

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

In re:

MOLECULAR TEMPLATES, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 25-10739 (BLS)

(Jointly Administered)

**Re: D.I. 147**

**NOTICE OF FILING OF AMENDED PLAN SUPPLEMENT  
DOCUMENT WITH RESPECT TO DEBTORS' REVISED COMBINED DISCLOSURE  
STATEMENT AND JOINT CHAPTER 11 PLAN OF REORGANIZATION FOR  
MOLECULAR TEMPLATES, INC. AND ITS AFFILIATED DEBTOR**

**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the solicitation version of the *Revised Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization for Molecular Templates, Inc. and its Affiliated Debtor* [D.I. 124] (as may be amended, modified or supplemented from time to time, the "Plan") with the United States Bankruptcy Court for the District of Delaware (the "Court").

**PLEASE TAKE FURTHER NOTICE** that, on June 17, 2025, the Debtors filed the *Notice of Filing of Plan Supplement to Revised Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization for Molecular Templates, Inc. and its Affiliated Debtor* (the "Plan Supplement") in support of confirmation of the Plan, which included the Liquidating Trust Agreement as Exhibit A (the "Liquidating Trust Agreement"). The documents contained in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. The Plan Supplement has not yet been approved by the Court.

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit 1** is an amended version of the Liquidating Trust Agreement (the "Amended Liquidating Trust Agreement"). A comparison of the Amended Liquidating Trust Agreement to the Liquidating Trust Agreement initially filed with the Plan Supplement is attached hereto as **Exhibit 2**. This document has not yet been approved by the Court.

**PLEASE TAKE FURTHER NOTICE** that the Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained therein, at any time before the Effective Date, or any such other date in accordance with the Plan, the Confirmation Order, or any other order of the Court. Each of the documents contained

<sup>1</sup> The Debtors in these chapter 11 cases, along with the Debtors' federal tax identification number (if applicable), are: Molecular Templates, Inc. (9596) and Molecular Templates OpCo, Inc. (6035). The Debtors' mailing address is: 124 Washington Street, Ste. 101, Foxboro, MA 02035. All Court filings can be accessed at: <https://www.veritaglobal.net/MolecularTemplates>.



in the Plan Supplement or its amendments are subject to certain consent and approval rights to the extent so provided in the Plan.

**PLEASE TAKE FURTHER NOTICE** that copies of the Plan, the Plan Supplement, and other documents and materials filed in the above-captioned chapter 11 cases may be examined by any party in interest (a) between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding federal holidays, at the Office of the Clerk of the Court (the “Clerk”), 824 N. Market St., 3rd Floor, Wilmington, Delaware 19801; (b) free of charge at the Debtors’ case website (<https://www.veritaglobal.net/moleculartemplates>); or (c) for a fee at the Court’s website (<http://www.deb.uscourts.gov>) (a PACER account is required). Such documents may also be obtained by upon request to the Debtors’ claims agent, Kurtzman Carson Consultants, LLC dba Verita Global, at (877) 634-7178 or (424) 236-7224 (for parties outside the U.S. and Canada).

Dated: June 20, 2025  
Wilmington, Delaware

Respectfully submitted,

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

*/s/ Luke Brzozowski*

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**Exhibit 1**

**Amended Liquidating Trust Agreement**

## LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (the “Liquidating Trust Agreement”) dated as of [●], 2025, is made by and among Molecular Templates, Inc. and Molecular Templates OpCo, Inc., debtors and debtors in possession in the chapter 11 cases being jointly administered under Case No. 25-10739 (BLS) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) (collectively, the “Debtors”), and Craig Jalbert, as the initial Liquidating Trustee (as defined below) in connection with the *Revised Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization for Molecular Templates, Inc. and its Affiliated Debtor* (the “Plan”) [Docket No. ●], which was confirmed by the [*Confirmation Order*], (the “Confirmation Order”) [Docket No. ●], entered on July [●], 2025, for the purpose of forming a liquidating trust (the “Liquidating Trust”) which provides, *inter alia*:

(a) For the Liquidating Trust to qualify as a “grantor trust” for federal income tax purposes, the Liquidating Trustee shall operate and maintain the Liquidating Trust in compliance with the guidelines for liquidating trusts as set forth in the applicable provisions of Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Sections 1.671-4(a) and 301.7701-4(d) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue Service, U.S. Treasury Department and other applicable legislative, administrative, regulatory and judicial agencies and departments;

(b) For the transfer of all Liquidating Trust Assets into the Liquidating Trust for distribution to beneficiaries of the Liquidating Trust (the “Liquidating Trust Beneficiaries”) pursuant to and in accordance with this Liquidating Trust Agreement, the Plan and the Confirmation Order;

(c) For federal income tax purposes, (i) the Liquidating Trust Beneficiaries of the Liquidating Trust are to be treated as the grantors of the Liquidating Trust and deemed to be the owners of the Liquidating Trust Assets; and (ii) the Debtors are to treat the transfer of the Liquidating Trust Assets to the Liquidating Trust as a deemed transfer to such Liquidating Trust Beneficiaries followed by a deemed transfer by such Liquidating Trust Beneficiaries to the Liquidating Trust;

(d) For the management of the Liquidating Trust Assets by the Liquidating Trustee; and

(e) For the Distribution of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries as set forth in the Plan.

Unless the context otherwise requires, all capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan.

NOW, THEREFORE, pursuant to the Plan and in consideration of the mutual agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the parties hereby agree as follows:

**ARTICLE I**  
**DECLARATION OF TRUST**

**1.1 Purpose of the Liquidating Trust.** The Debtors and the Liquidating Trustee, pursuant to the Plan and the Confirmation Order, and in accordance with the Bankruptcy Code and applicable tax statutes, rules and regulations, hereby constitute and create the Liquidating Trust for the purpose of administering post-Effective Date responsibilities of the Debtors and Wind-down Estates under the Plan, including, but not limited to, (i) being vested with, administering, and liquidating, the Liquidating Trust Assets, and (ii) making Distributions to Holders of Allowed Claims in accordance with the terms of the Plan and this Liquidating Trust Agreement. Further, the Liquidating Trust is created for the purpose of liquidating and distributing the Liquidating Trust Assets with no objective to continue or engage in the conduct of a trade or business. In particular, the Liquidating Trust, through the Liquidating Trustee, shall (a) make continuing efforts to collect and reduce the Liquidating Trust Assets to Cash in order to meet the Liquidating Trust's Cash and other obligations, (b) make timely Distributions on account of Allowed Claims pursuant to the Plan and this Liquidating Trust Agreement, (c) not unduly prolong the duration of the Liquidating Trust, and (d) take such steps as are reasonably necessary to accomplish such purpose, all as more fully provided in, and subject to the terms and provisions of, the Plan, the Confirmation Order and this Liquidating Trust Agreement. Notwithstanding any provision of Delaware law or any other applicable law to the contrary, the Liquidating Trustee shall not have authority to engage in any trade or business, and no portion of the Liquidating Trust Assets shall be used in the conduct of a trade or business, except as is reasonably necessary for the prompt and orderly collection and reduction to Cash of the Liquidating Trust Assets.

**1.2 Name of the Liquidating Trust.** The Liquidating Trust established hereby shall be known as the "MTEM Liquidating Trust". In connection with the exercise of its powers, the Liquidating Trustee may use such name or such variation thereof as the Liquidating Trustee sees fit and may transact the affairs of the Liquidating Trust in such name.

**1.3 Offices.**

(a) The principal office of the Liquidating Trust, and such additional offices as the Liquidating Trustee may determine to establish, shall be located at such place or places inside or outside the State of Delaware as the Liquidating Trustee may designate from time to time.

(b) Service of process upon the Liquidating Trust may be made by service upon the Liquidating Trustee. The principal office of the Liquidating Trustee is located at: 124 Washington Street, Suite 101, Foxboro, MA 02035.

**1.4 Transfer of Assets to Create Liquidating Trust.**

(a) In accordance with Section 9.5 of the Plan, the Debtors and the Estates hereby grant, release, assign, transfer, convey and deliver, for and on behalf of the Liquidating Trust Beneficiaries, the Liquidating Trust Assets to the Liquidating Trust which transfer shall be free and clear of all Claims and Liens and contractually imposed restrictions, and exempt from any

stamp, real estate transfer, mortgage reporting, sales, use or other similar tax to the maximum extent permitted under section 1146 of the Bankruptcy Code, as of the Effective Date, to have and to hold unto the Liquidating Trustee and its successors in trust and to be applied as specified in the Plan, the Confirmation Order and this Liquidating Trust Agreement. Upon the transfer of the Liquidating Trust Assets, and except as otherwise provided herein or in the Plan, neither the Debtors nor any other entity shall retain any interest in the Liquidating Trust Assets. The Debtors shall execute and deliver or cause to be executed and delivered to or upon the order of the Liquidating Trustee all such documents, in recordable form where necessary or appropriate, and the Debtors shall take or cause to be taken such further or other action, as the Liquidating Trustee may deem appropriate, to vest or perfect in or confirm to the Liquidating Trustee, or upon the order of the Liquidating Trustee, title to and possession of all of the Liquidating Trust Assets as of the Effective Date.

(b) To the extent any Liquidating Trust Assets cannot be transferred to the Liquidating Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such Liquidating Trust Assets shall be deemed to have been retained by the Debtors and the Liquidating Trustee shall be deemed to have been designated as a representative of the Debtors pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Liquidating Trust Assets on behalf of the Debtors. Notwithstanding the foregoing, all net proceeds of such Liquidating Trust Assets shall be transferred to the Liquidating Trust to be distributed to the Liquidating Trust Beneficiaries in accordance with the Plan.

**1.5 Acceptance by Liquidating Trustee.** The Liquidating Trustee hereby accepts (a) the appointment to serve as Liquidating Trustee; (b) the transfer of the Liquidating Trust Assets on behalf of the Liquidating Trust; (c) the trust imposed on the Liquidating Trustee by this Liquidating Trust Agreement, and (d) any liabilities of the Liquidating Trust, on behalf of the Liquidating Trust, to the extent provided in the Plan. The Liquidating Trustee agrees to receive, hold, administer and distribute the Liquidating Trust Assets and the income derived therefrom on behalf of the Liquidating Trust pursuant to the terms of the Plan, the Confirmation Order and this Liquidating Trust Agreement. The Liquidating Trust Agreement expressly authorizes the Liquidating Trustee to reconcile and satisfy Claims and meet all other obligations of the Debtors' Estates in accordance with the Plan and the Confirmation Order. The Liquidating Trustee agrees to perform all acts necessary to ensure the transfer of the Liquidating Trust Assets to the Liquidating Trustee on behalf of the Liquidating Trust.

## ARTICLE II

### LIQUIDATING TRUSTEE - GENERALLY

**2.1 Appointment.** There shall at all times be a trustee who shall be responsible for the administration of the Liquidating Trust (the "Liquidating Trustee"). The initial Liquidating Trustee shall be Craig Jalbert. Any successor Liquidating Trustee shall be appointed as herein provided.

**2.2 Term of Service.** The initial Liquidating Trustee, and each successor Liquidating Trustee, shall serve until the earlier to occur of (a) the termination of the Liquidating

Trust in accordance with Article X of this Liquidating Trust Agreement, or (b) such Liquidating Trustee's resignation, death, dissolution, removal or liquidation.

### **2.3 Resignation, Death, Dissolution or Removal of Liquidating Trustee.**

(a) The Liquidating Trustee may resign his position at any time by providing 30 days' written notice to the Bankruptcy Court. Upon such resignation, the Liquidating Trustee shall appoint a successor Liquidating Trustee (the "Successor Liquidating Trustee"). Such resignation may become effective on the earlier to occur of (i) the date that is 30 days after such notice is filed with the Bankruptcy Court and (ii) the appointment of a permanent Successor Liquidating Trustee.

(b) The resignation, death, dissolution, removal or incapacity of the Liquidating Trustee shall not operate to terminate the Liquidating Trust created by this Liquidating Trust Agreement or to revoke any existing agency created pursuant to the terms of this Liquidating Trust Agreement or invalidate any action therefore taken by the Liquidating Trustee. In the event of the removal, incapacitation, or death of the Liquidating Trustee, counsel to the Liquidating Trust shall move the Bankruptcy Court to appoint a Successor Liquidating Trustee as soon as reasonably practicable, and in the interim, shall have the authority to take any necessary action on behalf of the Liquidating Trust as deemed reasonably necessary to take for the benefit of the Liquidating Trust Beneficiaries.

(c) Any Successor Liquidating Trustee so appointed pursuant to this Section 2.3 shall consent to and accept in writing the terms of this Liquidating Trust Agreement and agree that the provisions of this Liquidating Trust Agreement shall be binding upon and inure to the benefit of the Successor Liquidating Trustee. A Successor Liquidating Trustee shall have all the rights, privileges, powers, and duties of its predecessor under this Liquidating Trust Agreement, the Plan, and the Confirmation Order.

(d) The Liquidating Trustee may be removed by the Bankruptcy Court upon application for cause shown, which application may be brought by the U.S. Trustee or any creditor. For purposes of removing the Liquidating Trustee, "cause" shall mean (i) the Liquidating Trustee's willful failure to perform his, her or its material duties hereunder, which is not remedied within thirty (30) days of notice; (ii) the Liquidating Trustee's death; (iii) the Liquidating Trustee's mental or physical incapacity that materially and adversely affects the Liquidating Trustee's ability to perform his, her or its duties under the Plan; (iv) the Liquidating Trustee's commission of an act of fraud, theft or embezzlement in connection with the Liquidating Trustee's duties under this Plan; and (v) the Liquidating Trustee's conviction for the commission of a felony with all appeals having been exhausted or appeal periods lapsed; *provided, however*, that no "cause" shall exist involving clause (i) above until the Liquidating Trustee first has failed to cure such failure within thirty (30) days of having been given written notice of such failure. For purposes of the foregoing, no act or failure to act on the part of the Liquidating Trustee shall be considered "willful" unless it is done, or permitted to be done, by the Liquidating Trustee without reasonable belief that the Liquidating Trustee's action or omission was in the best interests of the Debtors. The Liquidating Trustee's rights to oppose any such application are fully preserved and reserved.

(e) No Successor Liquidating Trustee hereunder shall in any event have any liability or responsibility for the acts or omissions of any of his, her or its predecessors. Every Successor Liquidating Trustee selected pursuant to the terms hereof shall execute, acknowledge and deliver to Morris, Nichols, Arsht & Tunnell LLP an instrument in writing accepting such appointment hereunder, and thereupon such Successor Liquidating Trustee, without any further act, shall become fully vested with all of the rights, powers, duties and obligations of his, her or its predecessor.

**2.4 Trust Continuance.** The death, dissolution, resignation or removal (for cause) of the Liquidating Trustee shall not terminate the Liquidating Trust or revoke any existing agency (other than any agency of such Liquidating Trustee as Liquidating Trustee) created pursuant to this Liquidating Trust Agreement or invalidate any action theretofore taken by the Liquidating Trustee, and the Successor Liquidating Trustee agrees that the provisions of this Liquidating Trust Agreement shall be binding upon and inure to the benefit of the Successor Liquidating Trustee and all his, her or its heirs and legal and personal representatives, successors or assigns.

