

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
VERTEX ENERGY, INC., <i>et al.</i> , ¹)	
)	Case No. 24-90507 (CML)
Debtors.)	(Jointly Administered)
)	

NOTICE OF FILING SECOND AMENDED PLAN SUPPLEMENT

PLEASE TAKE NOTICE THAT on December 13, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Notice of Filing Plan Supplement* [Docket No. 531] (the “Initial Plan Supplement”) with the United States Bankruptcy Court for the Southern District of Texas (the “Court”).

PLEASE TAKE FURTHER NOTICE THAT on December 16, 2024, the Debtors filed the *Notice of Filing First Amended Plan Supplement* [Docket No. 540] (the “First Amended Plan Supplement”) with the Court.

PLEASE TAKE FURTHER NOTICE THAT the Debtors hereby file this amendment to the Plan Supplement (this “Second Amended Plan Supplement,” and together with the Initial Plan Supplement and the First Amended Plan Supplement, the “Plan Supplement”) in support of the *First Amended Joint Chapter 11 Plan of Vertex Energy, Inc. and its Debtor Affiliates* [Docket No. 425] (as may be modified, amended, or supplemented from time to time, the “Plan”).²

PLEASE TAKE FURTHER NOTICE THAT the Second Amended Plan Supplement includes the GUC Trust Agreement.

PLEASE TAKE FURTHER NOTICE THAT the Debtors shall have the right to alter, amend, modify, or supplement the documents contained in the Plan Supplement up to the Effective Date as set forth in the Plan. The documents contained in the Plan Supplement are integral to, and are considered part of, the Plan.

PLEASE TAKE FURTHER NOTICE THAT the hearing at which the Court will consider Confirmation of the Plan (the “Confirmation Hearing”) will commence on **December 20, 2024 at 1:00 p.m.**, prevailing Central Time, before the

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street, Suite 250, Houston, Texas 77058.

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



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Honorable Christopher Lopez, in the United States Bankruptcy Court for the Southern District of Texas, located at 515 Rusk Street, Courtroom 401, Houston, Texas 77002.

PLEASE TAKE FURTHER NOTICE THAT the deadline for filing objections to the Plan is **December 18, 2024, at 4:00 p.m.**, prevailing Central Time (the “Plan Objection Deadline”). Any objection to the Plan ***must***: (a) be in writing; (b) conform to the Bankruptcy Rules, the Bankruptcy Local Rules, and any orders of the Court; (c) state, with particularity, the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (d) be filed with the Court on or before the Plan Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT if you would like to obtain a copy of the Disclosure Statement, the Plan, the Initial Plan Supplement, the First Amended Plan Supplement, the Second Amended Plan Supplement, or related documents, free of charge, you should you should contact KCC dba Verita Global LLC, the claims and noticing agent retained by the Debtors in these chapter 11 cases (the “Claims and Noticing Agent”), by: (a) emailing VertexEnergyInfo@veritaglobal.com; (b) calling the Claims and Noticing Agent at (877) 709-4747 (domestic, toll free) or +1 (424) 236-7228 (international); or (c) accessing the Debtors’ restructuring website at <https://www.veritaglobal.net/vertex>. You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at: <http://www.txs.uscourts.gov>.

Houston, Texas
December 17, 2024

/s/ Jason G. Cohen

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

VERTEX ENERGY, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-90507 (CML)
)
) (Jointly Administered)
)

**SECOND AMENDED PLAN
SUPPLEMENT FOR THE DEBTORS' FIRST AMENDED JOINT
CHAPTER 11 PLAN OF VERTEX ENERGY, INC. AND ITS DEBTOR AFFILIATES**

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<u>Exhibit</u>	<u>Description</u>
H	GUC Trust Agreement

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.'s corporate headquarters and the Debtors' service address in these chapter 11 cases is 1331 Gemini Street, Suite 250, Houston, Texas 77058.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *First Amended Joint Chapter 11 Plan of Vertex Energy, Inc. and its Debtor Affiliates* [Docket No. 425] (the "Plan") or the *Order (I) Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Debtors' Proposed Joint Chapter 11 Plan, (III) Approving the Forms of Ballots and Notices in Connection Therewith, (IV) Scheduling Certain Dates with Respect Thereto, and (V) Granting Related Relief* [Docket No. 431] (the "Disclosure Statement Order"), as applicable.

