the Contingent Payments Holding Trust to be included in such trust’s distributable net income within the meaning of IRC section 643(a)(3), in any of the ways permitted by that section or by Treasury Regulations section 1.643(a)-3, and (ii) determine whether to make any adjustment between income and principal because of any tax decision made with respect to any Contingent Payments Holding Trust Assets.

## 5.2 ~~5.2~~ Tax Reporting.

(a) To the extent permitted by applicable law, all parties, including the Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Beneficiaries, shall report consistently with the foregoing for all applicable tax reporting purposes.

(b) The Contingent Payments Holding Trustee shall be responsible for payment, out of the Wind-Down Account, of any taxes imposed on the Contingent Payments Holding Trust or its assets.

(c) As soon as reasonably practicable after the Contingent Payments Holding Trust Assets are transferred to the Contingent Payments Holding Trust, but in no event later than one hundred and twenty (120) days thereafter, the Contingent Payments Holding Trustee shall make a good faith valuation of the Contingent Payments Holding Trust Assets, which may be based on the Debtor’s valuation of the Contingent Payments Holding Trust Assets if the Contingent Payments Holding Trustee determines in its sole discretion that the Debtor’s valuation is materially accurate, and such valuation shall be used consistently by all parties for all U.S. federal income tax purposes. The Contingent

Payments Holding Trustee shall also file (or cause to be filed) any other statements, returns, or disclosures relating to the Contingent Payments Holding Trust that are required by any Governmental Unit. In connection with the preparation of the valuation contemplated hereby and by the Plan, the Contingent Payments Holding Trustee shall be entitled to retain such professionals and advisors as the Contingent Payments Holding Trustee shall determine to be appropriate or necessary, and the Contingent Payments Holding Trustee shall take such other actions in connection therewith as it determines to be appropriate or necessary. Such valuation shall be used consistently by such parties for all U.S. federal income tax purposes.

(d) The Contingent Payments Holding Trustee shall annually send to each Contingent Payments Holding Trust Beneficiary a separate statement and/or Schedule K-1, as applicable, regarding the information necessary for tax reporting purposes and shall instruct all such beneficiaries to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such beneficiary's underlying beneficial owners with instructions to utilize such information in preparing their U.S. federal income tax returns. The Contingent Payments Holding Trustee shall also file (or cause to be filed) any other statement, return or disclosure relating to the Contingent Payments Holding Trust that is required by any governmental unit.

(e) The Contingent Payments Holding Trustee may request an expedited determination of taxes of the Contingent Payments Holding Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Contingent Payments Holding Trust for all taxable periods through the dissolution of the Contingent Payments Holding Trust. Nothing in this Section 5.02(e) shall be deemed to determine, expand or contract the jurisdiction of the Bankruptcy Court under Section 505 of the Bankruptcy Code.

5.3     ~~5.3.~~ Tax Withholdings by Contingent Payments Holding Trustee.

(a) The Contingent Payments Holding Trustee shall (1) withhold, deduct, and pay over to the appropriate governmental authority any amount required to be withheld under U.S. federal, state, local, or foreign tax laws with respect to any distribution pursuant to this Trust Agreement and (2) comply with any reporting requirements imposed by any U.S. federal, state, local, or foreign taxing authority. The Contingent Payments Holding Trustee may withhold all or the appropriate portion of any distribution due to any Contingent Payments Holding Trust Beneficiary until such time as such Contingent Payments Holding Trust Beneficiary provides the necessary information to comply with any withholding requirements of any governmental authority. Any tax withheld shall be treated as distributed and received by the applicable Contingent Payments Holding Trust Beneficiary for all purposes of this Trust Agreement and the Plan. If a Contingent Payments Holding Trust Beneficiary fails to provide the information necessary to comply with any withholding requirements of any governmental authority on or before the day that is one year after the Effective Date of the Plan, then such beneficiary's distribution may be treated as unclaimed property in accordance with this Trust Agreement.

5.4 ~~5.4.~~ IRS Forms.

(a) In connection with the Plan, to the extent applicable and not an obligation of the Purchasers under the Sale Documents, the Contingent Payments Holding Trustee shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Contingent Payments Holding Trustee shall be authorized to take all actions necessary to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms it believes are reasonable and appropriate. The Contingent Payments Holding Trustee reserves the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, Liens, and encumbrances.

(b) As a condition precedent to receiving any distribution under this Plan, each Contingent Payments Holding Trust Beneficiary that is entitled to a distribution under the Plan and this Trust Agreement must provide the Contingent Payments Holding Trustee an executed IRS Form. An Allowed Claim of a Holder that fails to provide an executed IRS Form or provide any other required information to effectuate a distribution within sixty (60) days after service (by first class mail) of a formal request for the same by the Contingent Payments Holding Trustee shall be deemed disallowed and expunged for purposes of distributions under the Plan.

## ARTICLE VI

**POWERS OF AND LIMITATIONS ON THE CONTINGENT PAYMENTS  
HOLDING TRUSTEE**

6.1 ~~6.1.~~ Term of the Contingent Payments Holding Trustee.

(a) The Contingent Payments Holding Trustee will serve on and after the Effective Date in accordance with this Trust Agreement and the Plan, reporting to the Contingent Payments Holding Trust Advisory Board to the extent required by this Trust Agreement and the Plan. Subject to Article VII of this Trust Agreement and Article IV of the Plan, the Contingent Payments Holding Trustee shall hold office until the earlier to occur of (i) the termination of the Contingent Payments Holding Trust in accordance with the terms set forth in this Trust Agreement and the Plan or (ii) the Contingent Payments Holding Trustee's death, resignation, dissolution, incapacity or removal pursuant to this Trust Agreement. The duties, responsibilities and powers of the Contingent Payments Holding Trustee shall terminate on the date the Contingent Payments Holding Trust is wound up and dissolved in accordance with Delaware law pursuant to Section 3.1 of this Trust Agreement; *provided*, that Section 3.2 of this Trust Agreement, Section ~~8.29.2~~ of this Trust Agreement, Section ~~8.49.4~~ of this Trust Agreement, Section ~~8.59.5~~ of this

Trust Agreement and Section ~~8.6~~9.6 of this Trust Agreement shall survive such termination, dissolution and entry. References herein to the Contingent Payments Holding Trustee shall refer to the individual or individuals serving as the Contingent Payments Holding Trustee solely in its or their capacity as trustees hereunder.