### **ARTICLE III**

#### **POWERS AND LIMITATIONS OF LIQUIDATING TRUSTEE**

**3.1 General Powers of Liquidating Trustee.** In connection with the administration of the Liquidating Trust, except as otherwise set forth herein, the Liquidating Trustee is authorized to perform only those acts necessary and desirable to accomplish the purposes of the Liquidating Trust, the Plan and the Confirmation Order. The Liquidating Trustee shall succeed to all of the rights, remedies, powers and defenses of the Debtors and the Estates necessary to protect, conserve, maximize the value of, distribute and liquidate all Liquidating Trust Assets as quickly as reasonably practicable. Subject to the limitations set forth in this Liquidating Trust Agreement, the Plan and the Confirmation Order, and in addition to any powers and authority conferred by law or by any other Section or provision of this Liquidating Trust Agreement, the Plan and the Confirmation Order, the Liquidating Trustee may exercise all powers granted to the Liquidating Trustee under this Liquidating Trust Agreement, the Plan and Confirmation Order. Without limiting, but subject to, the foregoing, the Liquidating Trustee shall be expressly authorized:

(a) To receive, hold, preserve, and liquidate the Liquidating Trust Assts and exercise all rights with respect thereto;

(b) To exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced and take all actions that may be or could have been taken by any general or limited partner, officer or director of any of the Debtors with like effect as if authorized, to the extent necessary or convenient to implement the provisions of the Plan, the Confirmation Order, and this Liquidating Trust Agreement, exercised and taken by unanimous action of the officers, directors and shareholders of any of the Debtors;



(c) To open and maintain bank accounts on behalf of or in the name of the Liquidating Trust, make Distributions and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment and maintenance of appropriate reserves, in the name of the Liquidating Trust;

(d) To take all steps and execute all instruments and documents necessary to make Distributions to Holders of Allowed Claims and to perform the duties assigned to the Liquidating Trustee under the Plan or this Liquidating Trust Agreement;

(e) To comply with and effectuate the Plan and the obligations of the Liquidating Trustee and the Liquidating Trust thereunder;

(f) To employ, retain or replace professionals to represent him or her with respect to his or her responsibilities (including professionals previously retained by the Debtors);

(g) To take any actions necessary to (i) resolve all matters related to the Liquidating Trust Assets and (ii) vest assets in the Liquidating Trust;

(h) To make Distributions of the Cash in the Liquidating Trust and any proceeds thereof, in excess of any amounts necessary to pay Liquidating Trust Expenses, in accordance with the terms of the Plan;

(i) To prepare and file appropriate tax returns and other reports on behalf of the Liquidating Trust, if any, and pay taxes or other obligations owed by the Debtors that are Allowed Claims (including, without limitation, any Allowed Administrative Expense Claims and Allowed Priority Tax Claims asserted by taxing authorities) and/or seek a determination of tax liability of the Debtors or Liquidating Trust pursuant to section 505 of the Bankruptcy Code;

(j) To file, prosecute, settle or dispose of any and all Objections to asserted Claims;

(k) To file, prosecute, settle or dispose of any and all Causes of Action which are Liquidating Trust Assets, and for the avoidance of doubt, nothing in this Article III shall be read or interpreted as limiting or precluding the Liquidating Trust from taking possession of, asserting, or prosecuting any and all rights, claims, and defenses of the Debtors or the Debtors' Estates as is necessary to effectuate the terms of the Plan, Confirmation Order, or Liquidating Trust Agreement;

(l) To establish and maintain the Disputed Claims Reserve and the Professional Fees Account, which Professional Fees Account, for the avoidance of doubt and consistent with Section 6.2 of the Plan, shall be (x) treated as a trust account for the benefit of Holders of Fee Claims until all such Fee Claims have been paid in full in Cash upon final allowance of such Claims, and (y) funded by the Liquidating Trustee as of the Effective Date in an amount sufficient to satisfy all estimated Fee Claims;

(m) To take such actions as are necessary or appropriate to close any of the Debtors' Chapter 11 Cases;

(n) To maintain the books and records and accounts of the Debtors;

(o) To invest Cash as deemed appropriate by the Liquidating Trustee; *provided, however*, that the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a “Liquidating Trust”, within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service (“IRS”) guidelines, whether set forth in IRS rulings, revenue procedures, other IRS pronouncements or otherwise;

(p) To enter into any agreement or execute any document required by or consistent with the Plan and the Confirmation Order and perform all of the Debtors’ obligations thereunder;

(q) To purchase or create and carry all insurance policies and pay all insurance premiums and costs the Liquidating Trustee deems necessary or advisable; and

(r) To take all other actions not inconsistent with the provisions of the Plan which the Liquidating Trustee deems reasonably necessary or desirable with respect to administering the Plan.

**3.2 Limitations on the Liquidating Trustee.** Notwithstanding anything in this Liquidating Trust Agreement, the Plan or the Confirmation Order to the contrary, the Liquidating Trustee shall not do or undertake any of the following in its capacity as such:

(a) Take any action in contravention of the Plan or the Confirmation Order;

(b) Take any action that would jeopardize treatment of the Liquidating Trust as a “Liquidating Trust” for federal income tax purposes;

(c) Receive transfers of any listed stocks or securities, any readily-marketable assets or any operating assets of a going business other than to liquidate such assets;

(d) Receive or retain Cash in excess of a reasonable amount necessary to meet Claims and contingent liabilities (including Disputed Claims);

(e) Exercise any investment power other than the power to invest in demand and time deposits in banks or savings institutions, or temporary investments such as short term certificates of deposit or Treasury bills;

(f) Enter into or engage in any trade or business (other than the management and disposition of the Liquidating Trust Assets), and no part of the Liquidating Trust Assets or the proceeds, revenue or income therefrom shall be used or disposed of by the Liquidating Trust in furtherance of any trade or business;

(g) Receive or retain any operating assets of a going business, a partnership interest in a partnership that holds operating assets, or fifty percent (50%) or more of the stock of a corporation with operating assets; and

(h) Guarantee any debt of other persons or entities without the prior written consent of K2 HealthVentures, LLC.

**3.3 Compensation and Expenses of Liquidating Trustee.** The Liquidating Trustee shall be entitled to receive compensation at its standard hourly rates in effect at the time the services are rendered and shall be reimbursed for all reasonable and documented costs and expenses in connection with the performance of its duties as Liquidating Trustee hereunder. The current hourly rates for the Liquidating Trustee and other pertinent employees at Verdolino & Lowey, P.C. are set forth on **Exhibit A** to this Liquidating Trust Agreement. Such compensation and expenses shall be expenses of the Liquidating Trust and may be paid out of the Liquidating Trust Assets without prior approval of the Bankruptcy Court. The compensation of any other Successor Liquidating Trustee shall be the amount set forth on **Exhibit A**, or if such Successor Liquidating Trustee does not agree to the same compensation terms as the original Liquidating Trustee, under such terms as agreed to by such Successor Liquidating Trustee and the Liquidating Trustee.

**3.4 Retention of Professionals.** Without any further notice to any party or action, order or approval of the Bankruptcy Court, the Liquidating Trustee, on behalf of the Liquidating Trust, may retain and engage such professionals and persons as may be necessary to carry out his duties under this Liquidating Trust Agreement (including professionals previously retained by the Debtors). Professionals retained by the Liquidating Trust shall submit monthly invoices for their reasonable fees and expenses to the Liquidating Trustee for payment upon receipt by the Liquidating Trustee from the Liquidating Trust Assets, subject to any limitations and procedures established by the Liquidating Trust Agreement.

**3.5 Liquidating Trustee Action.** Except as provided in the Plan or otherwise specified in this Liquidating Trust Agreement, the Liquidating Trustee need not obtain an order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred under the Plan or this Liquidating Trust Agreement, or account to the Bankruptcy Court. Notwithstanding the foregoing, the Liquidating Trustee shall have the right to submit to the Bankruptcy Court any question or questions regarding which the Liquidating Trustee may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the Liquidating Trust, including the administration or Distribution of any of the Liquidating Trust Assets. The Bankruptcy Court shall retain jurisdiction and power for such purposes and may approve or disapprove any such proposed action upon motion by the Liquidating Trust.

**3.6 Appointment of Supplemental Liquidating Trustee.** If the Liquidating Trustee has a conflict or any of the Liquidating Trust Assets are situated in any state or other jurisdiction in which the Liquidating Trustee is not qualified to act as trustee, the Liquidating Trustee shall nominate and appoint a Person duly qualified to act as trustee (the "Supplemental Trustee") in such state or jurisdiction and require from each such Supplemental Trustee such

security as may be designated by the Liquidating Trustee, subject to K2 HealthVenture, LLC's prior written approval. The Liquidating Trustee may confer upon such Supplemental Trustee all of the rights, powers, privileges, and duties of the Liquidating Trustee hereunder, subject to the conditions and limitations of this Liquidating Trust Agreement, except as modified or limited by the laws of the applicable state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such Supplemental Trustee is acting shall prevail to the extent necessary). The Liquidating Trustee shall require such Supplemental Trustee to be answerable to the Liquidating Trustee for all monies, assets, and other property that may be received in connection with the administration of all the Liquidating Trust Assets by the Supplemental Trustee. The Liquidating Trustee may remove such Supplemental Trustee, with or without cause, and appoint a successor Supplemental Trustee at any time by executing a written instrument declaring such Supplemental Trustee removed from office and specifying the effective date and time of removal.

#### **ARTICLE IV**

#### **LIABILITY OF LIQUIDATING TRUSTEE**

**4.1 Liquidating Trustee Standard of Care; Exculpation.** Neither the Liquidating Trustee, nor any director, officer, affiliate, employee, employer, professional, agent or representative of the Liquidating Trustee (if applicable) shall be personally liable in connection with affairs of the Liquidating Trust to any Holder of a Claim or Liquidating Trust Beneficiary, or the Liquidating Trust, or any other person, except for any acts or omissions of the Liquidating Trustee as shall constitute actual fraud, willful misconduct or gross negligence, each as determined by a Final Order from a court of competent jurisdiction. Every act done, power exercised or obligation assumed by the Liquidating Trustee pursuant to the provisions of this Liquidating Trust Agreement shall be held to be done, exercised or assumed, as the case may be, by the Liquidating Trustee acting in a fiduciary capacity and not otherwise, and every person, firm, corporation or other entity contracting or otherwise dealing with the Liquidating Trustee shall look only to the Liquidating Trust Assets for payment under such contract or payment of any money that may become due or payable under any obligation arising under this Liquidating Trust Agreement, in whole or in part, and the Liquidating Trustee shall not be individually liable therefor even though the Liquidating Trustee did not exempt himself, herself or itself from individual liability when entering into any contract, obligation or transaction in connection with or growing out of the Liquidating Trust.

**4.2 Indemnification.** Except as otherwise set forth in the Plan or Confirmation Order, the Liquidating Trustee and its respective accountants, agents, assigns, attorneys, bankers, consultants, directors, employees, executors, financial advisors, investment bankers, real estate brokers, transfer agents, managers, members, officers, partners, predecessors, principals, professional persons, representatives, affiliates, employer and successors (each, an "Indemnified Party") shall be indemnified for, and defended and not be liable for any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost, or expense (including the reasonable fees and expenses of their respective professionals) actually incurred in connection with actions taken or omitted in their respective capacities as, or on behalf of, the Liquidating Trustee or the Liquidating Trust, except those acts arising out of its or their own actual fraud, willful misconduct or gross negligence, each as determined by a Final Order from a court of competent jurisdiction.

The Indemnified Parties shall be entitled to advancement, indemnification, and reimbursement for fees and expenses in defending any and all of its or their actions or inactions in its or their capacity as, or on behalf of, the Liquidating Trustee or the Liquidating Trust, except for any actions or inactions involving its or their own actual fraud, willful misconduct or gross negligence, each as determined by a Final Order from a court of competent jurisdiction. Any indemnification claim of the Indemnified Parties under this subsection shall be satisfied from the Liquidating Trust Assets, as provided in this Liquidating Trust Agreement.

**4.3 No Liability for Acts of Successor/Predecessor Liquidating Trustees.**

Upon the delivery of the Liquidating Trust Assets to a Successor Liquidating Trustee, the predecessor Liquidating Trustee shall have no further liability or responsibility with respect thereto. A Successor Liquidating Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor and no Successor Liquidating Trustee shall be in any way liable for the acts or omissions of any predecessor Liquidating Trustee unless a Successor Liquidating Trustee expressly assumes such responsibility in writing.

**4.4 Reliance by Liquidating Trustee on Documents, Mistake of Fact or Advice of Counsel.** Except as otherwise provided in this Liquidating Trust Agreement, the Liquidating Trustee may rely, and shall be protected from liability for acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order or other paper or document reasonably believed by the Liquidating Trustee to be genuine and to have been presented by an authorized party. Also, the Liquidating Trustee shall not be liable if the Liquidating Trustee acts based on a mistake of fact before having actual knowledge of an event. The Liquidating Trustee shall not be liable for any action taken or suffered by the Liquidating Trustee in reasonably relying upon the advice of counsel or other professionals engaged by the Liquidating Trustee in accordance with the Plan, the Confirmation Order or this Liquidating Trust Agreement.

**4.5 Insurance.** The Liquidating Trustee shall be authorized, but not required, to obtain any reasonably necessary insurance coverage, at the Liquidating Trust's sole expense, for itself and its respective agents, including coverage with respect to the liabilities, duties and obligations of the Liquidating Trustee, which insurance coverage may, at the sole option of the Liquidating Trustee, be extended for a reasonable period after the termination of this Liquidating Trust Agreement. The Liquidating Trustee shall maintain appropriate insurance coverage for the protection of the Indemnified Parties.

## ARTICLE V

### DUTIES OF LIQUIDATING TRUSTEE

**5.1 General.** The Liquidating Trustee shall have all duties specified in this Liquidating Trust Agreement, the Plan and the Confirmation Order.

**5.2 Register of Liquidating Trust Beneficiaries.** The Liquidating Trustee shall maintain at all times a register of the names, addresses and amounts of Allowed Claims of the Liquidating Trust Beneficiaries (the "Register"). The Liquidating Trustee shall not be liable for relying on the accuracy of the Register, provided that the Liquidating Trustee (including through the Debtors' claims agent, Kurtzman Carson Consultants, LLC dba Verita Global

(“Verita”) has properly maintained the Register in accordance with this Liquidating Trust Agreement and/or the Plan, including making all changes based upon notification proper under this Liquidating Trust Agreement and/or the Plan having been submitted to the Liquidating Trustee.

**5.3 Books and Records.** The Liquidating Trustee also shall maintain, in respect of the Liquidating Trust and the Liquidating Trust Beneficiaries, books and records relating to the Liquidating Trust Assets and income realized therefrom and the payment of expenses of and claims against or assumed by the Liquidating Trust in accordance with generally accepted accounting principles and for such period of time as may be necessary to enable the Liquidating Trustee to make full and proper reports in respect thereof. Except as expressly provided in this Liquidating Trust Agreement, the Plan or the Confirmation Order, nothing in this Liquidating Trust Agreement is intended to require 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.

**5.4 Post-Confirmation Reports to Liquidating Trust Beneficiaries.** As required by the United States Trustee, the Liquidating Trustee will timely prepare and file with the Bankruptcy Court quarterly the Post-Confirmation Reports detailing the aggregate receipts and Distributions to the Liquidating Trust Beneficiaries, as well as any other statements, reports, and submissions to the extent required by applicable law.

**5.5 Final Accounting of Liquidating Trustee.** The Liquidating Trustee shall within ninety (90) days after the termination of the Liquidating Trust or its resignation, removal, liquidation or death (in which case, the obligation contained in this Section shall pass to the Liquidating Trustee’s estate), render a final accounting (which may be included or deemed satisfied as part of the final quarterly operating report to be filed with the Bankruptcy Court, to the extent the Debtors’ chapter 11 cases remain open) containing at least the following information:

- (a) A description of the Liquidating Trust Assets;
- (b) A summarized accounting in sufficient detail of all gains, losses, receipts, disbursements and other transactions in connection with the Liquidating Trust and the Liquidating Trust Assets during the Liquidating Trustee’s term of service, including their source and nature, which can be satisfied by incorporating the quarterly Post-Confirmation Reports by reference;
- (c) The ending balance of all Liquidating Trust Assets as of the date of the Liquidating Trustee’s accounting, including the Cash balance on hand and the name(s) and location(s) of the depository or depositories where the Cash is kept; and
- (d) All known liabilities of the Liquidating Trust.

The final accounting shall be presented to the Bankruptcy Court for approval, and all Liquidating Trust Beneficiaries shall have the opportunity to request notice (by emailing the Liquidating Trust’s counsel requesting same no later than ten (10) days prior to the publishing of

the final accounting) regarding the final accounting having been filed and an opportunity to have a hearing on the approval of the accounting and the discharge of the Liquidating Trustee.

**5.6 Fees and Expenses of Liquidating Trust.** From and after the Effective Date, Liquidating Trust Expenses shall be paid from the Liquidating Trust Assets in the ordinary course of business, in accordance with the Plan and this Liquidating Trust Agreement.

**5.7 Confidentiality.** The Liquidating Trustee shall and shall direct each of its respective accountants, agents, assigns, attorneys, bankers, consultants, directors, employees, executors, financial advisors, investment bankers, real estate brokers, transfer agents, managers, members, officers, partners, predecessors, principals, professional persons, representatives, affiliates, employers and successors, each in their respective capacities as such (collectively, the “Confidential Parties”) to hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Liquidating Trust Assets relate or of which the Confidential Parties have become aware in their capacity as Confidential Parties; *provided, however*, that such information may be disclosed pursuant to legal process including but not limited to subpoena or other court orders or applicable laws or regulations.