Exhibit H

GUC Trust Agreement

GENERAL UNSECURED CLAIMS TRUST AGREEMENT

Dated as of December [●], 2024

by and between

**Vertex Energy, Inc. and its
Affiliated Debtors and Debtors-in-Possession**

and

**U.S. Bank Trust Company, National Association
as GUC Trustee**

GUC TRUST AGREEMENT

This General Unsecured Claims Trust Agreement (as it may be amended, modified, supplemented, or restated from time to time, this “GUC Trust Agreement”), dated as of December [●], 2024, is made and entered into by and among Vertex Energy, Inc. and its affiliated debtors and debtors-in-possession (each a “Debtor” and collectively, the “Debtors”)¹ in the Chapter 11 Cases, and U.S. Bank Trust Company, National Association, solely in its capacity as GUC Trustee (as defined herein, and together with the Debtors, the “Parties,” and each a “Party”), for the purpose of forming a trust and is executed in connection with and pursuant to the terms of the *First Amended Joint Chapter 11 Plan of Vertex Energy, Inc. and Its Debtor Affiliates* [Docket No. 425] (as it may be amended, modified, supplemented, or restated from time to time, the “Plan”), which Plan provides for, among other things, the establishment of the trust evidenced hereby (the “GUC Trust”).²

RECITALS

WHEREAS, on September 24, 2024, the Debtors commenced the Chapter 11 Cases by filing voluntary chapter 11 petitions in the Bankruptcy Court;

WHEREAS, on December [●], 2024, the Bankruptcy Court entered an order confirming the Plan [Docket No. [●]] (the “Confirmation Order”);

WHEREAS, Article [IV.H] of the Plan provides for the creation of the GUC Trust on the Effective Date of the Plan to hold, administer, manage, sell, invest and distribute the GUC Trust Net Assets to the GUC Trust Beneficiaries (as defined herein), in accordance with the terms of the Plan, the Confirmation Order, and this GUC Trust Agreement;

WHEREAS, the GUC Trust is established for the benefit of Holders of Allowed General Unsecured Claims at Debtors other than Vertex (Class 4), Holders of Allowed Other General Unsecured Claims at Vertex (Class 5) (such Claims, together with the Allowed General Unsecured Claims at Debtors other than Vertex, the “General Unsecured Claims”), Holders of Allowed 2027 Convertible Notes Claims (Class 6), and Holders of Allowed Term Loan Deficiency Claims (Class 7) (collectively, the “GUC Trust Beneficiaries”), in each case, with distributions to be made in accordance with the Plan;

WHEREAS, the powers, authority, responsibilities, and duties of the GUC Trustee shall be governed by the Plan, the Confirmation Order, and this GUC Trust Agreement;

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street Suite 250, Houston, Texas 77058.

² Capitalized terms used in this GUC Trust Agreement but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Plan.

WHEREAS, the GUC Trust shall have no objective or authority to continue or to engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purpose of the GUC Trust as set forth in this GUC Trust Agreement, the Plan, and the Confirmation Order;

WHEREAS, this GUC Trust Agreement is intended to supplement and complement the Plan, and implement certain terms of the Committee Settlement, as set forth in the Plan;

WHEREAS, the GUC Trust is intended to qualify as a liquidating trust within the meaning of U.S. Treasury Regulation (hereinafter “Treasury Regulation”) Section 301.7701-4(d) and to be exempt from the requirements of the Investment Company Act of 1940;

WHEREAS, the Debtors, the GUC Trustee, and the GUC Trust Beneficiaries agree to treat, for all U.S. federal income tax purposes, the transfer of the GUC Settlement Assets to the GUC Trust as a deemed transfer of the GUC Settlement Assets by the Debtors to the GUC Trust Beneficiaries on account of their Allowed Claims under the Plan, followed by a deemed transfer of the GUC Settlement Assets by the GUC Trust Beneficiaries to the GUC Trust in exchange for the beneficial interests herein, and to treat the GUC Trust Beneficiaries as the grantors and owners of the GUC Trust in accordance with Treasury Regulation Section 301.7701-4 and, therefore, shall be responsible for the payment of tax on their respective allocable share of the taxable income of the GUC Trust;

WHEREAS, the GUC Trust is intended to be treated as a grantor trust for U.S. federal income tax purposes pursuant to IRC Section 671, *et seq.*, with the GUC Trust Beneficiaries treated as the grantors of the GUC Trust; and