6.2 ~~6.2.~~ Responsibilities and Authority of the Contingent Payments Holding Trustee.

(a) The responsibilities and authority of the Contingent Payments Holding Trustee shall include the following rights and responsibilities, which shall be the exclusive rights and responsibilities of the Contingent Payments Holding Trustee: (i) liquidating and administering the Contingent Payments Holding Trust Assets, (ii) administering and paying taxes, including, among other things, (1) filing tax returns, and (2) representing the interest and account of the Contingent Payments Holding Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding, or audit; (iii) retaining and paying, without the need for retention or fee applications, professionals in connection with the Contingent Payments Holding Trustee's performance of its duties under the Plan and this Trust Agreement; (iv) distributing information statements as required for U.S. federal income tax and other applicable tax purposes; and (v) such other responsibilities as may be vested in the Contingent Payments Holding Trustee pursuant to the Plan, this Trust Agreement, or an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of the Plan.

6.3 Actions Taken by the Contingent Payments Holding Trustee.

(a) ~~(b)~~ The Contingent Payments Holding Trustee may take any and all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan and this Trust Agreement, without the need for Bankruptcy Court approval (unless otherwise indicated) subject to and in accordance with the terms of the Plan and this Trust Agreement, including, but not limited to~~5~~:

(i) ~~(1)~~ the execution and delivery of appropriate agreements or other documents of consolidation, conversion, disposition, transfer, or dissolution containing terms that are consistent with the terms of the Plan and this Trust Agreement and that satisfy the requirements of applicable law;

(ii) ~~(2)~~ the power to invest funds of the Contingent Payments Holding Trust, and withdraw, make distributions, and pay taxes and other obligations owed by the Contingent Payments Holding Trust from such funds in accordance with the Plan and this Trust Agreement;

(iii) ~~(3)~~ the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and professionals to assist the Contingent Payments Holding Trustee with respect to its responsibilities. For the avoidance of doubt, a law firm shall not be disqualified from serving as counsel to

the Contingent Payments Holding Trustee solely because of that law firm's prior retention by the Debtor, the Creditors' Committee, or a member of the Creditors' Committee, the Indenture Trustee, or the Consenting Noteholders;

(iv) ~~(4)~~ the execution and delivery of any appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, duty, or obligation on terms consistent with the Plan and this Trust Agreement; ~~(5)~~

(v) the ability to appear and have standing in the Bankruptcy Court (or any other court having jurisdiction over the Contingent Payments Holding Trust Assets) to be heard with regard to matters that may affect or relate to the Contingent Payments Holding Trust Assets;

(vi) the filing of appropriate documents with the appropriate governmental authorities pursuant to applicable law; ~~(6)~~

(vii) the ability to protect and enforce the rights to the Contingent Payments Holding Trust Assets vested in the Contingent Payments Holding Trust by this Trust Agreement;

(viii) the ability to oversee compliance with the Contingent Payments Holding Trust's accounting, finance, and reporting obligations;

(ix) the powers set forth in Section 4.2(b) of this Trust Agreement; ~~and~~ ~~(7)~~

(x) the power to pay any and all expenses and make all other payments in connection with administering the Contingent Payments Holding Trust without further order of the Bankruptcy Court;

(xi) the ability to open and maintain bank accounts in the name of the Contingent Payments Holding Trust, draw checks and drafts thereon on the sole signature of the Contingent Payments Holding Trustee, and terminate such accounts as the Contingent Payments Holding Trustee deems appropriate;

(xii) in the event that the Contingent Payments Holding Trustee determines that the Contingent Payments Holding Trust Beneficiaries or the Contingent Payments Holding Trust may, will, or have become subject to adverse tax consequences, in the Contingent Payments Holding Trustee's sole discretion, the power to take such actions that will, or are intended to, alleviate such adverse tax consequences;

(xiii) make Distributions to holders of Allowed Claims and deliver Distributions on account of the Contingent Payments Holding Trust Interests or such other Distributions as may be authorized by Final Order of the Bankruptcy

Court, this Trust Agreement, or the Plan to the Contingent Payments Holding Trust Beneficiaries in accordance with this Trust Agreement; and

(xiv) any and all other actions that the Contingent Payments Holding Trustee determines is necessary or appropriate to effectuate the Plan and this Trust Agreement.

6.4 ~~6.3.~~ Limitations on Contingent Payments Holding Trustee.

(a) The Contingent Payments Holding Trustee shall, on behalf of the Contingent Payments Holding Trust, hold the Contingent Payments Holding Trust out as a trust in the process of liquidation and not as an investment company. The authority of the Contingent Payments Holding Trustee shall be restricted to the liquidation of the Contingent Payments Holding Trust Assets on behalf, and for the benefit, of the Contingent Payments Holding Trust Beneficiaries and the distribution and application of the Contingent Payments Holding Trust Assets for the purposes set forth in, and the conservation and protection of the Contingent Payments Holding Trust Assets and the administration thereof in accordance with, the provisions of this Trust Agreement, the Plan and the Confirmation Order, and the Contingent Payments Holding Trustee shall not take any action that would jeopardize (i) treatment of the Contingent Payments Holding Trust as a liquidating trust that is a grantor trust for U.S. federal income tax purposes, if all Disputed Claims are resolved prior to the Trust Election Date, or (ii) treatment of the Contingent Payments Holding Trust as a liquidating trust that is a “complex trust” in accordance with Subpart C of Part I of Subchapter J of the IRC for U.S. federal income tax purposes, if all Disputed Claims are not resolved prior to the Trust Election Date. The Contingent Payments Holding Trustee shall not at any time, on behalf of the Contingent Payments Holding Trust or the Contingent Payments Holding Trust Beneficiaries, (i) enter into or engage in any trade or business, or (ii) take any actions that are not related, directly or indirectly, to the purposes of this Trust Agreement and the Contingent Payments Holding Trust or the administration or implementation of the terms hereof.

(b) Notwithstanding anything in this Trust Agreement to the contrary, the Contingent Payments Holding Trustee shall provide reasonable notice to the Contingent Payments Holding Trust Advisory Board with respect to the following matters (the “Material Matters”):

(i) any incurrence of any cost, expense or fee in excess of \$[50,000] (covering services to be rendered or products utilized by the Contingent Payments Holding Trustee within a one month period);

(ii) determination of the timing of any Distribution to the Contingent Payments Holding Trust Beneficiaries;

(iii) the dissolution of the Contingent Payments Holding Trust.