## ARTICLE VI

### LIQUIDATING TRUST BENEFICIARIES

**6.1 Interest Beneficial Only.** The ownership of a beneficial interest in the Liquidating Trust shall not entitle any Liquidating Trust Beneficiary to any title in or to the Liquidating Trust Assets or to any right to call for a partition or division of the Liquidating Trust Assets or to require an accounting, except as specifically provided by this Liquidating Trust Agreement.

**6.2 Evidence of Beneficial Interest.** Ownership of a beneficial interest in the Liquidating Trust Assets shall not be evidenced by any certificate, security or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Liquidating Trust by the Liquidating Trustee or its appointee.

**6.3 Registration of Beneficial Interest.** 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 (and for the avoidance of doubt, such Register may be maintained electronically and will be reflective of the then-current register of Holders of Allowed Claims against the Debtors, as updated by the Liquidating Trustee and/or the claims agent for the Debtors, Verita). The Register shall reflect the ownership of the beneficial interests of the Liquidating Trust Beneficiaries.

**6.4 Absolute Owners.** The Liquidating Trustee may deem and treat the Liquidating Trust Beneficiary reflected as the owner of a beneficial interest on the Register as the absolute owner thereof for the purposes of receiving distributions and payments on account thereof for federal, state and local income tax purposes and for all other purposes whatsoever.

**6.5 Effect of Death, Dissolution, Incapacity or Bankruptcy of Liquidating Trust Beneficiary.** The death, dissolution, incapacity or bankruptcy of a Liquidating Trust Beneficiary during the term of the Liquidating Trust shall not operate to terminate the Liquidating Trust during the term of the Liquidating Trust nor shall it entitle the representative or creditors of the deceased, incapacitated or bankrupt Liquidating Trust Beneficiary to an accounting or to take any action in any court or elsewhere for the Distribution of the Liquidating Trust Assets or for a partition thereof nor shall it otherwise affect the rights and obligations of the Liquidating Trust Beneficiary under this Liquidating Trust Agreement or in the Liquidating Trust.

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

**6.7 Addresses of Liquidating Trust Beneficiaries.** In order to determine the actual names and addresses of the Liquidating Trust Beneficiaries, the Liquidating Trustee may deliver a notice to the Liquidating Trust Beneficiaries (which beneficiaries will be identified based on the then-current list of Holders of Claims entitled or potentially entitled to a Distribution under the Plan, including the Holders identified on the current register of Claims maintained by Verita and/or the Liquidating Trustee). Such notice may include a form for each Liquidating Trust Beneficiary (as determined to be necessary by the Liquidating Trustee, as applicable, including, without limitation, IRS Form W-8 and/or Form W-9) to complete in order to be properly registered as a Liquidating Trust Beneficiary and be eligible for Distributions from the Liquidating Trust. A Liquidating Trust Beneficiary may, after the Effective Date, select an alternative mailing address from the one set forth on such form or in its Proof of Claim by notifying the Liquidating Trustee in writing (e-mail being sufficient) of such alternative distribution address. Absent receipt of such notice, the Liquidating Trustee shall not be obligated to recognize any such change of address. Such notification shall be effective only upon receipt by the Liquidating Trustee. The Liquidating Trustee, in its reasonable discretion, may suspend Distributions to any Liquidating Trust Beneficiary that has not provided its federal taxpayer identification number or social security number, as the case may be, after a request is made pursuant to this Section 6.7. If tax information is not provided within ninety (90) days after such request, the applicable Liquidating Trust Beneficiary's underlying Claim (and any related Claim of such Holder) will be deemed automatically expunged and disallowed (without further order of the Bankruptcy Court) for all purposes of this Liquidating Trust Agreement and Plan and such Holder shall not be entitled to receive any other or further Distribution under the Plan (with funds that such Holder would have otherwise been entitled to receive automatically reverting to the Liquidating Trust to be distributed pursuant to the Plan or this Liquidating Trust Agreement to Holders of Allowed Claims).



## ARTICLE VII

### PROCEDURES FOR RESOLVING AND TREATING CONTESTED CLAIMS

**7.1 Objection Deadline.** As soon as practicable, but in no event later than 180 days after the Effective Date, Objections to Claims shall be filed with the Bankruptcy Court and served upon Holders of each of the Claims to which Objections are made, provided, however, that such deadline may be extended by the Liquidating Trustee upon order of the Bankruptcy Court. In addition, the Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate any Contingent Claim, Disputed Claim or Unliquidated Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether any party previously objected to or sought estimation of such Claim.

**7.2 Prosecution of Disputed Claims.** The Liquidating Trustee is authorized and empowered, but not required, to resolve consensually any disputes regarding the allowance, classification or amount of any Claim, without further order of or approval from the Bankruptcy Court. All Objections that are filed and prosecuted as provided herein shall be litigated to Final Order or compromised and settled (or otherwise Allowed) in accordance with Section 7.4 of this Liquidating Trust Agreement and/or the Plan.

**7.3 Disputed Claim Reserve.** In determining the amount of Distributions to be made under the Plan to Holders of Allowed Claims, the appropriate Distribution required by the Plan shall be made according to estimates and subject to the provisions of the Plan. The Liquidating Trustee may, in his sole discretion, establish a reserve (“Disputed Claim Reserve”) for each Disputed Claim and shall transfer thereto the amounts of Cash as deemed necessary by the Liquidating Trustee to provide a pro rata Distribution to such Holders of a Claim. The Liquidating Trustee shall fund the Disputed Claim Reserve from the Liquidating Trust Assets.

**7.4 Claims Settlement Authority.** Notwithstanding any requirement that may be imposed pursuant to Bankruptcy Rule 9019, from and after the Effective Date, the Liquidating Trustee may settle consistent with its fiduciary duties all Claims that any of the Debtors, the Estates or the Liquidating Trust, as appropriate, have or may have asserted against other parties or any Claims that have been or will be asserted against the Debtors, their Estates or the Liquidating Trust, prior to objection without supervision or approval of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, the local rules of the Bankruptcy Court, and the guidelines and requirements of the United States Trustee, consistent with and pursuant to the terms of the Plan or the Confirmation Order; provided that, settlement of any Claims other than general unsecured Claims shall require the consent of K2 HealthVentures, LLC, such consent not to be unreasonably withheld.

## ARTICLE VIII

### DISTRIBUTIONS

**8.1 Distributions to Liquidating Trust Beneficiaries from Liquidating Trust Assets.** All payments to be made by the Liquidating Trustee to any Liquidating Trust Beneficiary shall be made in accordance with the Plan, the Confirmation Order and this

Liquidating Trust Agreement and from the Liquidating Trust Assets (or from the income and proceeds realized from the Liquidating Trust Assets) and only to the extent that the Liquidating Trust has sufficient Liquidating Trust Assets (or income and proceeds realized from the Liquidating Trust Assets) to make such payments in accordance with and to the extent provided for in the Plan, the Confirmation Order and this Liquidating Trust Agreement. Any Distribution made by the Liquidating Trustee in good faith shall be binding and conclusive on all interested parties.

## **8.2 Distributions; Withholding.**

(a) The first Distribution (the “Initial Distribution”) made by the Liquidating Trustee, as applicable, shall be made in accordance with the Plan.

(b) After the Initial Distribution, the Liquidating Trustee shall make Distributions from the Liquidating Trust at least annually but not prior to the Distribution Date to the Liquidating Trust Beneficiaries from all net Cash income and all other net Cash proceeds received by the Liquidating Trust; *provided, however*, that the Liquidating Trust may, to the extent consistent with Revenue Procedure 82-58, 1982-2 C.B. 847, as amplified by Revenue Procedure 94-45, 1994-2 C.B. 684, retain such amounts (i) as are reasonably necessary to meet contingent liabilities and to maintain the value of the Liquidating Trust Assets during the term of the Liquidating Trust, (ii) to pay reasonable administrative expenses including, without limitation, the compensation and the reimbursement of reasonable, actual and necessary costs fees (including attorneys’ fees) and expenses of the Liquidating Trustee in connection with the performance of its duties in connection with this Liquidating Trust Agreement, and (iii) to satisfy all other liabilities incurred or assumed by the Liquidating Trust (or to which the Liquidating Trust Assets are otherwise subject) in accordance with the Plan, the Confirmation Order and this Liquidating Trust Agreement. All Distributions shall be made as provided, and subject to any withholding or reserve, in this Liquidating Trust Agreement, the Plan or the Confirmation Order. Additionally, the Liquidating Trustee may withhold from amounts distributable to any Liquidating Trust Beneficiary any and all amounts, determined in the Liquidating Trustee’s reasonable sole direction, to be required by any law, regulation, rule, ruling, directive or other governmental requirement, including withholding the entirety of a Distribution until the Liquidating Trustee receives the necessary tax information from a Liquidating Trust Beneficiary. The Liquidating Trustee shall make continuing efforts to dispose of the Liquidating Trust Assets, make timely Distributions and not unduly prolong the duration of the Liquidating Trust.

(c) For the avoidance of doubt, given the limited assets of the Liquidating Trust and the anticipated number of Claims, the Liquidating Trustee shall exercise its discretion in determining whether it is feasible and reasonable to make Distributions to all Holders of Allowed Claims (including Allowed General Unsecured Claims) in one Distribution or in multiple Distributions.

**8.3 No Distribution Pending Allowance.** Notwithstanding anything to the contrary in the Plan, the Confirmation Order or this Liquidating Trust Agreement, no payment or Distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim provided that payment or Distribution

may be made on an Allowed portion of a Claim pending adjudication of the Disputed portion of such Claim.

**8.4 Distributions after Allowance.** Distributions to each Holder of a Disputed Claim, to the extent that such Claim ultimately becomes an Allowed Claim or Interest, shall be made in accordance with the provisions of the Plan governing the Class of Claims to which such Holder of a Claim belongs.

**8.5 Disputed Identity of Holder.** If any dispute arises as to the identity of a Holder of an Allowed Claim who is to receive any Distribution hereunder, the Liquidating Trustee may, in lieu of making such Distribution to such person, make such Distribution into an escrow account until the disposition thereof shall be determined by Bankruptcy Court order or by written agreement among the interested parties to such dispute.

**8.6 No Recourse to Liquidating Trust, Liquidating Trustee.** Notwithstanding that the Allowed amount of any particular Disputed Claim is reconsidered under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is Allowed in an amount for which there is insufficient Cash to provide a recovery equal to that received by other Holders of Allowed Claims in the relevant Class, no Claim Holder shall have recourse to the Liquidating Trustee or any of its professionals, or its successors or assigns, or the Holder of any other Claim, or any of their respective property. However, nothing in the Plan shall modify any right of a Holder of a Claim under Section 502(j) of the Bankruptcy Code. Thus, the Court's entry of an estimation order may limit the Distribution to be made on individual Disputed Claims, regardless of the amount finally allowed on account of such Disputed Claims.

**8.7 Non-Cash Property.** Any non-Cash property of the Liquidating Trust may be sold, transferred or abandoned by the Liquidating Trustee. The net proceeds of such sales shall be held in the Liquidating Trust pending Distribution or until used to fund the Liquidating Trust's obligations hereunder.

**8.8 Unclaimed Property.** If any Distribution remains unclaimed for a period of ninety (90) days after it has been delivered (or attempted to be delivered) in accordance with the Plan to the Holder entitled thereto, such unclaimed property shall be deposited in a segregated account established by the Liquidating Trustee. After the expiration of the ninety (90) day period (which period may be extended within the reasonable discretion of the Liquidating Trustee), the Holders of Allowed Claims theretofore entitled to such unclaimed property shall cease to be entitled thereto and shall be entitled to no further Distribution under this Liquidating Trust Agreement, and such Claims of the unclaimed property shall be deemed disallowed and expunged in their entirety and the funds shall revert to the Liquidating Trust and thereafter be redistributed to the other Holders of Allowed Claims in accordance with the Plan and the terms of this Liquidating Trust Agreement. Such funds shall not be subject to the escheat laws of any state.

**8.9 Withholding Taxes and Expenses of Distribution.** Any federal, state or local withholding taxes or other amounts required to be withheld under applicable law, as determined by the Liquidating Trustee in its sole discretion, shall be deducted from Distributions hereunder. All persons holding Claims shall be required to provide the Liquidating Trustee with

any information necessary to effect the withholding of such taxes and the Liquidating Trustee may withhold all Distributions pending receipt of such information. In addition, the Liquidating Trustee shall be entitled to reserve and account for the actual and reasonable costs of making such Distributions and reserve and account for all costs and other projected future reasonable costs and expenses of the Liquidating Trust prior to calculating the amounts available for Distribution on account of Allowed Claims.

**8.10 Method of Cash Distributions.** Any Cash payment to be made by the Liquidating Trustee pursuant to the Plan will be in U.S. dollars and may be made, at the sole discretion of the Liquidating Trustee, by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law.

**8.11 Timing of Distributions.** Any payment or other Distribution required to be made under the Plan on a day other than a Business Day shall be due on the next succeeding Business Day, but shall be deemed to have been made on the required date. Any payment of Cash to be made pursuant to the Plan, subject to the terms hereof, shall be deemed made, if by electronic wire transfer, when the applicable electronic wire transfer is initiated by the sending bank or, if by check drawn on a domestic bank, when the earliest occurs of depositing in the mail for the entitled recipient, receipt by the entitled recipient, or delivery to a third party delivery service for delivery to the entitled recipient.

**8.12 No Distribution in Excess of Allowed Amount of Claim.** Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution (of a value set forth herein or in the Disclosure Statement) in excess of the Allowed amount of such Claim.

**8.13 Setoff Rights.** The Liquidating Trustee may, but shall not be required to, setoff against or recoup from any Holder (including any Liquidating Trust Beneficiary) on which payments or other Distributions are to be made hereunder, claims or defenses of any nature that the Liquidating Trust, the Debtors or the Estates may have against such Person. However, neither the failure to do so, nor the allowance of any Claim under the Plan or otherwise, shall constitute a waiver or release of any such claim, right of setoff or right of recoupment against the Holder of such Allowed Claim.

**8.14 Conflicting Claims.**

(a) If any conflicting claims or demands are made or asserted with respect to the beneficial interest of a Liquidating Trust Beneficiary under this Liquidating 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.

(b) The Liquidating Trustee, at its sole election, may elect to cause the Liquidating Trust to make no payment or Distribution with respect to the Liquidating Trust Interest

subject to the conflicting claims or demand, or any part thereof, and to refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands. Neither the Liquidating Trust nor the Liquidating Trustee shall be or become liable to any of such parties for their refusal to comply with any such conflicting claims or demands, nor shall the Liquidating Trust or Liquidating Trustee be liable for interest on any funds which may be so withheld.

(c) The Liquidating Trustee shall be entitled to refuse to act until either (i) the rights of the adverse claimants have been adjudicated by a final order of the Bankruptcy Court or (ii) all differences have been resolved by a valid written agreement among all such parties to the satisfaction of the Liquidating Trustee, which agreement shall include a complete release of the Liquidating Trust and Liquidating Trustee. Until the Liquidating Trustee receives written notice that one of the conditions of the preceding sentence is met, the Liquidating Trustee may deem and treat as the absolute owner under this Liquidating Trust Agreement of the Liquidating Trust Interest the Liquidating Trust Beneficiary identified as the owner of that interest in the books and records maintained by the Liquidating Trustee. The Liquidating Trustee may deem and treat such Liquidating Trust Beneficiary as the absolute owner for purposes of receiving distributions and any payments on account thereof for federal and state income tax purposes, and for all other purposes whatsoever.

**8.15 Distributions under One Hundred Dollars.** Notwithstanding anything herein to the contrary, no Holder of any Allowed Claim in an amount that would entitle such Holder to a pro-rata distribution of less than \$100 shall receive any Distribution on account of such Allowed Claim. All such amounts shall remain unallocated components of the Liquidating Trust Assets to be distributed in subsequent Distributions.

## ARTICLE IX

### TAXES

**9.1 Income Tax Status.** Consistent with Revenue Procedure 94-45, 1994-2 C.B. 684, the Liquidating Trust shall be treated as a Liquidating Trust pursuant to Treasury Regulation Section 301.7701-4(d) and as a grantor trust pursuant to Sections 671-677 of the Internal Revenue Code of 1986, as amended (the "Tax Code"). As such, the Liquidating Trust Beneficiaries will be treated as both the grantors and the deemed owners of the Liquidating Trust. Any items of income, deduction, credit and loss of the Liquidating Trust shall be allocated for federal income tax purposes to the Liquidating Trust Beneficiaries.