WHEREAS, the Bankruptcy Court shall have jurisdiction over the GUC Trust, the GUC Trustee, and the GUC Settlement Assets as provided herein, in the Plan, and in the Confirmation Order.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and in the Plan, the Debtors and the GUC Trustee agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATIONS

1.1. **Definitions.** The following capitalized terms have the meanings herein as described below:

1.1.1 “**Asserted GUC Trust Claim**” shall mean any General Unsecured Claim or 2027 Convertible Notes Claim that is (i) scheduled in the Debtors’ Schedules as a General Unsecured Claim or 2027 Convertible Notes Claim that is contingent, unliquidated, and/or disputed, (ii) based on a proof of claim that asserts to be a General Unsecured Claim or 2027 Convertible Notes Claim, or (iii) determined, or pending determination, by Final Order of the Bankruptcy Court, to be a General Unsecured Claim or 2027 Convertible Notes Claim.

1.1.2 “**Disputed**” shall have the meaning given to such term in the Plan.

1.1.3 “Distribution” shall mean any transfers or payments made to the GUC Trust Beneficiaries pursuant to the Plan, the Confirmation Order and this GUC Trust Agreement.

1.1.4 “GUC Settlement Assets” shall have the meaning given to such term in the Plan, including, for the avoidance of doubt, any income or proceeds realized from such assets.

1.1.5 “GUC Trust Beneficiary Claims” shall mean Allowed General Unsecured Claims, Allowed 2027 Convertible Notes Claims, and Allowed Term Loan Deficiency Claims, in each case, with distributions to be made in accordance with the Plan.

1.1.6 “GUC Trust Interests” shall mean the beneficial interests in the GUC Trust held by the GUC Trust Beneficiaries on account of Allowed GUC Trust Beneficiary Claims.

1.1.7 “GUC Trust Net Assets” shall have the meaning given to such term in the Plan.

1.1.8 “GUC Trust Reserve” shall have the meaning set forth in Section 4.2 of this GUC Trust Agreement.

1.1.9 “GUC Trustee” shall mean, in its capacity as such, (x) initially, the person or entity named in the introductory paragraph to this GUC Trust Agreement as the GUC Trustee, and (y) any successors or replacements duly appointed under the terms of this GUC Trust Agreement.

1.1.10 “IRC” shall refer to the Internal Revenue Code of 1986, as amended.

1.1.11 “Schedules of Assets and Liabilities” shall mean the Debtors’ schedules of assets and liabilities [Docket. Nos. 260--307], as amended or supplemented.

1.1.12 “Transfer” shall mean, with respect to a GUC Trust Interest, any transfer, sale, pledge, assignment, conveyance, gift, bequest, inheritance, grant, distribution, hypothecation, or other disposition of or creation of a security interest in such GUC Trust Interest, whether voluntarily or by operation of law. “Transferor,” “Transferee,” and “Transferred” shall have correlative meanings.

1.2. Conflict Among Plan Documents. The Plan and the Confirmation Order are each hereby incorporated into this GUC Trust Agreement and made part hereof by this reference. In the case of any inconsistency between the terms of this GUC Trust Agreement and the terms of the Plan and/or the Confirmation Order, each such document shall have controlling effect in the following rank order: (1) the Confirmation Order, (2) the Plan, and (3) this GUC Trust Agreement. This GUC Trust Agreement shall not be construed to impair or limit in any way the rights of any Person under the Plan.

ARTICLE II ESTABLISHMENT, PURPOSE, AND FUNDING OF GUC TRUST

2.1. Creation and Name; Formation.

2.1.1 Upon the Effective Date of the Plan, (a) the GUC Trust is hereby created and (b) the GUC Trust Agreement shall become effective. The GUC Trustee may conduct the affairs of the GUC Trust under the name of the “Vertex GUC Trust,” or such variation thereof as the GUC Trustee sees fit.

2.2. Purpose and Powers of Trust

2.2.1 The Debtors and the GUC Trustee, pursuant to the Plan and the Confirmation Order and in accordance with the Bankruptcy Code, hereby establish the GUC Trust for the purpose of collecting, holding, administering, managing, selling, investing, distributing, and liquidating the GUC Settlement Assets to the GUC Trust Beneficiaries in accordance with the terms of the Plan, the Confirmation Order, and this GUC Trust Agreement.