In the event that the Contingent Payments Holding Trust Advisory Board objects to the Contingent Payments Holding Trustee’s proposed course of action with respect to any

Material Matter, the Contingent Payments Holding Trust Advisory Board shall submit such matter to the Contingent Payments Holding Trust Beneficiaries, and the Contingent Payments Holding Trustee shall not pursue such proposed course of action if, within twenty (20) days following the submission of such matter to the Contingent Payments Holding Trust Beneficiaries, the Majority Contingent Payments Holding Trust Beneficiaries have not objected to the proposed course of action.

6.5 ~~6.4.~~ Compensation and Expenses of the Contingent Payments Holding Trustee.

(a) The Contingent Payments Holding Trustee shall be entitled to receive reasonable compensation in connection with its performance of its duties plus the reimbursement of reasonable out-of-pocket expenses. All reasonable and documented costs, expenses, and obligations, including filing fees, incurred by the Contingent Payments Holding Trustee or the Contingent Payments Holding Trust Professionals shall be paid from the Wind-Down Account without further Bankruptcy Court approval or order (subject to the limitations set forth in this Trust Agreement and the Plan).

6.6 ~~6.5.~~ Agents, Employees, and Professionals.

(a) The Contingent Payments Holding Trustee, in consultation with the Contingent Payments Holding Trust Advisory Board, shall have the right, without Court approval, to retain the services of attorneys, accountants, and other professionals and agents (the “**Contingent Payments Holding Trust Professionals**”), to assist and advise the Contingent Payments Holding Trustee in the performance of its duties, and to compensate and reimburse expenses of such professionals in accordance with the this Trust Agreement; *provided*, however, that it is understood that the Contingent Payments Holding Trust intends to initially engage [•] as Primary Trust Counsel. None of the professionals that represented parties in interest in the Chapter 11 Case shall be precluded from being engaged by the Contingent Payments Holding Trust solely on account of their service as a professional for such parties-in-interest prior to the Effective Date. The Contingent Payments Holding Trustee may remove any Contingent Payments Holding Trust Professional with or without Cause.

(b) The Primary Trust Counsel that is appointed in accordance with the terms of the Plan shall be considered a Contingent Payments Holding Trust Professional for the purposes of this Trust Agreement and the Plan. Notwithstanding Section 6.7(a) of this Trust Agreement, in the event of the resignation, removal, bankruptcy or insolvency of the Primary Trust Counsel, a vacancy shall be deemed to exist, and a successor shall be appointed by the Contingent Payments Holding Trustee in consultation with the Contingent Payments Holding Trust Advisory Board.

(c) After the Effective Date, Contingent Payments Holding Trust Professionals shall be required to submit reasonably detailed invoices on a monthly basis to the Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Advisory Board, including in such invoices a description of the work performed, who performed such work, and if billing on an hourly basis, the hourly rate of such person,

plus an itemized statement of expenses. In the event of any dispute concerning the entitlement to, or the reasonableness of any compensation and/or expenses of any Contingent Payments Holding Trust Professionals, either the Contingent Payments Holding Trustee or the affected party may ask the Bankruptcy Court to resolve the dispute. The Contingent Payments Holding Trustee is authorized to pay compensation for services rendered or reimbursement of expenses incurred after the Effective Date in the ordinary course and without the need for Bankruptcy Court approval.

6.7 ~~6.6.~~ Investment of Contingent Payments Holding Trust Monies.

The Contingent Payments Holding Trustee may, in consultation with the Contingent Payments Holding Trust Advisory Board, invest Cash (including any earnings thereon or proceeds therefrom); *provided*, that such investments are investments permitted to be made by a “liquidating trust” within the meaning of Treasury Regulations section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities. All monies and other assets received by the Contingent Payments Holding Trust as Contingent Payments Holding Trust Assets (including the proceeds thereof as a result of investment in accordance with this Section 6.6 of this Trust Agreement) shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Contingent Payments Holding Trust Beneficiaries, and shall not be segregated from other Contingent Payments Holding Trust Assets, unless and to the extent required by the Plan.

6.8 ~~6.7.~~ Resident Trustee.

(a) The Resident Trustee has been appointed and hereby agrees to serve as the trustee of the Contingent Payments Holding Trust solely for the purpose of complying with the requirement of Section 3807(a) of the Trust Act that the Contingent Payments Holding Trust have one trustee, which, in the case of a natural person, is a resident of the State of Delaware, or which in all other cases, has its principal place of business in the State of Delaware. The duties and responsibilities of the Resident Trustee shall be limited solely to (i) accepting legal process served on the Contingent Payments Holding Trust in the State of Delaware, (ii) the execution of any certificates required to be filed with the office of the Delaware Secretary of State that the Resident Trustee is required to execute under section 3811 of the Trust Act, and (iii) any other duties specifically allocated to the Resident Trustee in this Trust Agreement. Except as provided in the foregoing sentence, the Resident Trustee shall have no management responsibilities or owe any fiduciary duties to the Contingent Payments Holding Trust, the Contingent Payments Holding Trustee, the Contingent Payments Holding Trust Advisory Board, or the Contingent Payments Holding Trust Beneficiaries.

(b) By execution of this Trust Agreement, the Resident Trustee accepts the Contingent Payments Holding Trust created herein. Except as otherwise expressly required by Section 6.7(a) of this Trust Agreement, the Resident Trustee shall not have any duty or liability with respect to the administration of the Contingent Payments Holding Trust, the investment of the Contingent Payments Holding Trust Assets or the Distribution of the Contingent Payments Holding Trust Assets to the Contingent Payments Holding Trust Beneficiaries, and no such duties shall be implied. The Resident

Trustee shall not be liable for the acts or omissions of the Contingent Payments Holding Trustee or the Contingent Payments Holding Trust Advisory Board, nor shall the Resident Trustee be liable for supervising or monitoring the performance of the duties and obligations of the Contingent Payments Holding Trustee or the Contingent Payments Holding Trust Advisory Board under this Trust Agreement, except as expressly required by Section 6.7(a) of this Trust Agreement. The Resident Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder. The Resident Trustee shall not be personally liable under any circumstances, except for its own willful misconduct, bad faith, or gross negligence. Without limiting the foregoing:

(i) the Resident 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;

(ii) no provision of this Trust Agreement shall require the Resident 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 Resident 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;

(iii) the Resident Trustee shall not be personally liable for the validity or sufficiency of this Trust Agreement or for the due execution of this Trust Agreement by the other parties to this Trust Agreement;

(iv) the Resident 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;

(v) the Resident Trustee may request the Contingent Payments Holding 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 Resident Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(vi) in the exercise or administration of the Contingent Payments Holding Trust hereunder, the Resident Trustee (A) may act directly or through agents or attorneys pursuant to agreements entered into with any of them and (B) may consult with nationally recognized counsel selected by it in good faith and with due care 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; and

(vii) the Resident Trustee acts solely as Resident Trustee hereunder and not in its individual capacity, and all persons having any claim against the Resident Trustee by reason of the transactions contemplated by this Trust

Agreement shall look only to the Contingent Payments Holding Trust Assets for payment or satisfaction thereof.

(c) The Resident Trustee shall be entitled to receive compensation out of the Wind-Down Account in accordance with the Wind-Down Budget for the services that the Resident Trustee performs in accordance with this Trust Agreement in accordance with such fee schedules as shall be agreed from time to time by the Resident Trustee and the Contingent Payments Holding Trustee. The Resident Trustee may also consult with counsel (who may be counsel for the Contingent Payments Holding Trust, counsel for the Resident Trustee, or counsel for both the Contingent Payments Holding Trust and the Resident Trustee) with respect to those matters that relate to the Resident Trustee's role as the Delaware resident trustee of the Contingent Payments Holding Trust, and the reasonable legal fees incurred in connection with such consultation shall be reimbursed out of the Wind-Down Budget to the Resident Trustee pursuant to this Section 6.7(c) of this Trust Agreement on terms reasonably acceptable to the Contingent Payments Holding Trust Advisory Board; *provided* that no such fees shall be reimbursed to the extent that they are incurred as a result of the Resident Trustee's gross negligence, bad faith or willful misconduct.

(d) The Resident Trustee shall serve for the duration of the Contingent Payments Holding Trust or until the earlier of (i) the effective date of the Resident Trustee's resignation, or (ii) the effective date of the removal of the Resident Trustee. The Resident Trustee may resign at any time by giving 30 days' written notice to the Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Advisory Board; *provided*, however, that such resignation shall not be effective until such time as a successor Resident Trustee has accepted appointment. The Resident Trustee may be removed at any time by the Contingent Payments Holding Trustee or the Contingent Payments Holding Trust Advisory Board, by providing 30 days' written notice to the Resident Trustee; *provided*, however, such removal shall not be effective until such time as a successor Resident Trustee has accepted appointment. Upon the resignation or removal of the Resident Trustee, the Contingent Payments Holding Trustee shall appoint a successor Resident Trustee. If no successor Resident Trustee shall have been appointed and shall have accepted such appointment within 45 days after the giving of such notice of resignation or removal, the Resident Trustee may petition the Bankruptcy Court for the appointment of a successor Resident Trustee. Any successor Resident Trustee appointed pursuant to this Section 6.7(d) of this Trust Agreement shall be eligible to act in such capacity in accordance with this Trust Agreement and, following compliance with this Section 6.7(d) of this Trust Agreement, shall become fully vested with the rights, powers, duties, and obligations of its predecessor under this Trust Agreement, with like effect as if originally named as Resident Trustee. Any such successor Resident Trustee shall notify the Resident Trustee of its appointment by providing written notice to the Resident Trustee, and upon receipt of such notice, the Resident Trustee shall be discharged of its duties herein.

~~6.8. Fiduciary and Other Duties.~~ Fiduciary and Other Duties.

Notwithstanding anything in the Plan or this Trust Agreement to the contrary, the Contingent Payments Holding Trustee and the members of the Contingent Payments

Holding Trust Advisory Board shall always act in the best interests of the Contingent Payments Holding Trust Beneficiaries and in furtherance of the purpose of the Contingent Payments Holding Trust as set forth in Article IV.D of the Plan; *provided*, however, that the Contingent Payments Holding Trustee and the members of the Contingent Payments Holding Trust Advisory Board shall not owe fiduciary obligations to (i) any defendants or potential defendants of Causes of Action or Retained Causes of Action in their capacities as such or (ii) any Holder of an Unliquidated or Disputed Claim, in their capacities as such, it being the intent of such fiduciary duties to ensure that the obligations of the Contingent Payments Holding Trustee and the members of the Contingent Payments Holding Trust Advisory Board are to maximize the value of the Contingent Payments Holding Trust Assets. Except for obligations expressly imposed on the Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Advisory Board by this Trust Agreement, to the extent that, at law or in equity, the Contingent Payments Holding Trustee or the Contingent Payments Holding Trust Advisory Board has duties (including fiduciary duties) to the Contingent Payments Holding Trust Beneficiaries or to any other person that is a party to or is otherwise bound by this Trust Agreement, such duties are hereby eliminated by this Trust Agreement to the fullest extent permitted by applicable law; *provided*, however, that this Trust Agreement does not eliminate the implied contractual covenant of good faith and fair dealing.

## ARTICLE VII

### SUCCESSOR CONTINGENT PAYMENTS HOLDING TRUSTEE

~~7.1. Resignation.~~ Resignation. The Contingent Payments Holding Trustee may resign from the Contingent Payments Holding Trust by giving prior written notice thereof to the Contingent Payments Holding Trust Advisory Board or, in the event the Contingent Payments Holding Trust Advisory Board is no longer in existence, the Contingent Payments Holding Beneficiaries, and, prior to the entry of a final decree closing the Chapter 11 Case, to the U.S. Trustee and Bankruptcy Court. Such resignation shall become effective on the earlier to occur of (a) the date specified in such written notice and (b) the effective date of the appointment of a successor Contingent Payments Holding Trustee in accordance with Section 7.4 of this Trust Agreement and such successor's acceptance of such appointment in accordance with Section 7.5 of this Trust Agreement.