**9.2 Tax Returns.** The Liquidating Trustee shall file such tax returns as may be required by federal, state or local taxing authorities. The Liquidating Trustee shall file with the IRS annual tax returns on Form 1041 or comply with other applicable tax return filing options, in accordance with Tax Code Section 6012 and Treasury Regulation Sections 1.671-4(a) and 1.671-4(b). In addition, the Liquidating Trustee shall file in a timely manner such other tax returns as are required by applicable law and pay any taxes shown as due thereon. The Liquidating Trustee shall send to each Liquidating Trust Beneficiary a copy of the Form 1041 for the Liquidating Trust (without attaching any other Liquidating Trust Beneficiary's Schedule K-1 or other applicable

information form) within a reasonable time following the end of the taxable year, along with such Liquidating Trust Beneficiary's Schedule K-1 or other applicable information form.

**9.3 Withholding of Taxes Related to Liquidating Trust Operations.** To the extent that the operation of the Liquidating Trust or the liquidation of the Liquidating Trust Assets creates a tax liability of the Liquidating Trust in excess of applicable net operating losses, the Liquidating Trustee shall promptly pay such tax liability, if any, and any such payment shall be considered a cost and expense of the operation of the Liquidating Trust payable from the Liquidating Trust Assets. The Liquidating Trustee may reserve a sum, the amount of which shall be determined by the Liquidating Trustee in its sole discretion, sufficient to pay the accrued or potential tax liability arising out of the operations of the Liquidating Trust or the operation of the Liquidating Trust Assets. In the exercise of its sole discretion, the Liquidating Trustee may enter into agreements with taxing authorities or other governmental units for the payment of such amounts as may be withheld.

**9.4 Valuations.** The Liquidating Trustee and the Liquidating Trust Beneficiaries shall utilize consistent valuations of the Liquidating Trust Assets and such valuations shall be used for all federal income tax purposes.

**9.5 Survival.** For the avoidance of doubt, the foregoing provisions of this Article IX shall survive the termination of a Liquidation Trust Beneficiary's beneficial interests in the Liquidation Trust pursuant to Article X hereof.

## ARTICLE X

### TERMINATION OF TRUST

**10.1 Maximum Term.** The Liquidating Trust shall have an initial term of two years (the "Initial Trust Term") if not otherwise terminated sooner by the Distribution of all of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries in accordance with the Plan and this Liquidating Trust Agreement; *provided, however*, that the Liquidating Trustee may extend the term of the Liquidating Trust if necessary to facilitate or complete the liquidation of the Liquidating Trust Assets or the Distributions required to be made to the Liquidating Trust Beneficiaries hereunder for an additional one (1) year (the "Supplemental Liquidating Trust Term") by filing a motion with the Bankruptcy Court of the Liquidating Trustee's intent to extend the term of the Liquidating Trust with the Bankruptcy Court and obtaining the approval of the Bankruptcy Court within six (6) months prior to the beginning of the extended term; *provided further, however*, that the aggregate of all such extensions shall not exceed one (1) year, unless the Liquidating Trustee receives a favorable ruling from the IRS or an opinion of counsel satisfactory to the Liquidating Trustee that any further extension would not adversely affect the status of the Liquidating Trust as a Liquidating Trust within the meaning of Treas. Reg. §301.7701-4(d) for federal income tax purposes. Notwithstanding anything to the contrary in this Liquidating Trust Agreement, in no event shall the Liquidating Trustee unduly prolong the duration of the Liquidating Trust, and the Liquidating Trustee shall at all times endeavor to prosecute, direct, settle or compromise expeditiously the Causes of Action and Claims objections, so as to distribute the Liquidating Trust Assets to the Liquidating Trust Beneficiaries and terminate the Liquidating Trust as soon as practicable in accordance with this Liquidating Trust Agreement.

**10.2 Events Upon End of Term Termination.** Upon the termination of the Liquidating Trust, the Liquidating Trustee shall distribute the remaining Liquidating Trust Assets, if any, to the Liquidating Trust Beneficiaries, in accordance with the Plan, the Confirmation Order and this Liquidating Trust Agreement. In connection with the termination of the Liquidating Trust, notwithstanding other provisions hereof, any remaining Liquidating Trust Assets that are of inconsequential value or otherwise insufficient to support the cost of a Distribution may be transferred by the Liquidating Trustee to a non-profit charitable organization qualifying under Section 501(c)(3) of the Tax Code and selected by the Liquidating Trustee in consultation with Morris, Nichols, Arsht & Tunnell LLP, in its sole discretion.

**10.3 Winding Up and Discharge of the Liquidating Trustee.** For the purposes of winding up the affairs of the Liquidating Trust at its termination, the Liquidating Trustee shall continue to act as Liquidating Trustee until its duties have been fully discharged. After doing so, the Liquidating Trustee, its agents and employees shall have no further duties or obligations hereunder, except as required by this Liquidating Trust Agreement, the Plan, or applicable law concerning the termination of a trust. Upon a motion by the Liquidating Trustee, the Bankruptcy Court may enter an order relieving the Liquidating Trustee, its agents and employees of any further duties, discharging the Liquidating Trustee.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

#### **11.1 Amendments.**

(a) This Liquidating Trust Agreement may only be modified, supplemented or amended by the Liquidating Trustee in a written, acknowledged instrument: (i) to cure any ambiguity, omission, defect or inconsistency in this Liquidating Trust Agreement; provided that such amendments, supplements or waivers shall not contravene or otherwise be inconsistent with the terms of the Plan and the Confirmation Order, adversely affect the distributions to be made or other rights under this Liquidating Trust Agreement to any of the Liquidating Trust Beneficiaries, or adversely affect the U.S. federal income tax status of the Liquidating Trust as a “Liquidating Trust”; (ii) to comply with any requirements in connection with the U.S. federal income tax status of the Liquidating Trust as a “Liquidating Trust”; (iii) to comply with any requirements in connection with maintaining that the Liquidating Trust is not subject to registration or reporting requirements of the Exchange Act or the Investment Company Act; and (iv) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Liquidating Trust Agreement.

(b) Any substantive provision of this Liquidating Trust Agreement may be amended or waived by the Liquidating Trustee, with the approval of the Bankruptcy Court upon notice and an opportunity for a hearing; *provided, however*, that no change may be made to this Liquidating Trust Agreement that contravenes or is otherwise inconsistent with the terms of the Plan or the Confirmation Order.

**11.2 Waiver.** No failure by the Liquidating Trustee to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver, nor shall any single

or partial exercise of any right, power or privilege hereunder preclude any further exercise thereof, or of any other right, power or privilege.

**11.3 Cumulative Rights and Remedies.** The rights and remedies provided in this Liquidating Trust Agreement are cumulative and are not exclusive of any rights under law or in equity.

**11.4 No Bond Required.** Notwithstanding any state law to the contrary, the Liquidating Trustee (including any Successor Liquidating Trustee) shall be exempt from giving any bond or other security in any jurisdiction.

**11.5 Transfer of Books and Records; Preservation of Privileges and Immunities.**

(a) On the Effective Date or as soon thereafter as is reasonably practicable, all books and records of the Debtors, to the extent they exist and are in the Debtors' possession, including, without limitation, all books and records relating to the administration of the Liquidating Trust, all Claims against the Debtors and the Liquidating Trust and all Avoidance Actions, shall be transferred or deemed assigned to the Liquidating Trust. The Debtors, their affiliates and agents shall take all steps, and execute all documents, necessary to cause the transfer of all of the books and records of the Debtors in accordance with the Plan. Except as set forth in the Plan and Confirmation Order, the Liquidating Trustee shall maintain such books and records until five years from the filing of the Debtors' final tax returns. Thereafter, said records may be destroyed or otherwise disposed of, except as otherwise set forth in the Confirmation Order. The Liquidating Trustee shall be free, in their reasonable discretion, to destroy or otherwise dispose of any records of the Debtors' Estates, including to the extent unnecessary or unrelated to the Debtors' tax returns.

(b) Any documents or communications (whether written or oral, and including confidential information) transferred by the Debtors to the Liquidating Trust shall vest, including all rights and privileges, including the attorney-client and work product privileges, related thereto, in the Liquidating Trustee and its, his or her representatives, only to the extent necessary for administration of claims. Otherwise, any documents or communications (whether written or oral, and including confidential information) transferred by the Debtors to the Liquidating Trust shall vest, including all rights and privileges, including the attorney-client and work product privileges, related thereto, in K2 HealthVentures, LLC. The Debtors and the Liquidating Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges. After the Effective Date, no person other than the Liquidating Trustee shall have the right to assert or waive any privilege of the Debtors or to make any admission or statement against interest respecting the Debtors.

(c) On the Effective Date, all of the Debtors' privileges and work product, including but not limited to any attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral), shall be transferred to and maintained by the Liquidating Trustee or K2 HealthVentures, LLC, as applicable. The Liquidating Trustee, in its sole discretion, will have exclusive authority to waive or not waive the



Debtors' and Liquidating Trust's privileges as applied to the administration of claims. K2 HealthVentures, LLC, in its sole discretion, will otherwise have exclusive authority to waive or not waive the Debtors' and K2 HealthVentures, LLC's privileges. For the avoidance of doubt, the Liquidating Trustee's receipt of such information shall not waive any privileges, and such privileges are fully preserved.

**11.6 Irrevocability.** This Liquidating Trust Agreement and the Liquidating Trust created hereunder shall be irrevocable to the fullest extent permitted by applicable law, and may not be amended except as expressly provided in Section 11.1 of this Liquidating Trust Agreement.

**11.7 Relationship to the Plan.** The principal purpose of this Liquidating Trust Agreement is to aid in the implementation of the Plan and, therefore, this Liquidating Trust Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In the event that any provision of this Liquidating Trust Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order, the provisions of the Plan or the Confirmation Order, as applicable, shall control.

**11.8 Governing Law.** This Liquidating Trust Agreement is made in the State of Delaware, and the Liquidating Trust and this Liquidating Trust Agreement, and the rights and obligations of the Trustee are to be governed by and construed and administered according to the laws of the State of Delaware, *provided, however*, that, except as expressly provided in this Liquidating Trust Agreement, there shall not be applicable to the Liquidating Trust, the Liquidating Trustee, or this Liquidating Trust Agreement (a) the provisions of Section 3540 of Title 12 of the Delaware Code, or (b) any provisions of the laws (statutory or common) of the State of Delaware pertaining to trusts which relate to or regulate: (i) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges, (ii) affirmative requirements to post bonds for trustees, officers, agents or employees of a trust, (iii) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (iv) fees or other sums payable to trustees, officers, agents or employees of a trust, (v) the allocation of receipts and expenditures to income or principal, (vi) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding of trust assets, or (vii) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees, which are inconsistent with the limitations or liabilities or authorities and powers of the Trustee set forth or referenced in this Liquidating Trust Agreement. Each party hereto, including any Successor Liquidating Trustee, hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court or, if the Bankruptcy Court refuses such jurisdiction, to the non-exclusive jurisdiction of the courts of the State of Delaware, sitting in New Castle County and having proper subject matter jurisdiction, or the Federal District Court for the District of Delaware, for all purposes in connection with any action or proceeding that arises out of or relates to this Liquidating Trust Agreement (the "Proceedings") and hereby agrees that service of summons, complaint or other process in connection with any Proceedings may be made pursuant to the notice provisions of Section 12.12 of this Liquidating Trust Agreement, and that service so made shall be as effective as if personally made in the State of Delaware. Nothing

herein shall affect the right of either party hereto to serve legal process in any manner permitted by law.

**11.9 Retention of Jurisdiction.** Notwithstanding any other provision of this Liquidating Trust Agreement, and to the fullest extent permitted by law, the Bankruptcy Court shall retain jurisdiction over the Liquidating Trust after the Effective Date, including, without limitation, jurisdiction as set forth in the Plan and the Confirmation Order and to resolve any and all controversies, suits and issues that may arise in connection with the Liquidating Trust, including, without limitation, this Liquidating Trust Agreement, or any entity's obligations incurred in connection herewith, including without limitation, any action against the Liquidating Trustee or any professional retained by the Liquidating Trustee or the Liquidating Trust, in each case in its capacity as such. Each party to this Liquidating Trust Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Liquidating Trust Agreement or of any other agreement or document delivered in connection with this Liquidating Trust Agreement, and also hereby irrevocably waives any defense of improper venue, forum non conveniens or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that (i) any action to enforce, interpret or construe any provision of this Liquidating Trust Agreement will be brought only in the Bankruptcy Court and (ii) all determinations, decisions, rulings and holdings of the Bankruptcy Court shall be final and non-appealable and not subject to reargument or reconsideration. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, to be sent to its address set forth in Section 12.12 of this Liquidating Trust Agreement or to such other address as he, she or it may designate from time to time by notice given in the manner provided above, of any process in any action to enforce, interpret or construe any provision of this Liquidating Trust Agreement. **ANY AND ALL RIGHT TO TRIAL BY JURY IS HEREBY WAIVED AND THERE SHALL BE NO RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE LIQUIDATING TRUST AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

**11.10 Severability.** In the event that any provision of this Liquidating Trust Agreement or the application thereof to any person or circumstance shall be determined by the Bankruptcy Court or another court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Liquidating Trust Agreement, or the application of such provision to persons or circumstance, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Liquidating Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

**11.11 Limitation of Benefits.** Except as otherwise specifically provided in this Liquidating Trust Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or to give any person other than the parties hereto and the Liquidating Trust Beneficiaries any rights or remedies under or by reason of this Liquidating Trust Agreement.

**11.12 Notices.** All notices, requests, demands, consents and other communication hereunder shall be in writing and shall be deemed to have been duly given to a person, if delivered

in person or by email or if sent by overnight mail, registered mail, certified mail or regular mail, with postage prepaid, to the following addresses:

If to the Debtors:

Morris, Nichols, Arsht & Tunnell LLP  
1201 N. Market St., 16<sup>th</sup> Floor  
Wilmington, Delaware 19801  
Attn: Eric D. Schwartz, Andrew R. Remming, Luke Brzozowski  
Ph: 302-658-9200  
Email: eschwartz@morrisonichols.com  
aremring@morrisonichols.com  
lbrzozowski@morrisonichols.com

If to the Liquidating Trustee:

Verdolino & Lowey, P.C.  
124 Washington Street, Suite 101  
Foxboro, MA 02035  
Attn: Craig Jalbert  
Email: CJalbert@vlpc.com

With a copy to:

Morris, Nichols, Arsht & Tunnell LLP  
1201 N. Market St., 16<sup>th</sup> Floor  
Wilmington, Delaware 19801  
Attn: Eric D. Schwartz, Andrew R. Remming, Luke Brzozowski  
Ph: 302-658-9200  
Email: eschwartz@morrisonichols.com  
aremring@morrisonichols.com  
lbrzozowski@morrisonichols.com

If to a Liquidating Trust Beneficiary:

To the name and address set forth in the Register with respect to such Liquidating Trust Beneficiary.

If to K2 HealthVentures, LLC:

Ben Bang  
K2 HealthVentures, LLC  
855 Boylston Street  
10th Floor  
Boston, MA 02116  
Email: bbang@k2hv.com

legal@k2hv.com

With a copy (which shall not constitute notice) to:

Jeri Leigh Miller  
Sidley Austin LLP  
2021 McKinney Avenue #2000  
Dallas, TX 75201  
Telephone: (214) 981-3432  
Email: jeri.miller@sidley.com

The parties may designate in writing from time to time other and additional places to which notices may be sent. All demands, requests, consents, notices and communications shall be deemed to have been given (a) at the time of actual delivery thereof, (b) if given by certified or registered mail, five (5) business days after being deposited in the United States mail, postage prepaid and properly addressed, or (c) if given by overnight courier, the next business day after being sent, charges prepaid and properly addressed.

**11.13 Further Assurances.** From and after the Effective Date, the parties hereto covenant and agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and purposes of this Liquidating Trust Agreement, and to consummate the transactions contemplated hereby.