~~7.2. Removal.~~ Removal. The Contingent Payments Holding Trustee may be removed with or without cause at any time. ~~Any Contingent Payments Holding Trust Beneficiary seeking to remove a Contingent Payments Holding Trustee may motion for removal. If by~~ the Majority Contingent Payments Holding Trust Beneficiaries ~~vote for removal, such removal.~~ Removal of the Contingent Payments Holding Trustee shall be effective on the date specified in the resolution. Notwithstanding the removal of the Contingent Payments Holding Trustee pursuant to this Section 7.2, the rights of the resigning Contingent Payments Holding Trustee under this Trust Agreement with respect to acts or omissions occurring prior to the effectiveness of such removal will continue for

the benefit of such resigning Contingent Payments Holding Trustee following the effectiveness of such resignation. “Majority Contingent Payments Holding Trust Beneficiaries” means the Contingent Payments Holding Trust Beneficiaries holding a majority of the aggregate amount of Allowed Claims of all Contingent Payments Holding Trust Beneficiaries.

7.3 ~~7.3.~~ Effect of Resignation or Removal. The resignation, removal, incompetency, bankruptcy, or insolvency of the Contingent Payments Holding Trustee shall not operate to terminate the Contingent Payments Holding Trust or to revoke any existing agency created pursuant to the terms of this Trust Agreement, the Plan, or the Confirmation Order or invalidate any action theretofore taken by the Contingent Payments Holding Trustee. All fees and expenses properly incurred by the Contingent Payments Holding Trustee prior to the resignation, incompetency or removal of the Contingent Payments Holding Trustee shall be paid from the Wind-Down Account pursuant to the Wind-Down Budget, unless such fees and expenses are disputed by the Contingent Payments Holding Trust Advisory Board, in which case the Bankruptcy Court shall resolve the dispute and any disputed fees and expenses of the predecessor Contingent Payments Holding Trustee that are subsequently allowed by the Bankruptcy Court shall be paid from the Contingent Payments Holding Trust Assets. In the event of the resignation or removal of the Contingent Payments Holding Trustee, such Contingent Payments Holding Trustee shall (a) promptly execute and deliver such documents, instruments and other writings as may be reasonably requested by the Contingent Payments Holding Trust Advisory Board or the successor Contingent Payments Holding Trustee or directed by the Bankruptcy Court to effect the termination of such Contingent Payments Holding Trustee’s capacity under this Trust Agreement, (b) promptly deliver to the Contingent Payments Holding Trust Advisory Board and the successor Contingent Payments Holding Trustee all documents, instruments, records and other writings related to the Contingent Payments Holding Trust as may be in the possession of such Contingent Payments Holding Trustee, and (c) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Contingent Payments Holding Trustee.

7.4 ~~7.4.~~ Appointment of Successor. ~~Upon the resignation or dissolution of a Contingent Payments Holding Trustee, the Contingent Payments Holding Trustee shall have the authority to designate a successor Contingent Payments Holding Trustee upon the consent of the Majority Contingent Payments Holding Trust Beneficiaries.~~ Upon the death, resignation, dissolution, incapacity or removal of a Contingent Payments Holding Trustee, the Majority Contingent Payments Holding Trust Beneficiaries ~~shall appoint,~~ in consultation with the Contingent Payments Holding Trust Advisory Board, shall have the authority to designate a successor Contingent Payments Holding Trustee ~~on an interim or permanent basis,~~ with the consent of the Majority Contingent Payments Holding Trust Beneficiaries.

7.5 ~~7.5.~~ Acceptance of Appointment by Successor Contingent Payments Holding Trustee. Any successor Contingent Payments Holding Trustee so appointed shall consent to and accept in writing the terms of this Trust Agreement and agrees that the provisions of this Trust Agreement shall be binding upon and inure to the

benefit of the successor Contingent Payments Holding Trustee. Upon acceptance in writing, such successor Contingent Payments Holding Trustee shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion and privileges of its predecessor in the Contingent Payments Holding Trust with like effect as if originally named Contingent Payments Holding Trustee and shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

## ARTICLE VIII

### CONTINGENT PAYMENTS HOLDING TRUST ADVISORY BOARD

#### 8.1 Contingent Payments Holding Trust Advisory Board.

(a) There is hereby established and created a special advisory board (the “Contingent Payments Holding Trust Advisory Board”) to monitor and oversee the Contingent Payments Holding Trustee and other activities required in connection with the management and distribution of the Contingent Payments Holding Trust Assets, including the performance of the Contingent Payments Holding Trustee’s obligations under the Plan and this Trust Agreement.

(b) As of the Effective Date, the members of the Contingent Payments Holding Trust Advisory Board shall be [•], [•] and [•]. Any or all members of the Contingent Payments Holding Trust Advisory Board may resign from the Contingent Payments Holding Trust Advisory Board at any time by written notice of resignation to the Contingent Payments Holding Trustee. A member of the Contingent Payments Holding Trust Advisory Board (i) shall be deemed to be immediately removed as a member of the Contingent Payments Holding Trust Advisory Board in the event that a Contingent Payments Holding Trust Advisory Board member (i) dies, resigns, or becomes incapacitated, or (ii) otherwise fails or refuses to serve and is removed pursuant to the terms of this Contingent Payments Holding Trust Agreement. In the event of a Contingent Payments Holding Trust Advisory Board member’s resignation or removal, the Contingent Payments Holding Trust Advisory Board, in consultation with the Contingent Payments Holding Trustee, may, but is not required to, elect a replacement member. There shall be no minimum number of members of the Contingent Payments Holding Trust Advisory Board to retain its function; provided, however, if there shall have been no Contingent Payments Holding Trust Advisory Board for a period of thirty (30) consecutive days, then the Contingent Payments Holding Trustee may, during such vacancy, and thereafter, ignore any reference in the Plan, this Trust Agreement, or the Confirmation Order to the Contingent Payments Holding Trust Advisory Board, and all such references in the Plan, this Trust Agreement or the Confirmation Order shall be null and void. Any deadlock in a vote by the members of the Contingent Payments Holding Trust Advisory Board may be broken by a vote cast by the Contingent Payments Holding Trustee.

(c) The Contingent Payments Holding Trustee shall provide the Contingent Payments Holding Trust Advisory Board with such reports as set forth in Section 4.8.

Each member of the Contingent Payments Holding Trust Advisory Board shall be reimbursed by the Contingent Payments Holding Trust from the Contingent Payments Holding Trust Assets for its actual, reasonable, and documented out-of-pocket expenses incurred for serving on the Contingent Payments Holding Trust Advisory Board; provided that each member of the Contingent Payments Holding Trust Advisory Board shall not receive any reimbursement for the services of any attorney, accountant, and other professional and agent. Except as provided for in this Section 8.1(c) of this Trust Agreement, the members of the Contingent Payments Holding Trust Advisory Board shall not be entitled to receive any other form of compensation for their services provided as such members. The Contingent Payments Holding Trust Advisory Board may, but shall not be required to, adopt by-laws addressing the conduct of the Contingent Payments Holding Trust Advisory Board.

(d) The Contingent Payments Holding Trust Advisory Board, may, at any time, provide notice to the Contingent Payments Holding Trust Beneficiaries that the Contingent Payments Holding Trust Advisory Board recommends removal of the Contingent Payments Holding Trustee by the Contingent Payments Holding Trust Beneficiaries. Within ten (10) business days of providing such notice, the Contingent Payments Holding Trust Beneficiaries shall vote on such matter, and the Contingent Payments Holding Trustee shall be removed upon the vote in favor of removal by the Majority Contingent Payments Holding Trust Beneficiaries pursuant to Section 7.2 of this Trust Agreement.

(e) The Contingent Payments Holding Trust Advisory Board, any of the Contingent Payments Holding Trust Advisory Board's members or designees, attorneys, accountants, or other professionals, any duly designated agent or representative of the Contingent Payments Holding Trust Advisory Board, and the respective employees of any of the foregoing, shall not be liable for any act or omission of any other member, designee, agent, or representative of the Contingent Payments Holding Trust Advisory Board, nor shall any member be liable for any act or omission taken or to be taken in that member's capacity as a member of the Contingent Payments Holding Trust Advisory Board, other than acts resulting from such member's intentional misconduct, willful misconduct, or gross negligence. The Contingent Payments Holding Trust Advisory Board may, in connection with the performance of the Contingent Payments Holding Trust Advisory Board's functions, and in the Contingent Payments Holding Trust Advisory Board's sole and absolute discretion, consult with counsel, accountants, and any other professionals, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such counsel, accountants, or other professionals, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, the Contingent Payments Holding Trust Advisory Board shall be under no obligation to consult with counsel, accountants or other professionals, and the Contingent Payments Holding Trust Advisory Board's determinations to not do so shall not result in the imposition of liability on the Contingent Payments Holding Trust Advisory Board or the Contingent Payments Holding Trust Advisory Board's members or designees, unless such determination is based on intentional misconduct, willful misconduct, or gross negligence.

(f) In the event there is an act required to be taken pursuant to the terms of this Trust Agreement, the Plan or the Confirmation Order by the Contingent Payments Holding Trust Advisory Board and the Contingent Payments Holding Trust Advisory Board cannot act because of a voting deadlock, the deadlock shall be broken by the vote of the Contingent Payments Holding Trustee. If the Contingent Payments Holding Trustee determines not to vote, the matter shall be decided by the Bankruptcy Court by submission of a motion on proper notice.

## ARTICLE IX~~ARTICLE VIII~~

### RELIANCE, LIABILITY AND INDEMNIFICATION

9.1 ~~8.1.~~ Reliance by the Contingent Payments Holding Trustee, and the Members of the Contingent Payments Holding Trust Advisory Board. Except as otherwise provided in this Trust Agreement, the Plan or the Confirmation Order, the Contingent Payments Holding Trustee, the members of the Contingent Payments Holding Trust Advisory Board and the Resident Trustee may rely and shall be protected in acting upon the advice of any Contingent Payments Holding Trust Professional and/or upon any resolution, statement, instrument, opinion, report, notice, request, consent, order or other paper or document reasonably believed by the Contingent Payments Holding Trustee, the Contingent Payments Holding Trust Advisory Board and the Resident Trustee to be genuine and to have been signed or presented by the proper party or parties.

9.2 ~~8.2.~~ Liability to Third Persons. No Contingent Payments Holding Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person in connection with the Contingent Payments Holding Trust Assets or the affairs of the Contingent Payments Holding Trustee. The Contingent Payments Holding Trustee, the members of the Contingent Payments Holding Trust Advisory Board, the Resident Trustee and the Contingent Payments Holding Trust Professionals shall not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any person (including, in the case of the Contingent Payments Holding Trustee and members of the Contingent Payments Holding Trust Advisory Board, to any Contingent Payments Holding Trust Professionals retained by the Contingent Payments Holding Trustee in accordance with this Trust Agreement) in connection with the Contingent Payments Holding Trust Assets or the affairs of the Contingent Payments Holding Trust and shall not be liable with respect to any action taken or omitted to be taken in good faith, except for actions and omissions determined by a final order of the Bankruptcy Court to be due to their respective bad faith, gross negligence, intentional fraud, criminal conduct or willful misconduct, and all such persons shall look solely to the Contingent Payments Holding Trust Assets for satisfaction of claims of any nature arising in connection with affairs of the Contingent Payments Holding Trust. Other than as set forth in the Plan or in the Confirmation Order, nothing in this Section ~~8.29.2~~ of this Trust Agreement shall be deemed to release any Contingent Payments Holding Trust Beneficiary from any actions or omissions occurring prior to the Effective Date.

9.3 ~~8.3.~~ Nonliability of Contingent Payments Holding Trustee and Contingent Payments Holding Trust Advisory Board for Acts of Others. Except as provided herein, nothing contained in this Trust Agreement, the Plan or the Confirmation Order shall be deemed to be an assumption by the Contingent Payments Holding Trustee, the Contingent Payments Holding Trust Advisory Board (or its members), the Resident Trustee or the Contingent Payments Holding Trust Professionals of any of the liabilities, obligations or duties of the Debtor or shall be deemed to be or contain a covenant or agreement by the Contingent Payments Holding Trustee to assume or accept any such liability, obligation or duty. Any successor Contingent Payments Holding Trustee, Contingent Payments Holding Trust Advisory Board member or Resident Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Contingent Payments Holding Trustee hereunder, and any statement or representation made as to the assets comprising the Contingent Payments Holding Trust Assets or as to any other fact bearing upon the prior administration of the Contingent Payments Holding Trust, so long as it has a good faith basis to do so. The Contingent Payments Holding Trustee, the Contingent Payments Holding Trust Advisory Board members, and the Resident Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. The Contingent Payments Holding Trustee or any successor Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Advisory Board members shall not be liable for any act or omission of any predecessor Contingent Payments Holding Trustee or Contingent Payments Holding Trust Advisory Board member. No provision of this Trust Agreement shall require the Contingent Payments Holding Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of his rights or powers hereunder if the Contingent Payments Holding 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.