**11.14 Integration.** This Liquidating Trust Agreement, the Plan and the Confirmation Order constitute the entire agreement with, by and among the parties thereto, and there are no representations, warranties, covenants or obligations except as set forth herein, in the Plan and in the Confirmation Order. Except as provided in this Liquidating Trust Agreement, the Plan or the Confirmation Order, this Liquidating Trust Agreement, together with the Plan and the Confirmation Order, supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise provided in this Liquidating Trust Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any person other than the parties hereto and the Liquidating Trust Beneficiaries any rights or remedies under or by reason of this Liquidating Trust Agreement.

**11.15 Successors or Assigns.** The terms of this Liquidating Trust Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

**11.16 Interpretation.** The enumeration and Section headings contained in this Liquidating Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Liquidating Trust Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this Liquidating Trust Agreement the singular shall include the plural and the plural shall include the singular, and words importing the masculine gender shall include the feminine and the neuter, if appropriate, and vice versa, and words importing persons shall include partnerships, associations and corporations. The words herein,

hereby, and hereunder and words with similar import, refer to this Liquidating Trust Agreement as a whole and not to any particular Section or subsection hereof unless the context requires otherwise.

**11.17 Counterparts.** This Liquidating Trust Agreement may be signed by the parties hereto in counterparts, which, when taken together, shall constitute one and the same document.

*[Remainder of page intentionally left blank]*

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

**DEBTORS:**

Molecular Templates, Inc.  
Molecular Templates Opco, Inc.

By: \_\_\_\_\_

Name:

Title:

**LIQUIDATING TRUSTEE:**

Craig Jalbert

By: \_\_\_\_\_

Name: Craig Jalbert

Title:

**Exhibit A**

**(Liquidating Trustee Compensation)**

<b>Title</b>	<b>Hourly Rate</b>
Managing Director	\$440.00-\$565.00
Director	\$345.00
Associate/Analyst	\$275.00

**Exhibit 2**

**Redline**



## LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (the “Liquidating Trust Agreement”) dated as of [●], 2025, is made by and among Molecular Templates, Inc. and Molecular Templates OpCo, Inc., debtors and debtors in possession in the chapter 11 cases being jointly administered under Case No. 25-10739 (BLS) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) (collectively, the “Debtors”), and Craig Jalbert, as the initial Liquidating Trustee (as defined below) in connection with the *Revised Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization for Molecular Templates, Inc. and its Affiliated Debtor* (the “Plan”) [Docket No. ●], which was confirmed by the [*Confirmation Order*], (the “Confirmation Order”) [Docket No. ●], entered on July [●], 2025, for the purpose of forming a liquidating trust (the “Liquidating Trust”) which provides, *inter alia*:

(a) For the Liquidating Trust to qualify as a “grantor trust” for federal income tax purposes, the Liquidating Trustee shall operate and maintain the Liquidating Trust in compliance with the guidelines for liquidating trusts as set forth in the applicable provisions of Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Sections 1.671-4(a) and 301.7701-4(d) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue Service, U.S. Treasury Department and other applicable legislative, administrative, regulatory and judicial agencies and departments;

(b) For the transfer of all Liquidating Trust Assets into the Liquidating Trust for distribution to beneficiaries of the Liquidating Trust (the “Liquidating Trust Beneficiaries”) pursuant to and in accordance with this Liquidating Trust Agreement, the Plan and the Confirmation Order;

(c) For federal income tax purposes, (i) the Liquidating Trust Beneficiaries of the Liquidating Trust are to be treated as the grantors of the Liquidating Trust and deemed to be the owners of the Liquidating Trust Assets; and (ii) the Debtors are to treat the transfer of the Liquidating Trust Assets to the Liquidating Trust as a deemed transfer to such Liquidating Trust Beneficiaries followed by a deemed transfer by such Liquidating Trust Beneficiaries to the Liquidating Trust;

(d) For the management of the Liquidating Trust Assets by the Liquidating Trustee; and

(e) For the Distribution of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries as set forth in the Plan.

Unless the context otherwise requires, all capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan.

NOW, THEREFORE, pursuant to the Plan and in consideration of the mutual agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the parties hereby agree as follows:

**ARTICLE I**  
**DECLARATION OF TRUST**

**1.1 Purpose of the Liquidating Trust.** The Debtors and the Liquidating Trustee, pursuant to the Plan and the Confirmation Order, and in accordance with the Bankruptcy Code and applicable tax statutes, rules and regulations, hereby constitute and create the Liquidating Trust for the purpose of administering post-Effective Date responsibilities of the Debtors and Wind-down Estates under the Plan, including, but not limited to, (i) being vested with, administering, and liquidating, the Liquidating Trust Assets, and (ii) making Distributions to Holders of Allowed Claims in accordance with the terms of the Plan and this Liquidating Trust Agreement. Further, the Liquidating Trust is created for the purpose of liquidating and distributing the Liquidating Trust Assets with no objective to continue or engage in the conduct of a trade or business. In particular, the Liquidating Trust, through the Liquidating Trustee, shall (a) make continuing efforts to collect and reduce the Liquidating Trust Assets to Cash in order to meet the Liquidating Trust's Cash and other obligations, (b) make timely Distributions on account of Allowed Claims pursuant to the Plan and this Liquidating Trust Agreement, (c) not unduly prolong the duration of the Liquidating Trust, and (d) take such steps as are reasonably necessary to accomplish such purpose, all as more fully provided in, and subject to the terms and provisions of, the Plan, the Confirmation Order and this Liquidating Trust Agreement. Notwithstanding any provision of Delaware law or any other applicable law to the contrary, the Liquidating Trustee shall not have authority to engage in any trade or business, and no portion of the Liquidating Trust Assets shall be used in the conduct of a trade or business, except as is reasonably necessary for the prompt and orderly collection and reduction to Cash of the Liquidating Trust Assets.

**1.2 Name of the Liquidating Trust.** The Liquidating Trust established hereby shall be known as the "MTEM Liquidating Trust". In connection with the exercise of its powers, the Liquidating Trustee may use such name or such variation thereof as the Liquidating Trustee sees fit and may transact the affairs of the Liquidating Trust in such name.

**1.3 Offices.**

(a) The principal office of the Liquidating Trust, and such additional offices as the Liquidating Trustee may determine to establish, shall be located at such place or places inside or outside the State of Delaware as the Liquidating Trustee may designate from time to time.

(b) Service of process upon the Liquidating Trust may be made by service upon the Liquidating Trustee. The principal office of the Liquidating Trustee is located at: 124 Washington Street, Suite 101, Foxboro, MA 02035.

**1.4 Transfer of Assets to Create Liquidating Trust.**

(a) In accordance with Section 9.5 of the Plan, the Debtors and the Estates hereby grant, release, assign, transfer, convey and deliver, for and on behalf of the Liquidating

Trust Beneficiaries, the Liquidating Trust Assets to the Liquidating Trust which transfer shall be free and clear of all Claims and Liens and contractually imposed restrictions, and exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar tax to the maximum extent permitted under section 1146 of the Bankruptcy Code, as of the Effective Date, to have and to hold unto the Liquidating Trustee and its successors in trust and to be applied as specified in the Plan, the Confirmation Order and this Liquidating Trust Agreement. Upon the transfer of the Liquidating Trust Assets, and except as otherwise provided herein or in the Plan, neither the Debtors nor any other entity shall retain any interest in the Liquidating Trust Assets. The Debtors shall execute and deliver or cause to be executed and delivered to or upon the order of the Liquidating Trustee all such documents, in recordable form where necessary or appropriate, and the Debtors shall take or cause to be taken such further or other action, as the Liquidating Trustee may deem appropriate, to vest or perfect in or confirm to the Liquidating Trustee, or upon the order of the Liquidating Trustee, title to and possession of all of the Liquidating Trust Assets as of the Effective Date.

(b) To the extent any Liquidating Trust Assets cannot be transferred to the Liquidating Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such Liquidating Trust Assets shall be deemed to have been retained by the Debtors and the Liquidating Trustee shall be deemed to have been designated as a representative of the Debtors pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Liquidating Trust Assets on behalf of the Debtors. Notwithstanding the foregoing, all net proceeds of such Liquidating Trust Assets shall be transferred to the Liquidating Trust to be distributed to the Liquidating Trust Beneficiaries in accordance with the Plan.

**1.5 Acceptance by Liquidating Trustee.** The Liquidating Trustee hereby accepts (a) the appointment to serve as Liquidating Trustee; (b) the transfer of the Liquidating Trust Assets on behalf of the Liquidating Trust; (c) the trust imposed on the Liquidating Trustee by this Liquidating Trust Agreement, and (d) any liabilities of the Liquidating Trust, on behalf of the Liquidating Trust, to the extent provided in the Plan. The Liquidating Trustee agrees to receive, hold, administer and distribute the Liquidating Trust Assets and the income derived therefrom on behalf of the Liquidating Trust pursuant to the terms of the Plan, the Confirmation Order and this Liquidating Trust Agreement. The Liquidating Trust Agreement expressly authorizes the Liquidating Trustee to reconcile and satisfy Claims and meet all other obligations of the Debtors' Estates in accordance with the Plan and the Confirmation Order. The Liquidating Trustee agrees to perform all acts necessary to ensure the transfer of the Liquidating Trust Assets to the Liquidating Trustee on behalf of the Liquidating Trust.

## ARTICLE II

### LIQUIDATING TRUSTEE - GENERALLY

**2.1 Appointment.** There shall at all times be a trustee who shall be responsible for the administration of the Liquidating Trust (the "Liquidating Trustee"). The

initial Liquidating Trustee shall be Craig Jalbert. Any successor Liquidating Trustee shall be appointed as herein provided.

**2.2 Term of Service.** The initial Liquidating Trustee, and each successor Liquidating Trustee, shall serve until the earlier to occur of (a) the termination of the Liquidating Trust in accordance with Article X of this Liquidating Trust Agreement, or (b) such Liquidating Trustee's resignation, death, dissolution, removal or liquidation.

**2.3 Resignation, Death, Dissolution or Removal of Liquidating Trustee.**

(a) The Liquidating Trustee may resign his position at any time by providing 30 days' written notice to the Bankruptcy Court. Upon such resignation, the Liquidating Trustee shall appoint a successor Liquidating Trustee (the "Successor Liquidating Trustee"). Such resignation may become effective on the earlier to occur of (i) the date that is 30 days after such notice is filed with the Bankruptcy Court and (ii) the appointment of a permanent Successor Liquidating Trustee.

(b) The resignation, death, dissolution, removal or incapacity of the Liquidating Trustee shall not operate to terminate the Liquidating Trust created by this Liquidating Trust Agreement or to revoke any existing agency created pursuant to the terms of this Liquidating Trust Agreement or invalidate any action therefore taken by the Liquidating Trustee. In the event of the removal, incapacitation, or death of the Liquidating Trustee, counsel to the Liquidating Trust shall move the Bankruptcy Court to appoint a Successor Liquidating Trustee as soon as reasonably practicable, and in the interim, shall have the authority to take any necessary action on behalf of the Liquidating Trust as deemed reasonably necessary to take for the benefit of the Liquidating Trust Beneficiaries.

(c) Any Successor Liquidating Trustee so appointed pursuant to this Section 2.3 shall consent to and accept in writing the terms of this Liquidating Trust Agreement and agree that the provisions of this Liquidating Trust Agreement shall be binding upon and inure to the benefit of the Successor Liquidating Trustee. A Successor Liquidating Trustee shall have all the rights, privileges, powers, and duties of its predecessor under this Liquidating Trust Agreement, the Plan, and the Confirmation Order.

(d) The Liquidating Trustee may be removed by the Bankruptcy Court upon application for cause shown, which application may be brought by the U.S. Trustee or any creditor. For purposes of removing the Liquidating Trustee, "cause" shall mean (i) the Liquidating Trustee's willful failure to perform his, her or its material duties hereunder, which is not remedied within thirty (30) days of notice; (ii) the Liquidating Trustee's death; (iii) the Liquidating Trustee's mental or physical incapacity that materially and adversely affects the Liquidating Trustee's ability to perform his, her or its duties under the Plan; (iv) the Liquidating Trustee's commission of an act of fraud, theft or embezzlement in connection with the Liquidating Trustee's duties under this Plan; and (v) the Liquidating Trustee's conviction for the commission of a felony with all appeals having been exhausted or appeal periods lapsed; *provided, however*, that no "cause" shall exist involving clause (i) above until the Liquidating Trustee first has failed to cure such failure within thirty (30) days of having been given written

notice of such failure. For purposes of the foregoing, no act or failure to act on the part of the Liquidating Trustee shall be considered “willful” unless it is done, or permitted to be done, by the Liquidating Trustee without reasonable belief that the Liquidating Trustee’s action or omission was in the best interests of the Debtors. The Liquidating Trustee’s rights to oppose any such application are fully preserved and reserved.

(e) No Successor Liquidating Trustee hereunder shall in any event have any liability or responsibility for the acts or omissions of any of his, her or its predecessors. Every Successor Liquidating Trustee selected pursuant to the terms hereof shall execute, acknowledge and deliver to Morris, Nichols, Arsht & Tunnell LLP an instrument in writing accepting such appointment hereunder, and thereupon such Successor Liquidating Trustee, without any further act, shall become fully vested with all of the rights, powers, duties and obligations of his, her or its predecessor.

**2.4 Trust Continuance.** The death, dissolution, resignation or removal (for cause) of the Liquidating Trustee shall not terminate the Liquidating Trust or revoke any existing agency (other than any agency of such Liquidating Trustee as Liquidating Trustee) created pursuant to this Liquidating Trust Agreement or invalidate any action theretofore taken by the Liquidating Trustee, and the Successor Liquidating Trustee agrees that the provisions of this Liquidating Trust Agreement shall be binding upon and inure to the benefit of the Successor Liquidating Trustee and all his, her or its heirs and legal and personal representatives, successors or assigns.

### ARTICLE III

#### POWERS AND LIMITATIONS OF LIQUIDATING TRUSTEE

**3.1 General Powers of Liquidating Trustee.** In connection with the administration of the Liquidating Trust, except as otherwise set forth herein, the Liquidating Trustee is authorized to perform only those acts necessary and desirable to accomplish the purposes of the Liquidating Trust, the Plan and the Confirmation Order. The Liquidating Trustee shall succeed to all of the rights, remedies, powers and defenses of the Debtors and the Estates necessary to protect, conserve, maximize the value of, distribute and liquidate all Liquidating Trust Assets as quickly as reasonably practicable. Subject to the limitations set forth in this Liquidating Trust Agreement, the Plan and the Confirmation Order, and in addition to any powers and authority conferred by law or by any other Section or provision of this Liquidating Trust Agreement, the Plan and the Confirmation Order, the Liquidating Trustee may exercise all powers granted to the Liquidating Trustee under this Liquidating Trust Agreement, the Plan and Confirmation Order. Without limiting, but subject to, the foregoing, the Liquidating Trustee shall be expressly authorized:

(a) To receive, hold, preserve, and liquidate the Liquidating Trust Assts and exercise all rights with respect thereto;

(b) To exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced and take all actions that may be or could have been taken by any general or limited partner, officer or director

of any of the Debtors with like effect as if authorized, to the extent necessary or convenient to implement the provisions of the Plan, the Confirmation Order, and this Liquidating Trust Agreement, exercised and taken by unanimous action of the officers, directors and shareholders of any of the Debtors;

(c) To open and maintain bank accounts on behalf of or in the name of the Liquidating Trust, make Distributions and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment and maintenance of appropriate reserves, in the name of the Liquidating Trust;

(d) To take all steps and execute all instruments and documents necessary to make Distributions to Holders of Allowed Claims and to perform the duties assigned to the Liquidating Trustee under the Plan or this Liquidating Trust Agreement;

(e) To comply with and effectuate the Plan and the obligations of the Liquidating Trustee and the Liquidating Trust thereunder;

(f) To employ, retain or replace professionals to represent him or her with respect to his or her responsibilities (including professionals previously retained by the Debtors);

(g) To take any actions necessary to (i) resolve all matters related to the Liquidating Trust Assets and (ii) vest assets in the Liquidating Trust;

(h) To make Distributions of the Cash in the Liquidating Trust and any proceeds thereof, in excess of any amounts necessary to pay Liquidating Trust Expenses, in accordance with the terms of the Plan;

(i) To prepare and file appropriate tax returns and other reports on behalf of the Liquidating Trust, if any, and pay taxes or other obligations owed by the Debtors that are Allowed Claims (including, without limitation, any Allowed Administrative Expense Claims and Allowed Priority Tax Claims asserted by taxing authorities) and/or seek a determination of tax liability of the Debtors or Liquidating Trust pursuant to section 505 of the Bankruptcy Code;

(j) To file, prosecute, settle or dispose of any and all Objections to asserted Claims;

(k) To file, prosecute, settle or dispose of any and all Causes of Action which are Liquidating Trust Assets, and for the avoidance of doubt, nothing in this Article III shall be read or interpreted as limiting or precluding the Liquidating Trust from taking possession of, asserting, or prosecuting any and all rights, claims, and defenses of the Debtors or the Debtors' Estates as is necessary to effectuate the terms of the Plan, Confirmation Order, or Liquidating Trust Agreement;

(l) To establish and maintain the Disputed Claims Reserve and the Professional Fees Account, which Professional Fees Account, for the avoidance of doubt and consistent with Section 6.2 of the Plan, shall be (x) treated as a trust account for the benefit of Holders of Fee Claims until all such Fee Claims have been paid in full in Cash upon final

allowance of such Claims, and (y) funded by the Liquidating Trustee as of the Effective Date in an amount sufficient to satisfy all estimated Fee Claims;

(m) To take such actions as are necessary or appropriate to close any of the Debtors' Chapter 11 Cases;

(n) To maintain the books and records and accounts of the Debtors;

(o) To invest Cash as deemed appropriate by the Liquidating Trustee; *provided, however*, that the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a "Liquidating Trust", within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service ("IRS") guidelines, whether set forth in IRS rulings, revenue procedures, other IRS pronouncements or otherwise;

(p) To enter into any agreement or execute any document required by or consistent with the Plan and the Confirmation Order and perform all of the Debtors' obligations thereunder;

(q) To purchase or create and carry all insurance policies and pay all insurance premiums and costs the Liquidating Trustee deems necessary or advisable; and

(r) To take all other actions not inconsistent with the provisions of the Plan which the Liquidating Trustee deems reasonably necessary or desirable with respect to administering the Plan.