~~8.4. Exculpation.~~ Exculpation. No Holder of a Claim or Interest, Contingent Payments Holding Trust Beneficiary, or any other party in interest will have, or otherwise pursue, any claim or Cause of Action against the Contingent Payments Holding Trustee, the members of the Contingent Payments Holding Trust Advisory Board, the Resident Trustee, the Contingent Payments Holding Trust, or the Contingent Payments Holding Trust Professionals (for each of the foregoing, solely in the performance of their duties) for making payments and distributions in accordance with the Plan and this Trust Agreement or for fulfilling any functions incidental to implementing the provisions of the Plan or the this Trust Agreement, except for actions or omissions to act that are determined by final order of the Bankruptcy Court to have arisen out of their own respective intentional fraud, criminal conduct, gross negligence or willful misconduct. Any action taken or omitted to be taken with the express approval of the Bankruptcy Court shall conclusively be deemed not to constitute gross negligence or willful misconduct.

9.5 ~~8.5.~~ Limitation of Liability. The Contingent Payments Holding Trustee, the members of the Contingent Payments Holding Trust Advisory Board, the Resident Trustee and the Contingent Payments Holding Trust Professionals will not be

liable for punitive, exemplary, consequential, special, or other damages for a breach of this Trust Agreement under any circumstances.

~~8.6. Indemnity.~~ Indemnity. The Contingent Payments Holding Trust shall indemnify and hold harmless (a) the Contingent Payments Holding Trustee (solely in its capacity as such and in its capacity as officer and director of the Debtor), (b) members of the Contingent Payments Holding Trust Advisory Board, (c) the Resident Trustee and (d) the Contingent Payments Holding Trust Professionals ((a), (b) ~~and~~, (c) and (d) collectively, the “**Indemnified Parties**”)), from and against and with respect to any and all liabilities, losses, damages, claims, costs, and expenses, including, but not limited to, attorneys’ fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, other than actions or omissions resulting from such Indemnified Party’s bad faith, willful misconduct (including, without limitation, actual fraud), or gross negligence, or the implementation or administration of the Plan or this Trust Agreement. To the extent that an Indemnified Party asserts a claim for indemnification as provided above, (y) any payment on account of such claim shall be paid solely from the Wind-Down Account and shall be entitled to a priority distribution therefrom, superior to any other rights (other than those rights of the Contingent Payments Holding Trust Professionals) to receive a distribution from the Wind-Down Account, including the Contingent Payments Holding Trust Beneficiaries and (z) the legal fees and related costs incurred by counsel to the Contingent Payments Holding Trustee in monitoring and participating in the defense of such claims giving rise to the asserted right of indemnification shall be advanced to such Indemnified Party (and such Indemnified Party undertakes to repay such amounts if it ultimately shall be determined that such Indemnified Party is not entitled to be indemnified therefore) out of the Wind-Down Account or any insurance purchased using the Wind-Down Account, and paid with priority over distributions to the Contingent Payments Holding Trust Beneficiaries. This indemnification provision shall remain available to, and be binding upon, any former Contingent Payments Holding Trustee or Resident Trustee or member of the Contingent Payments Holding Trust Advisory Board, or the estate of any decedent of the Contingent Payments Holding Trustee or Resident Trustee or member of the Contingent Payments Holding Trust Advisory Board, and shall survive the termination of this Trust Agreement.

## ARTICLE X ~~ARTICLE IX~~

### MISCELLANEOUS PROVISIONS

10.1 ~~9.1. Governing Law.~~ Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent that any document to be entered into in connection herewith provides otherwise, the rights, duties, and obligations arising under this Trust Agreement shall be governed by, and construed and enforced in accordance with, the Bankruptcy Code and, to the extent not inconsistent therewith, the laws of the State of Delaware, without giving effect to principles of conflicts of laws.

~~9.2. Jurisdiction.~~ Jurisdiction. Subject to the proviso below, prior to the entry of a final decree closing the Chapter 11 Cases, the parties agree that the Bankruptcy

Court shall have exclusive jurisdiction over the Contingent Payments Holding Trust ~~and~~, the Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Advisory Board, including the administration and activities of the Contingent Payments Holding Trust ~~and~~, the Contingent Payments Holding Trustee and the Contingent Payments Holding Trust Advisory Board, and, pursuant to the Plan, the Bankruptcy Court has retained such jurisdiction.

~~9.3. Severability.~~ Severability. In the event any provision of this Trust Agreement or the application thereof to any person or circumstances shall be determined by a final, non-appealable judgment or order to be invalid or unenforceable to any extent, the remainder of this Trust 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 Trust Agreement shall be valid and enforceable to the full extent permitted by law.

~~9.4. Notices.~~ Notices. Any notice or other communication required or permitted to be made under this Trust Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally, by email, sent by nationally recognized overnight delivery service or mailed by first-class mail:

(a) if to the Contingent Payments Holding Trust, to:

[•]

with a copy to:

[•]

(b) if to the Contingent Payments Holding Trust Advisory Board, to each of:

[•]

[•]

[•]

(c) ~~(b)~~ if to the Resident Trustee, to:

[•]

(d) ~~(e)~~ if to any Contingent Payments Holding Trust Beneficiary, to the name and distribution address set forth in the Register with respect to such Contingent Payments Holding Trust Beneficiary.

~~9.5. Headings.~~Headings. The headings contained in this Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Trust Agreement or of any term or provision of this Trust Agreement.

10.6 ~~9.6.~~Controlling Document. In the event of any conflict between the terms and provisions in the Plan and the terms and provisions in the Disclosure Statement, the Plan Supplement, any other instrument or document created or executed pursuant to the Plan, or any order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), the Plan shall govern and control; *provided* that, in the event of a conflict between this Trust Agreement, on the one hand, and any of the Plan, the Plan Supplement or the Definitive Documents, on the other hand, this Trust Agreement shall govern and control in all respects relating to the operation and/or administration of the Contingent Payments Holding Trust and/or indemnification of the Contingent Payments Holding Trustee.

10.7 ~~9.7.~~Entire Trust Agreement. This Trust Agreement (including the recitals and annex hereto), the Plan, and the Confirmation Order constitute the entire agreement by and among the parties and supersede all prior and contemporaneous agreements or understandings by and among the parties with respect to the subject matter of this Trust Agreement.