**3.2 Limitations on the Liquidating Trustee.** Notwithstanding anything in this Liquidating Trust Agreement, the Plan or the Confirmation Order to the contrary, the Liquidating Trustee shall not do or undertake any of the following in its capacity as such:

(a) Take any action in contravention of the Plan or the Confirmation Order;

(b) Take any action that would jeopardize treatment of the Liquidating Trust as a "Liquidating Trust" for federal income tax purposes;

(c) Receive transfers of any listed stocks or securities, any readily-marketable assets or any operating assets of a going business other than to liquidate such assets;

(d) Receive or retain Cash in excess of a reasonable amount necessary to meet Claims and contingent liabilities (including Disputed Claims);

(e) Exercise any investment power other than the power to invest in demand and time deposits in banks or savings institutions, or temporary investments such as short term certificates of deposit or Treasury bills;

(f) Enter into or engage in any trade or business (other than the management and disposition of the Liquidating Trust Assets), and no part of the Liquidating Trust Assets or the proceeds, revenue or income therefrom shall be used or disposed of by the Liquidating Trust in furtherance of any trade or business;

(g) Receive or retain any operating assets of a going business, a partnership interest in a partnership that holds operating assets, or fifty percent (50%) or more of the stock of a corporation with operating assets; and

(h) Guarantee any debt of other persons or entities without the prior written consent of K2 HealthVentures, LLC.

**3.3 Compensation and Expenses of Liquidating Trustee.** The Liquidating Trustee shall be entitled to receive compensation at its standard hourly rates in effect at the time the services are rendered and shall be reimbursed for all reasonable and documented costs and expenses in connection with the performance of its duties as Liquidating Trustee hereunder. The current hourly rates for the Liquidating Trustee and other pertinent employees at Verdolino & Lowey, P.C. are set forth on **Exhibit A** to this Liquidating Trust Agreement. Such compensation and expenses shall be expenses of the Liquidating Trust and may be paid out of the Liquidating Trust Assets without prior approval of the Bankruptcy Court. The compensation of any other Successor Liquidating Trustee shall be the amount set forth on **Exhibit A**, or if such Successor Liquidating Trustee does not agree to the same compensation terms as the original Liquidating Trustee, under such terms as agreed to by such Successor Liquidating Trustee and the Liquidating Trustee.

**3.4 Retention of Professionals.** Without any further notice to any party or action, order or approval of the Bankruptcy Court, the Liquidating Trustee, on behalf of the Liquidating Trust, may retain and engage such professionals and persons as may be necessary to carry out his duties under this Liquidating Trust Agreement (including professionals previously retained by the Debtors). Professionals retained by the Liquidating Trust shall submit monthly invoices for their reasonable fees and expenses to the Liquidating Trustee for payment upon receipt by the Liquidating Trustee from the Liquidating Trust Assets, subject to any limitations and procedures established by the Liquidating Trust Agreement.

**3.5 Liquidating Trustee Action.** Except as provided in the Plan or otherwise specified in this Liquidating Trust Agreement, the Liquidating Trustee need not obtain an order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred under the Plan or this Liquidating Trust Agreement, or account to the Bankruptcy Court. Notwithstanding the foregoing, the Liquidating Trustee shall have the right to submit to the Bankruptcy Court any question or questions regarding which the Liquidating Trustee may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the Liquidating Trust, including the administration or Distribution of any of the



Liquidating Trust Assets. The Bankruptcy Court shall retain jurisdiction and power for such purposes and may approve or disapprove any such proposed action upon motion by the Liquidating Trust.

**3.6 Appointment of Supplemental Liquidating Trustee.** If the Liquidating Trustee has a conflict or any of the Liquidating Trust Assets are situated in any state or other jurisdiction in which the Liquidating Trustee is not qualified to act as trustee, the Liquidating Trustee shall nominate and appoint a Person duly qualified to act as trustee (the “Supplemental Trustee”) in such state or jurisdiction and require from each such Supplemental Trustee such security as may be designated by the Liquidating Trustee, subject to K2 HealthVenture, LLC’s prior written approval. The Liquidating Trustee may confer upon such Supplemental Trustee all of the rights, powers, privileges, and duties of the Liquidating Trustee hereunder, subject to the conditions and limitations of this Liquidating Trust Agreement, except as modified or limited by the laws of the applicable state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such Supplemental Trustee is acting shall prevail to the extent necessary). The Liquidating Trustee shall require such Supplemental Trustee to be answerable to the Liquidating Trustee for all monies, assets, and other property that may be received in connection with the administration of all the Liquidating Trust Assets by the Supplemental Trustee. The Liquidating Trustee may remove such Supplemental Trustee, with or without cause, and appoint a successor Supplemental Trustee at any time by executing a written instrument declaring such Supplemental Trustee removed from office and specifying the effective date and time of removal.

## ARTICLE IV

### LIABILITY OF LIQUIDATING TRUSTEE

**4.1 Liquidating Trustee Standard of Care; Exculpation.** Neither the Liquidating Trustee, nor any director, officer, affiliate, employee, employer, professional, agent or representative of the Liquidating Trustee (if applicable) shall be personally liable in connection with affairs of the Liquidating Trust to any Holder of a Claim or Liquidating Trust Beneficiary, or the Liquidating Trust, or any other person, except for any acts or omissions of the Liquidating Trustee as shall constitute actual fraud, willful misconduct or gross negligence, each as determined by a Final Order from a court of competent jurisdiction. Every act done, power exercised or obligation assumed by the Liquidating Trustee pursuant to the provisions of this Liquidating Trust Agreement shall be held to be done, exercised or assumed, as the case may be, by the Liquidating Trustee acting in a fiduciary capacity and not otherwise, and every person, firm, corporation or other entity contracting or otherwise dealing with the Liquidating Trustee shall look only to the Liquidating Trust Assets for payment under such contract or payment of any money that may become due or payable under any obligation arising under this Liquidating Trust Agreement, in whole or in part, and the Liquidating Trustee shall not be individually liable therefor even though the Liquidating Trustee did not exempt himself, herself or itself from individual liability when entering into any contract, obligation or transaction in connection with or growing out of the Liquidating Trust.

**4.2 Indemnification.** Except as otherwise set forth in the Plan or Confirmation Order, the Liquidating Trustee and its respective accountants, agents, assigns, attorneys, bankers, consultants, directors, employees, executors, financial advisors, investment bankers, real estate brokers, transfer agents, managers, members, officers, partners, predecessors, principals, professional persons, representatives, affiliates, employer and successors (each, an “Indemnified Party”) shall be indemnified for, and defended and not be liable for any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost, or expense (including the reasonable fees and expenses of their respective professionals) actually incurred in connection with actions taken or omitted in their respective capacities as, or on behalf of, the Liquidating Trustee or the Liquidating Trust, except those acts arising out of its or their own actual fraud, willful misconduct or gross negligence, each as determined by a Final Order from a court of competent jurisdiction. The Indemnified Parties shall be entitled to advancement, indemnification, and reimbursement for fees and expenses in defending any and all of its or their actions or inactions in its or their capacity as, or on behalf of, the Liquidating Trustee or the Liquidating Trust, except for any actions or inactions involving its or their own actual fraud, willful misconduct or gross negligence, each as determined by a Final Order from a court of competent jurisdiction. Any indemnification claim of the Indemnified Parties under this subsection shall be satisfied from the Liquidating Trust Assets, as provided in this Liquidating Trust Agreement.

**4.3 No Liability for Acts of Successor/Predecessor Liquidating Trustees.** Upon the delivery of the Liquidating Trust Assets to a Successor Liquidating Trustee, the predecessor Liquidating Trustee shall have no further liability or responsibility with respect thereto. A Successor Liquidating Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor and no Successor Liquidating Trustee shall be in any way liable for the acts or omissions of any predecessor Liquidating Trustee unless a Successor Liquidating Trustee expressly assumes such responsibility in writing.

**4.4 Reliance by Liquidating Trustee on Documents, Mistake of Fact or Advice of Counsel.** Except as otherwise provided in this Liquidating Trust Agreement, the Liquidating Trustee may rely, and shall be protected from liability for acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order or other paper or document reasonably believed by the Liquidating Trustee to be genuine and to have been presented by an authorized party. Also, the Liquidating Trustee shall not be liable if the Liquidating Trustee acts based on a mistake of fact before having actual knowledge of an event. The Liquidating Trustee shall not be liable for any action taken or suffered by the Liquidating Trustee in reasonably relying upon the advice of counsel or other professionals engaged by the Liquidating Trustee in accordance with the Plan, the Confirmation Order or this Liquidating Trust Agreement.

**4.5 Insurance.** The Liquidating Trustee shall be authorized, but not required, to obtain any reasonably necessary insurance coverage, at the Liquidating Trust’s sole expense, for itself and its respective agents, including coverage with respect to the liabilities, duties and obligations of the Liquidating Trustee, which insurance coverage may, at the sole option of the Liquidating Trustee, be extended for a reasonable period after the termination of this Liquidating

Trust Agreement. The Liquidating Trustee shall maintain appropriate insurance coverage for the protection of the Indemnified Parties.

## ARTICLE V DUTIES OF LIQUIDATING TRUSTEE

**5.1 General.** The Liquidating Trustee shall have all duties specified in this Liquidating Trust Agreement, the Plan and the Confirmation Order.

**5.2 Register of Liquidating Trust Beneficiaries.** The Liquidating Trustee shall maintain at all times a register of the names, addresses and amounts of Allowed Claims of the Liquidating Trust Beneficiaries (the “Register”). The Liquidating Trustee shall not be liable for relying on the accuracy of the Register, provided that the Liquidating Trustee (including through the Debtors’ claims agent, Kurtzman Carson Consultants, LLC dba Verita Global (“Verita”)) has properly maintained the Register in accordance with this Liquidating Trust Agreement and/or the Plan, including making all changes based upon notification proper under this Liquidating Trust Agreement and/or the Plan having been submitted to the Liquidating Trustee.

**5.3 Books and Records.** The Liquidating Trustee also shall maintain, in respect of the Liquidating Trust and the Liquidating Trust Beneficiaries, books and records relating to the Liquidating Trust Assets and income realized therefrom and the payment of expenses of and claims against or assumed by the Liquidating Trust in accordance with generally accepted accounting principles and for such period of time as may be necessary to enable the Liquidating Trustee to make full and proper reports in respect thereof. Except as expressly provided in this Liquidating Trust Agreement, the Plan or the Confirmation Order, nothing in this Liquidating Trust Agreement is intended to require 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.

**5.4 Post-Confirmation Reports to Liquidating Trust Beneficiaries.** As required by the United States Trustee, the Liquidating Trustee will timely prepare and file with the Bankruptcy Court quarterly the Post-Confirmation Reports detailing the aggregate receipts and Distributions to the Liquidating Trust Beneficiaries, as well as any other statements, reports, and submissions to the extent required by applicable law.

**5.5 Final Accounting of Liquidating Trustee.** The Liquidating Trustee shall within ninety (90) days after the termination of the Liquidating Trust or its resignation, removal, liquidation or death (in which case, the obligation contained in this Section shall pass to the Liquidating Trustee’s estate), render a final accounting (which may be included or deemed satisfied as part of the final quarterly operating report to be filed with the Bankruptcy Court, to the extent the Debtors’ chapter 11 cases remain open) containing at least the following information:

(a) A description of the Liquidating Trust Assets;

(b) A summarized accounting in sufficient detail of all gains, losses, receipts, disbursements and other transactions in connection with the Liquidating Trust and the Liquidating Trust Assets during the Liquidating Trustee's term of service, including their source and nature, which can be satisfied by incorporating the quarterly Post-Confirmation Reports by reference;

(c) The ending balance of all Liquidating Trust Assets as of the date of the Liquidating Trustee's accounting, including the Cash balance on hand and the name(s) and location(s) of the depository or depositories where the Cash is kept; and

(d) All known liabilities of the Liquidating Trust.

The final accounting shall be presented to the Bankruptcy Court for approval, and all Liquidating Trust Beneficiaries shall have the opportunity to request notice (by emailing the Liquidating Trust's counsel requesting same no later than ten (10) days prior to the publishing of the final accounting) regarding the final accounting having been filed and an opportunity to have a hearing on the approval of the accounting and the discharge of the Liquidating Trustee.

**5.6 Fees and Expenses of Liquidating Trust.** From and after the Effective Date, Liquidating Trust Expenses shall be paid from the Liquidating Trust Assets in the ordinary course of business, in accordance with the Plan and this Liquidating Trust Agreement.

**5.7 Confidentiality.** The Liquidating Trustee shall and shall direct each of its respective accountants, agents, assigns, attorneys, bankers, consultants, directors, employees, executors, financial advisors, investment bankers, real estate brokers, transfer agents, managers, members, officers, partners, predecessors, principals, professional persons, representatives, affiliates, employers and successors, each in their respective capacities as such (collectively, the "Confidential Parties") to hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Liquidating Trust Assets relate or of which the Confidential Parties have become aware in their capacity as Confidential Parties; *provided, however*, that such information may be disclosed pursuant to legal process including but not limited to subpoena or other court orders or applicable laws or regulations.

**ARTICLE VI**  
**LIQUIDATING TRUST BENEFICIARIES**

**6.1 Interest Beneficial Only.** The ownership of a beneficial interest in the Liquidating Trust shall not entitle any Liquidating Trust Beneficiary to any title in or to the Liquidating Trust Assets or to any right to call for a partition or division of the Liquidating Trust Assets or to require an accounting, except as specifically provided by this Liquidating Trust Agreement.

**6.2 Evidence of Beneficial Interest.** Ownership of a beneficial interest in the Liquidating Trust Assets shall not be evidenced by any certificate, security or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Liquidating Trust by the Liquidating Trustee or its appointee.

**6.3 Registration of Beneficial Interest.** 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 (and for the avoidance of doubt, such Register may be maintained electronically and will be reflective of the then-current register of Holders of Allowed Claims against the Debtors, as updated by the Liquidating Trustee and/or the claims agent for the Debtors, Verita). The Register shall reflect the ownership of the beneficial interests of the Liquidating Trust Beneficiaries.

**6.4 Absolute Owners.** The Liquidating Trustee may deem and treat the Liquidating Trust Beneficiary reflected as the owner of a beneficial interest on the Register as the absolute owner thereof for the purposes of receiving distributions and payments on account thereof for federal, state and local income tax purposes and for all other purposes whatsoever.

**6.5 Effect of Death, Dissolution, Incapacity or Bankruptcy of Liquidating Trust Beneficiary.** The death, dissolution, incapacity or bankruptcy of a Liquidating Trust Beneficiary during the term of the Liquidating Trust shall not operate to terminate the Liquidating Trust during the term of the Liquidating Trust nor shall it entitle the representative or creditors of the deceased, incapacitated or bankrupt Liquidating Trust Beneficiary to an accounting or to take any action in any court or elsewhere for the Distribution of the Liquidating Trust Assets or for a partition thereof nor shall it otherwise affect the rights and obligations of the Liquidating Trust Beneficiary under this Liquidating Trust Agreement or in the Liquidating Trust.

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

**6.7 Addresses of Liquidating Trust Beneficiaries.** In order to determine the actual names and addresses of the Liquidating Trust Beneficiaries, the Liquidating Trustee may deliver a notice to the Liquidating Trust Beneficiaries (which beneficiaries will be identified based on the then-current list of Holders of Claims entitled or potentially entitled to a Distribution under the Plan, including the Holders identified on the current register of Claims maintained by Verita and/or the Liquidating Trustee). Such notice may include a form for each Liquidating Trust Beneficiary (as determined to be necessary by the Liquidating Trustee, as applicable, including, without limitation, IRS Form W-8 and/or Form W-9) to complete in order to be properly registered as a Liquidating Trust Beneficiary and be eligible for Distributions from the Liquidating Trust. A Liquidating Trust Beneficiary may, after the Effective Date, select an alternative mailing address from the one set forth on such form or in its Proof of Claim by notifying the Liquidating Trustee in writing (e-mail being sufficient) of such alternative distribution address. Absent receipt of such notice, the Liquidating Trustee shall not be obligated to recognize any such change of address. Such notification shall be effective only upon receipt by the Liquidating Trustee. The Liquidating Trustee, in its reasonable discretion, may suspend Distributions to any Liquidating Trust Beneficiary that has not provided its federal taxpayer identification number or social security number, as the case may be, after a request is made pursuant to this Section 6.7. If tax information is not provided within ninety (90) days after such request, the applicable Liquidating Trust Beneficiary's underlying Claim (and any related Claim of such Holder) will be deemed automatically expunged and disallowed (without further order of the Bankruptcy Court) for all purposes of this Liquidating Trust Agreement and Plan and such Holder shall not be entitled to receive any other or further Distribution under the Plan (with funds that such Holder would have otherwise been entitled to receive automatically reverting to the Liquidating Trust to be distributed pursuant to the Plan or this Liquidating Trust Agreement to Holders of Allowed Claims).

## ARTICLE VII

### PROCEDURES FOR RESOLVING AND TREATING CONTESTED CLAIMS

**7.1 Objection Deadline.** As soon as practicable, but in no event later than 180 days after the Effective Date, Objections to Claims shall be filed with the Bankruptcy Court and served upon Holders of each of the Claims to which Objections are made, provided, however, that such deadline may be extended by the Liquidating Trustee upon order of the Bankruptcy Court. In addition, the Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate any Contingent Claim, Disputed Claim or Unliquidated Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether any party previously objected to or sought estimation of such Claim.

**7.2 Prosecution of Disputed Claims.** The Liquidating Trustee is authorized and empowered, but not required, to resolve consensually any disputes regarding the allowance, classification or amount of any Claim, without further order of or approval from the Bankruptcy Court. All Objections that are filed and prosecuted as provided herein shall be litigated to Final Order or compromised and settled (or otherwise Allowed) in accordance with Section 7.4 of this Liquidating Trust Agreement and/or the Plan.

**7.3 Disputed Claim Reserve.** In determining the amount of Distributions to be made under the Plan to Holders of Allowed Claims, the appropriate Distribution required by the Plan shall be made according to estimates and subject to the provisions of the Plan. The Liquidating Trustee may, in his sole discretion, establish a reserve (“Disputed Claim Reserve”) for each Disputed Claim and shall transfer thereto the amounts of Cash as deemed necessary by the Liquidating Trustee to provide a pro rata Distribution to such Holders of a Claim. The Liquidating Trustee shall fund the Disputed Claim Reserve from the Liquidating Trust Assets.

**7.4 Claims Settlement Authority.** Notwithstanding any requirement that may be imposed pursuant to Bankruptcy Rule 9019, from and after the Effective Date, the Liquidating Trustee may settle consistent with its fiduciary duties all Claims that any of the Debtors, the Estates or the Liquidating Trust, as appropriate, have or may have asserted against other parties or any Claims that have been or will be asserted against the Debtors, their Estates or the Liquidating Trust, prior to objection without supervision or approval of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, the local rules of the Bankruptcy Court, and the guidelines and requirements of the United States Trustee, consistent with and pursuant to the terms of the Plan or the Confirmation Order; provided that, settlement of any Claims other than general unsecured Claims shall require the consent of K2 HealthVentures, LLC, such consent not to be unreasonably withheld.

## **ARTICLE VIII DISTRIBUTIONS**

**8.1 Distributions to Liquidating Trust Beneficiaries from Liquidating Trust Assets.** All payments to be made by the Liquidating Trustee to any Liquidating Trust Beneficiary shall be made in accordance with the Plan, the Confirmation Order and this Liquidating Trust Agreement and from the Liquidating Trust Assets (or from the income and proceeds realized from the Liquidating Trust Assets) and only to the extent that the Liquidating Trust has sufficient Liquidating Trust Assets (or income and proceeds realized from the Liquidating Trust Assets) to make such payments in accordance with and to the extent provided for in the Plan, the Confirmation Order and this Liquidating Trust Agreement. Any Distribution made by the Liquidating Trustee in good faith shall be binding and conclusive on all interested parties.

### **8.2 Distributions; Withholding.**

(a) The first Distribution (the “Initial Distribution”) made by the Liquidating Trustee, as applicable, shall be made in accordance with the Plan.

(b) After the Initial Distribution, the Liquidating Trustee shall make Distributions from the Liquidating Trust at least annually but not prior to the Distribution Date to the Liquidating Trust Beneficiaries from all net Cash income and all other net Cash proceeds received by the Liquidating Trust; *provided, however*, that the Liquidating Trust may, to the extent consistent with Revenue Procedure 82-58, 1982-2 C.B. 847, as amplified by Revenue Procedure 94-45, 1994-2 C.B. 684, retain such amounts (i) as are reasonably necessary to meet contingent liabilities and to maintain the value of the Liquidating Trust Assets during the term of

the Liquidating Trust, (ii) to pay reasonable administrative expenses including, without limitation, the compensation and the reimbursement of reasonable, actual and necessary costs fees (including attorneys' fees) and expenses of the Liquidating Trustee in connection with the performance of its duties in connection with this Liquidating Trust Agreement, and (iii) to satisfy all other liabilities incurred or assumed by the Liquidating Trust (or to which the Liquidating Trust Assets are otherwise subject) in accordance with the Plan, the Confirmation Order and this Liquidating Trust Agreement. All Distributions shall be made as provided, and subject to any withholding or reserve, in this Liquidating Trust Agreement, the Plan or the Confirmation Order. Additionally, the Liquidating Trustee may withhold from amounts distributable to any Liquidating Trust Beneficiary any and all amounts, determined in the Liquidating Trustee's reasonable sole direction, to be required by any law, regulation, rule, ruling, directive or other governmental requirement, including withholding the entirety of a Distribution until the Liquidating Trustee receives the necessary tax information from a Liquidating Trust Beneficiary. The Liquidating Trustee shall make continuing efforts to dispose of the Liquidating Trust Assets, make timely Distributions and not unduly prolong the duration of the Liquidating Trust.

(c) For the avoidance of doubt, given the limited assets of the Liquidating Trust and the anticipated number of Claims, the Liquidating Trustee shall exercise its discretion in determining whether it is feasible and reasonable to make Distributions to all Holders of Allowed Claims (including Allowed General Unsecured Claims) in one Distribution or in multiple Distributions.

**8.3 No Distribution Pending Allowance.** Notwithstanding anything to the contrary in the Plan, the Confirmation Order or this Liquidating Trust Agreement, no payment or Distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim provided that payment or Distribution may be made on an Allowed portion of a Claim pending adjudication of the Disputed portion of such Claim.

**8.4 Distributions after Allowance.** Distributions to each Holder of a Disputed Claim, to the extent that such Claim ultimately becomes an Allowed Claim or Interest, shall be made in accordance with the provisions of the Plan governing the Class of Claims to which such Holder of a Claim belongs.

**8.5 Disputed Identity of Holder.** If any dispute arises as to the identity of a Holder of an Allowed Claim who is to receive any Distribution hereunder, the Liquidating Trustee may, in lieu of making such Distribution to such person, make such Distribution into an escrow account until the disposition thereof shall be determined by Bankruptcy Court order or by written agreement among the interested parties to such dispute.

**8.6 No Recourse to Liquidating Trust, Liquidating Trustee.** Notwithstanding that the Allowed amount of any particular Disputed Claim is reconsidered under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is Allowed in an amount for which there is insufficient Cash to provide a recovery equal to that received by other Holders of Allowed Claims in the relevant Class, no Claim Holder shall have recourse to the Liquidating Trustee or any of its professionals, or its successors or assigns, or the Holder of



any other Claim, or any of their respective property. However, nothing in the Plan shall modify any right of a Holder of a Claim under Section 502(j) of the Bankruptcy Code. Thus, the Court's entry of an estimation order may limit the Distribution to be made on individual Disputed Claims, regardless of the amount finally allowed on account of such Disputed Claims.

**8.7 Non-Cash Property.** Any non-Cash property of the Liquidating Trust may be sold, transferred or abandoned by the Liquidating Trustee. The net proceeds of such sales shall be held in the Liquidating Trust pending Distribution or until used to fund the Liquidating Trust's obligations hereunder.

**8.8 Unclaimed Property.** If any Distribution remains unclaimed for a period of ninety (90) days after it has been delivered (or attempted to be delivered) in accordance with the Plan to the Holder entitled thereto, such unclaimed property shall be deposited in a segregated account established by the Liquidating Trustee. After the expiration of the ninety (90) day period (which period may be extended within the reasonable discretion of the Liquidating Trustee), the Holders of Allowed Claims theretofore entitled to such unclaimed property shall cease to be entitled thereto and shall be entitled to no further Distribution under this Liquidating Trust Agreement, and such Claims of the unclaimed property shall be deemed disallowed and expunged in their entirety and the funds shall revert to the Liquidating Trust and thereafter be redistributed to the other Holders of Allowed Claims in accordance with the Plan and the terms of this Liquidating Trust Agreement. Such funds shall not be subject to the escheat laws of any state.

**8.9 Withholding Taxes and Expenses of Distribution.** Any federal, state or local withholding taxes or other amounts required to be withheld under applicable law, as determined by the Liquidating Trustee in its sole discretion, shall be deducted from Distributions hereunder. All persons holding Claims shall be required to provide the Liquidating Trustee with any information necessary to effect the withholding of such taxes and the Liquidating Trustee may withhold all Distributions pending receipt of such information. In addition, the Liquidating Trustee shall be entitled to reserve and account for the actual and reasonable costs of making such Distributions and reserve and account for all costs and other projected future reasonable costs and expenses of the Liquidating Trust prior to calculating the amounts available for Distribution on account of Allowed Claims.

**8.10 Method of Cash Distributions.** Any Cash payment to be made by the Liquidating Trustee pursuant to the Plan will be in U.S. dollars and may be made, at the sole discretion of the Liquidating Trustee, by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law.

**8.11 Timing of Distributions.** Any payment or other Distribution required to be made under the Plan on a day other than a Business Day shall be due on the next succeeding Business Day, but shall be deemed to have been made on the required date. Any payment of Cash to be made pursuant to the Plan, subject to the terms hereof, shall be deemed made, if by electronic wire transfer, when the applicable electronic wire transfer is initiated by the sending bank or, if by check drawn on a domestic bank, when the earliest occurs of depositing in the mail

for the entitled recipient, receipt by the entitled recipient, or delivery to a third party delivery service for delivery to the entitled recipient.

**8.12 No Distribution in Excess of Allowed Amount of Claim.**

Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution (of a value set forth herein or in the Disclosure Statement) in excess of the Allowed amount of such Claim.

**8.13 Setoff Rights.** The Liquidating Trustee may, but shall not be required to, setoff against or recoup from any Holder (including any Liquidating Trust Beneficiary) on which payments or other Distributions are to be made hereunder, claims or defenses of any nature that the Liquidating Trust, the Debtors or the Estates may have against such Person. However, neither the failure to do so, nor the allowance of any Claim under the Plan or otherwise, shall constitute a waiver or release of any such claim, right of setoff or right of recoupment against the Holder of such Allowed Claim.

**8.14 Conflicting Claims.**

(a) If any conflicting claims or demands are made or asserted with respect to the beneficial interest of a Liquidating Trust Beneficiary under this Liquidating 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.

(b) The Liquidating Trustee, at its sole election, may elect to cause the Liquidating Trust to make no payment or Distribution with respect to the Liquidating Trust Interest subject to the conflicting claims or demand, or any part thereof, and to refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands. Neither the Liquidating Trust nor the Liquidating Trustee shall be or become liable to any of such parties for their refusal to comply with any such conflicting claims or demands, nor shall the Liquidating Trust or Liquidating Trustee be liable for interest on any funds which may be so withheld.

(c) The Liquidating Trustee shall be entitled to refuse to act until either (i) the rights of the adverse claimants have been adjudicated by a final order of the Bankruptcy Court or (ii) all differences have been resolved by a valid written agreement among all such parties to the satisfaction of the Liquidating Trustee, which agreement shall include a complete release of the Liquidating Trust and Liquidating Trustee. Until the Liquidating Trustee receives written notice that one of the conditions of the preceding sentence is met, the Liquidating Trustee may deem and treat as the absolute owner under this Liquidating Trust Agreement of the Liquidating Trust Interest the Liquidating Trust Beneficiary identified as the owner of that interest in the books and records maintained by the Liquidating Trustee. The Liquidating Trustee may deem and treat such Liquidating Trust Beneficiary as the absolute owner for purposes of

receiving distributions and any payments on account thereof for federal and state income tax purposes, and for all other purposes whatsoever.

**8.15 Distributions under One Hundred Dollars.** Notwithstanding anything herein to the contrary, no Holder of any Allowed Claim in an amount that would entitle such Holder to a pro-rata distribution of less than \$100 shall receive any Distribution on account of such Allowed Claim. All such amounts shall remain unallocated components of the Liquidating Trust Assets to be distributed in subsequent Distributions.

## ARTICLE IX

### TAXES

**9.1 Income Tax Status.** Consistent with Revenue Procedure 94-45, 1994-2 C.B. 684, the Liquidating Trust shall be treated as a Liquidating Trust pursuant to Treasury Regulation Section 301.7701-4(d) and as a grantor trust pursuant to Sections 671-677 of the Internal Revenue Code of 1986, as amended (the “Tax Code”). As such, the Liquidating Trust Beneficiaries will be treated as both the grantors and the deemed owners of the Liquidating Trust. Any items of income, deduction, credit and loss of the Liquidating Trust shall be allocated for federal income tax purposes to the Liquidating Trust Beneficiaries.

**9.2 Tax Returns.** The Liquidating Trustee shall file such tax returns as may be required by federal, state or local taxing authorities. The Liquidating Trustee shall file with the IRS annual tax returns on Form 1041 or comply with other applicable tax return filing options, in accordance with Tax Code Section 6012 and Treasury Regulation Sections 1.671-4(a) and 1.671-4(b). In addition, the Liquidating Trustee shall file in a timely manner such other tax returns as are required by applicable law and pay any taxes shown as due thereon. The Liquidating Trustee shall send to each Liquidating Trust Beneficiary a copy of the Form 1041 for the Liquidating Trust (without attaching any other Liquidating Trust Beneficiary’s Schedule K-1 or other applicable information form) within a reasonable time following the end of the taxable year, along with such Liquidating Trust Beneficiary’s Schedule K-1 or other applicable information form.

**9.3 Withholding of Taxes Related to Liquidating Trust Operations.** To the extent that the operation of the Liquidating Trust or the liquidation of the Liquidating Trust Assets creates a tax liability of the Liquidating Trust in excess of applicable net operating losses, the Liquidating Trustee shall promptly pay such tax liability, if any, and any such payment shall be considered a cost and expense of the operation of the Liquidating Trust payable from the Liquidating Trust Assets. The Liquidating Trustee may reserve a sum, the amount of which shall be determined by the Liquidating Trustee in its sole discretion, sufficient to pay the accrued or potential tax liability arising out of the operations of the Liquidating Trust or the operation of the Liquidating Trust Assets. In the exercise of its sole discretion, the Liquidating Trustee may enter into agreements with taxing authorities or other governmental units for the payment of such amounts as may be withheld.