~~9.8. Cooperation.~~Cooperation. On the Effective Date, the Debtor shall promptly upon the request of the Contingent Payments Holding Trustee (a) turn over or otherwise make available to the Contingent Payments Holding Trust at no cost to the Contingent Payments Holding Trust or the Contingent Payments Holding Trustee, any books and records of the Debtor held by such professionals, and (b) subject to payment of reasonable and documented fees and expenses incurred by such professionals (i) make available information, including electronic records or documents, reasonably required by the Contingent Payments Holding Trust to carry out its duties hereunder and (ii) otherwise reasonably cooperate with the Contingent Payments Holding Trustee in carrying out its duties hereunder, subject, in the case of (a) and (b), to the confidentiality provisions herein to preserve the confidential nature of the Debtor's books and records.

10.9 ~~9.9.~~Amendment and Waiver. ~~This~~ ~~Any provision of this~~ Trust Agreement may from time to time be amended ~~or waived, including amendments necessary to implement the provisions of the Plan, by the,~~ supplemented or modified by the Contingent Payments Holding Trustee, but only with (i) the approval of the Bankruptcy Court or (ii) the written consent of the Majority Contingent Payments Holding Trust Beneficiaries; *provided* that any such amendment which alters the duties or liabilities of the Contingent Payments Holding ~~Trustee~~Trust Advisory Board shall also require the consent of the Contingent Payments Holding ~~Trustee;~~Trust Advisory Board; *provided further* that any such amendment which alters the duties or liabilities of the

Resident Trustee shall also require the consent of the Resident Trustee. The Contingent Payments Holding Trustee shall provide the Contingent Payments Holding Trust Advisory Board notice of any proposed amendment, supplement or modification to this Trust Agreement at least five (5) business day prior to the effective date of such amendment, supplement or modification; provided, however, that the Contingent Payments Holding Trust Advisory Board may waive the notice period. Notwithstanding this Section ~~9.9~~10.9 of this Trust Agreement, any amendment to this Trust Agreement shall not be inconsistent with the Plan and the Confirmation Order and shall be consistent with the purpose and intention of the Contingent Payments Holding Trust to liquidate in an expeditious but orderly manner the Contingent Payments Holding Trust Assets in accordance with Treasury Regulations section 301.7701-4(d) and Section 1.2 of this Trust Agreement.

~~9.10. Confidentiality.~~Confidentiality. The Contingent Payments Holding Trustee, each member of the Contingent Payments Holding Trust Advisory Board, and each of ~~its~~their respective employees, members, agents, professionals and advisors, including the Contingent Payments Holding Trust Professionals (each a “**Confidential Party**” and, collectively, the “**Confidential 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 Confidential Party, of or pertaining to any Debtor to which any of the Contingent Payments Holding Trust Assets relates; *provided*, however, that such information may be disclosed if (a) it is now or in the future becomes generally available to the public other than as a result of a disclosure by the Confidential Parties or (b) such disclosure is required of the Confidential Parties pursuant to legal process including subpoena or other court order or other applicable laws or regulations. In the event that any Confidential Party is requested to divulge confidential information pursuant to this clause (b), such Confidential Party shall promptly, in advance of making such disclosure, provide reasonable notice of such required disclosure to the Contingent Payments Holding Trustee (or the Contingent Payments Holding Trust Advisory Board in case the Contingent Payments Holding Trustee or Resident Trustee is the disclosing party) to allow sufficient time to object to or prevent such disclosure through judicial or other means and shall cooperate reasonably with the Contingent Payments Holding Trustee (or the Contingent Payments Holding Trust Advisory Board, as applicable) in making any such objection, including appearing in any judicial or administrative proceeding in support of any objection to such disclosure.

~~9.11. Meanings of Other Terms.~~Meanings of Other Terms. Except where the context otherwise requires, words importing the masculine gender include the feminine and the neuter, 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. The words herein and words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section, or subdivision of this Trust Agreement. The term “including” shall mean “including, without limitation.”

~~9.12. Counterparts.~~Counterparts. This Trust Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but such

counterparts shall together constitute but one and the same instrument. A portable document file (PDF) signature of any party shall be considered to have the same binding legal effect as an original signature.

10.13 ~~9.13.~~ Intention of Parties to Establish ~~Contingent Payments Holding~~Liquidating Trust. This Trust Agreement is intended to create a liquidating trust within the meaning of Treasury Regulations section 301.7701-4(d) for U.S. federal income tax purposes. If all Disputed Claims are resolved prior to the Trust Election Date, the Contingent Payments Holding Trust is intended to be classified as a grantor trust for U.S. federal income tax purposes as to which the Contingent Payments Holding Trust Beneficiaries are treated as grantors and owners. If all Disputed Claims are not resolved prior to the Trust Election Date, the Contingent Payments Holdings Trust is intended to be classified as a “complex trust” in accordance with Subpart C of Part I of Subchapter J of the IRC for U.S. federal income tax purposes. To the extent provided by law, the Contingent Payments Holding Trust shall be governed and construed in all respects as such a trust as determined by the foregoing sentence and any ambiguity herein shall be construed consistent herewith and, if necessary, this Trust Agreement may be amended to comply with such U.S. federal income tax laws, which amendments may apply retroactively.

[Signature Page Follows]

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

**TRICIDA, INC.**

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

**CONTINGENT PAYMENTS HOLDING TRUSTEE**

By: \_\_\_\_\_  
Name: [•]

**RESIDENT TRUSTEE**

[•], not in its individual capacity, but solely as Resident Trustee

By: \_\_\_\_\_  
Name: [•]

EXHIBIT A

Notice of Transfer

The undersigned Contingent Payments Holding Trust Beneficiary (the “**Transferor**”) has agreed to transfer the Contingent Payments Holding Trust Interest set forth below to the undersigned transferee (the “**Transferee**”).

Transferor Name:

Date Executed:

Amount and Type of Contingent Payments Holding Trust Interest Transferred:

Notes Claim:

General Unsecured Claim (Allowed / Asserted):

Patheon Rejection Claim:

Transferee Name:

Transferee Address:

Transferee e-mail address:

~~[SIGNATURE PAGE TO CONTINGENT PAYMENTS HOLDING TRUST AGREEMENT]~~