**9.4 Valuations.** The Liquidating Trustee and the Liquidating Trust Beneficiaries shall utilize consistent valuations of the Liquidating Trust Assets and such valuations shall be used for all federal income tax purposes.

**9.5 Survival.** For the avoidance of doubt, the foregoing provisions of this Article IX shall survive the termination of a Liquidation Trust Beneficiary's beneficial interests in the Liquidation Trust pursuant to Article X hereof.

## **ARTICLE X TERMINATION OF TRUST**

**10.1 Maximum Term.** The Liquidating Trust shall have an initial term of two years (the "Initial Trust Term") if not otherwise terminated sooner by the Distribution of all of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries in accordance with the Plan and this Liquidating Trust Agreement; *provided, however*, that the Liquidating Trustee may extend the term of the Liquidating Trust if necessary to facilitate or complete the liquidation of the Liquidating Trust Assets or the Distributions required to be made to the Liquidating Trust Beneficiaries hereunder for an additional one (1) year (the "Supplemental Liquidating Trust Term") by filing a motion with the Bankruptcy Court of the Liquidating Trustee's intent to extend the term of the Liquidating Trust with the Bankruptcy Court and obtaining the approval of the Bankruptcy Court within six (6) months prior to the beginning of the extended term; *provided further, however*, that the aggregate of all such extensions shall not exceed one (1) year, unless the Liquidating Trustee receives a favorable ruling from the IRS or an opinion of counsel satisfactory to the Liquidating Trustee that any further extension would not adversely affect the status of the Liquidating Trust as a Liquidating Trust within the meaning of Treas. Reg. §301.7701-4(d) for federal income tax purposes. Notwithstanding anything to the contrary in this Liquidating Trust Agreement, in no event shall the Liquidating Trustee unduly prolong the duration of the Liquidating Trust, and the Liquidating Trustee shall at all times endeavor to prosecute, direct, settle or compromise expeditiously the Causes of Action and Claims objections, so as to distribute the Liquidating Trust Assets to the Liquidating Trust Beneficiaries and terminate the Liquidating Trust as soon as practicable in accordance with this Liquidating Trust Agreement.

**10.2 Events Upon End of Term Termination.** Upon the termination of the Liquidating Trust, the Liquidating Trustee shall distribute the remaining Liquidating Trust Assets, if any, to the Liquidating Trust Beneficiaries, in accordance with the Plan, the Confirmation Order and this Liquidating Trust Agreement. In connection with the termination of the Liquidating Trust, notwithstanding other provisions hereof, any remaining Liquidating Trust Assets that are of inconsequential value or otherwise insufficient to support the cost of a Distribution may be transferred by the Liquidating Trustee to a non-profit charitable organization qualifying under Section 501(c)(3) of the Tax Code and selected by the Liquidating Trustee in consultation with Morris, Nichols, Arsht & Tunnell LLP, in its sole discretion.

**10.3 Winding Up and Discharge of the Liquidating Trustee.** For the purposes of winding up the affairs of the Liquidating Trust at its termination, the Liquidating Trustee shall continue to act as Liquidating Trustee until its duties have been fully discharged.

After doing so, the Liquidating Trustee, its agents and employees shall have no further duties or obligations hereunder, except as required by this Liquidating Trust Agreement, the Plan, or applicable law concerning the termination of a trust. Upon a motion by the Liquidating Trustee, the Bankruptcy Court may enter an order relieving the Liquidating Trustee, its agents and employees of any further duties, discharging the Liquidating Trustee.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

#### **11.1 Amendments.**

(a) This Liquidating Trust Agreement may only be modified, supplemented or amended by the Liquidating Trustee in a written, acknowledged instrument: (i) to cure any ambiguity, omission, defect or inconsistency in this Liquidating Trust Agreement; provided that such amendments, supplements or waivers shall not contravene or otherwise be inconsistent with the terms of the Plan and the Confirmation Order, adversely affect the distributions to be made or other rights under this Liquidating Trust Agreement to any of the Liquidating Trust Beneficiaries, or adversely affect the U.S. federal income tax status of the Liquidating Trust as a “Liquidating Trust”; (ii) to comply with any requirements in connection with the U.S. federal income tax status of the Liquidating Trust as a “Liquidating Trust”; (iii) to comply with any requirements in connection with maintaining that the Liquidating Trust is not subject to registration or reporting requirements of the Exchange Act or the Investment Company Act; and (iv) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Liquidating Trust Agreement.

(b) Any substantive provision of this Liquidating Trust Agreement may be amended or waived by the Liquidating Trustee, with the approval of the Bankruptcy Court upon notice and an opportunity for a hearing; *provided, however*, that no change may be made to this Liquidating Trust Agreement that contravenes or is otherwise inconsistent with the terms of the Plan or the Confirmation Order.

**11.2 Waiver.** No failure by the Liquidating Trustee to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any further exercise thereof, or of any other right, power or privilege.

**11.3 Cumulative Rights and Remedies.** The rights and remedies provided in this Liquidating Trust Agreement are cumulative and are not exclusive of any rights under law or in equity.

**11.4 No Bond Required.** Notwithstanding any state law to the contrary, the Liquidating Trustee (including any Successor Liquidating Trustee) shall be exempt from giving any bond or other security in any jurisdiction.

### **11.5 Transfer of Books and Records; Preservation of Privileges and Immunities.**

(a) On the Effective Date or as soon thereafter as is reasonably practicable, all books and records of the Debtors, to the extent they exist and are in the Debtors' possession, including, without limitation, all books and records relating to the administration of the Liquidating Trust, all Claims against the Debtors and the Liquidating Trust and all Avoidance Actions, shall be transferred or deemed assigned to the Liquidating Trust. The Debtors, their affiliates and agents shall take all steps, and execute all documents, necessary to cause the transfer of all of the books and records of the Debtors in accordance with the Plan. Except as set forth in the Plan and Confirmation Order, the Liquidating Trustee shall maintain such books and records until five years from the filing of the Debtors' final tax returns. Thereafter, said records may be destroyed or otherwise disposed of, except as otherwise set forth in the Confirmation Order. The Liquidating Trustee shall be free, in their reasonable discretion, to destroy or otherwise dispose of any records of the Debtors' Estates, including to the extent unnecessary or unrelated to the Debtors' tax returns.

(b) Any documents or communications (whether written or oral, and including confidential information) transferred by the Debtors to the Liquidating Trust shall vest, including all rights and privileges, including the attorney-client and work product privileges, related thereto, in the Liquidating Trustee and its, his or her representatives, only to the extent necessary for administration of claims. Otherwise, any documents or communications (whether written or oral, and including confidential information) transferred by the Debtors to the Liquidating Trust shall vest, including all rights and privileges, including the attorney-client and work product privileges, related thereto, in K2 HealthVentures, LLC. The Debtors and the Liquidating Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges. After the Effective Date, no person other than the Liquidating Trustee shall have the right to assert or waive any privilege of the Debtors or to make any admission or statement against interest respecting the Debtors.

(c) On the Effective Date, all of the Debtors' privileges and work product, including but not limited to any attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral), shall be transferred to and maintained by the Liquidating Trustee or K2 HealthVentures, LLC, as applicable. The Liquidating Trustee, in its sole discretion, will have exclusive authority to waive or not waive the Debtors' and Liquidating Trust's privileges as applied to the administration of claims. K2 HealthVentures, LLC, in its sole discretion, will otherwise have exclusive authority to waive or not waive the Debtors' and K2 HealthVentures, LLC's privileges. For the avoidance of doubt, the Liquidating Trustee's receipt of such information shall not waive any privileges, and such privileges are fully preserved.

**11.6 Irrevocability.** This Liquidating Trust Agreement and the Liquidating Trust created hereunder shall be irrevocable to the fullest extent permitted by applicable law, and may not be amended except as expressly provided in Section 11.1 of this Liquidating Trust Agreement.

**11.7 Relationship to the Plan.** The principal purpose of this Liquidating Trust Agreement is to aid in the implementation of the Plan and, therefore, this Liquidating Trust Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In the event that any provision of this Liquidating Trust Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order, the provisions of the Plan or the Confirmation Order, as applicable, shall control.

**11.8 Governing Law.** This Liquidating Trust Agreement is made in the State of Delaware, and the Liquidating Trust and this Liquidating Trust Agreement, and the rights and obligations of the Trustee are to be governed by and construed and administered according to the laws of the State of Delaware, *provided, however*, that, except as expressly provided in this Liquidating Trust Agreement, there shall not be applicable to the Liquidating Trust, the Liquidating Trustee, or this Liquidating Trust Agreement (a) the provisions of Section 3540 of Title 12 of the Delaware Code, or (b) any provisions of the laws (statutory or common) of the State of Delaware pertaining to trusts which relate to or regulate: (i) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges, (ii) affirmative requirements to post bonds for trustees, officers, agents or employees of a trust, (iii) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (iv) fees or other sums payable to trustees, officers, agents or employees of a trust, (v) the allocation of receipts and expenditures to income or principal, (vi) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding of trust assets, or (vii) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees, which are inconsistent with the limitations or liabilities or authorities and powers of the Trustee set forth or referenced in this Liquidating Trust Agreement. Each party hereto, including any Successor Liquidating Trustee, hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court or, if the Bankruptcy Court refuses such jurisdiction, to the non-exclusive jurisdiction of the courts of the State of Delaware, sitting in New Castle County and having proper subject matter jurisdiction, or the Federal District Court for the District of Delaware, for all purposes in connection with any action or proceeding that arises out of or relates to this Liquidating Trust Agreement (the “Proceedings”) and hereby agrees that service of summons, complaint or other process in connection with any Proceedings may be made pursuant to the notice provisions of Section 12.12 of this Liquidating Trust Agreement, and that service so made shall be as effective as if personally made in the State of Delaware. Nothing herein shall affect the right of either party hereto to serve legal process in any manner permitted by law.

**11.9 Retention of Jurisdiction.** Notwithstanding any other provision of this Liquidating Trust Agreement, and to the fullest extent permitted by law, the Bankruptcy Court shall retain jurisdiction over the Liquidating Trust after the Effective Date, including, without limitation, jurisdiction as set forth in the Plan and the Confirmation Order and to resolve any and all controversies, suits and issues that may arise in connection with the Liquidating Trust, including, without limitation, this Liquidating Trust Agreement, or any entity’s obligations incurred in connection herewith, including without limitation, any action against the Liquidating Trustee or any professional retained by the Liquidating Trustee or the Liquidating Trust, in each case in its capacity as such. Each party to this Liquidating Trust Agreement hereby irrevocably

consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Liquidating Trust Agreement or of any other agreement or document delivered in connection with this Liquidating Trust Agreement, and also hereby irrevocably waives any defense of improper venue, forum non conveniens or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that (i) any action to enforce, interpret or construe any provision of this Liquidating Trust Agreement will be brought only in the Bankruptcy Court and (ii) all determinations, decisions, rulings and holdings of the Bankruptcy Court shall be final and non-appealable and not subject to reargument or reconsideration. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, to be sent to its address set forth in Section 12.12 of this Liquidating Trust Agreement or to such other address as he, she or it may designate from time to time by notice given in the manner provided above, of any process in any action to enforce, interpret or construe any provision of this Liquidating Trust Agreement. **ANY AND ALL RIGHT TO TRIAL BY JURY IS HEREBY WAIVED AND THERE SHALL BE NO RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE LIQUIDATING TRUST AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

**11.10 Severability.** In the event that any provision of this Liquidating Trust Agreement or the application thereof to any person or circumstance shall be determined by the Bankruptcy Court or another court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Liquidating Trust Agreement, or the application of such provision to persons or circumstance, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Liquidating Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

**11.11 Limitation of Benefits.** Except as otherwise specifically provided in this Liquidating Trust Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or to give any person other than the parties hereto and the Liquidating Trust Beneficiaries any rights or remedies under or by reason of this Liquidating Trust Agreement.

**11.12 Notices.** All notices, requests, demands, consents and other communication hereunder shall be in writing and shall be deemed to have been duly given to a person, if delivered in person or by email or if sent by overnight mail, registered mail, certified mail or regular mail, with postage prepaid, to the following addresses:

If to the Debtors:

Morris, Nichols, Arsht & Tunnell LLP  
1201 N. Market St., 16<sup>th</sup> Floor  
Wilmington, Delaware 19801  
Attn: Eric D. Schwartz, Andrew R. Remming, Luke Brzozowski  
Ph: 302-658-9200  
Email: [eschwartz@morrisnichols.com](mailto:eschwartz@morrisnichols.com)  
[aremming@morrisnichols.com](mailto:aremming@morrisnichols.com)



lbrzowski@morrisnichols.com

If to the Liquidating Trustee:

Verdolino & Lowey, P.C.  
124 Washington Street, Suite 101  
Foxboro, MA 02035  
Attn: Craig Jalbert  
Email: CJalbert@vlpc.com

With a copy to:

Morris, Nichols, Arsht & Tunnell LLP  
1201 N. Market St., 16<sup>th</sup> Floor  
Wilmington, Delaware 19801  
Attn: Eric D. Schwartz, Andrew R. Remming, Luke Brzozowski  
Ph: 302-658-9200  
Email: eschwartz@morrisnichols.com  
aremming@morrisnichols.com  
lbrzowski@morrisnichols.com\_\_\_\_\_

If to a Liquidating Trust Beneficiary:

To the name and address set forth in the Register  
with respect to such Liquidating Trust Beneficiary.

If to K2 HealthVentures, LLC:

Ben Bang  
K2 HealthVentures, LLC  
855 Boylston Street  
10th Floor  
Boston, MA 02116  
Email: bbang@k2hv.com  
[legal@k2hv.com](mailto:legal@k2hv.com)

With a copy (which shall not constitute notice) to:

Jeri Leigh Miller  
Sidley Austin LLP  
2021 McKinney Avenue #2000  
Dallas, TX 75201  
Telephone: (214) 981-3432  
Email: jeri.miller@sidley.com

The parties may designate in writing from time to time other and additional places to which notices may be sent. All demands, requests, consents, notices and communications shall be deemed to have been given (a) at the time of actual delivery thereof, (b) if given by certified or registered mail, five (5) business days after being deposited in the United States mail, postage prepaid and properly addressed, or (c) if given by overnight courier, the next business day after being sent, charges prepaid and properly addressed.

**11.13 Further Assurances.** From and after the Effective Date, the parties hereto covenant and agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and purposes of this Liquidating Trust Agreement, and to consummate the transactions contemplated hereby.

**11.14 Integration.** This Liquidating Trust Agreement, the Plan and the Confirmation Order constitute the entire agreement with, by and among the parties thereto, and there are no representations, warranties, covenants or obligations except as set forth herein, in the Plan and in the Confirmation Order. Except as provided in this Liquidating Trust Agreement, the Plan or the Confirmation Order, this Liquidating Trust Agreement, together with the Plan and the Confirmation Order, supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise provided in this Liquidating Trust Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any person other than the parties hereto and the Liquidating Trust Beneficiaries any rights or remedies under or by reason of this Liquidating Trust Agreement.

**11.15 Successors or Assigns.** The terms of this Liquidating Trust Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

**11.16 Interpretation.** The enumeration and Section headings contained in this Liquidating Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Liquidating Trust Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this Liquidating Trust Agreement the singular shall include the plural and the plural shall include the singular, and words importing the masculine gender shall include the feminine and the neuter, if appropriate, and vice versa, and words importing persons shall include partnerships, associations and corporations. The words herein, hereby, and hereunder and words with similar import, refer to this Liquidating Trust Agreement as a whole and not to any particular Section or subsection hereof unless the context requires otherwise.

**11.17 Counterparts.** This Liquidating Trust Agreement may be signed by the parties hereto in counterparts, which, when taken together, shall constitute one and the same document.

*[Remainder of page intentionally left blank]*

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

**DEBTORS:**

Molecular Templates, Inc.  
Molecular Templates Opco, Inc.

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

**LIQUIDATING TRUSTEE:**

Craig Jalbert

By: \_\_\_\_\_  
Name: Craig Jalbert  
Title:

**Exhibit A**

**(Liquidating Trustee Compensation)**

<b>Title</b>	<b>Hourly Rate</b>
Managing Director	\$440.00-\$565.00
Director	\$345.00
Associate/Analyst	\$275.00