2.2.2 The GUC Trust shall be empowered to: (a) perform all actions and execute all agreements, instruments, and other documents necessary to implement applicable provisions of the Plan; (b) establish, maintain, and administer accounts to hold the GUC Settlement Assets; (c) accept, preserve, receive, collect, manage, invest, sell, liquidate, transfer, supervise, and protect, as applicable, the GUC Settlement Assets either directly or indirectly; (d) perform all actions necessary to complete the Unsecured Claims Reconciliation Process; (e) calculate and make distributions of the GUC Trust Net Assets to the GUC Trust Beneficiaries; (f) retain, compensate, and employ professionals to represent the GUC Trust; *provided* that any such professionals shall be compensated solely from the GUC Settlement Assets; (g) file appropriate tax returns on behalf of the GUC Trust, consistent with the provision of this GUC Trust Agreement, the Plan, and the Confirmation Order, and pay taxes or other obligations arising in connection therewith; (h) hold the GUC Trust Net Assets for the GUC Trust Beneficiaries; (i) prosecute and resolve objections to Disputed General Unsecured Claims and Disputed 2027 Convertible Notes Claims; (j) exercise such other powers as may be vested in the GUC Trust under this GUC Trust Agreement, the Plan, and the Confirmation Order, or as are reasonably deemed by the GUC Trustee to be necessary and proper to implement, but not inconsistent with, the provisions of the Plan and this GUC Trust Agreement; and (k) terminate the GUC Trust in accordance with the terms of this GUC Trust Agreement. For the avoidance of doubt, the Debtors or the Reorganized Debtors, and their Related Parties (as applicable), shall have no liability with respect to the distribution or payment of any GUC Settlement Assets to any of the Holders of Allowed General Unsecured Claims, Holders of Allowed 2027 Convertible Notes, and Holders of Allowed Term Loan Deficiency Claims, except as otherwise provided for in the Plan.

2.2.3 The GUC Trust is intended to qualify as a liquidating trust pursuant to Treasury Regulations Section 301.7701-4(d). The GUC Trust’s primary purpose is to liquidate and distribute the GUC Settlement Assets with no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to provide for the orderly liquidation and distribution thereof. Accordingly, the GUC Trustee shall, in an orderly manner,

liquidate the GUC Settlement Assets and make timely distributions pursuant to the Plan, and shall not unduly prolong the duration of the GUC Trust.

2.3. Transfer of GUC Settlement Assets.

2.3.1 On the Effective Date, the Debtors and the GUC Trustee shall enter into the GUC Trust Agreement, the Debtors shall have transferred to the GUC Trust the GUC Settlement Assets, and the GUC Settlement Assets shall vest or deem to be vested in the GUC Trust automatically without further action by any Person, free and clear of all Claims and Liens, and encumbrances to the fullest extent provided by sections 363 or 1123 of the Bankruptcy Code. Such transfer shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax. The act of transferring the GUC Settlement Assets, as authorized by the Plan, shall not be construed to destroy or limit any such assets or rights or be construed as a waiver of any right, and such rights may be asserted by the GUC Trust as if the asset or right was still held by the Debtors or the Reorganized Debtors, as applicable.

2.3.2 Each Debtor hereby grants, releases, assigns, conveys, transfers and delivers, on behalf of the Holders of Allowed General Unsecured Claims, Holders of Allowed 2027 Convertible Notes Claims, and Holders of Allowed Term Loan Deficiency Claims, all of the GUC Settlement Assets owned, held, possessed or controlled by such Debtor to the GUC Trustee as of the Effective Date, in trust for the benefit of GUC Trust Beneficiaries, for the uses and purposes as specified in this GUC Trust Agreement and the Plan. None of the Debtors shall have any further obligations with respect to the Allowed General Unsecured Claims and Allowed 2027 Convertible Notes Claims under the Plan or the distribution or payment of any proceeds of the GUC Settlement Assets to any of the Holders of Allowed General Unsecured Claims or Allowed 2027 Convertible Notes Claims upon the transfer of the GUC Settlement Assets to the GUC Trust in accordance with this GUC Trust Agreement, the Plan, and the Confirmation Order.

2.3.3 For all U.S. federal, state, and local income tax purposes, the Debtors, the GUC Trust Beneficiaries, and the GUC Trustee shall treat the transfer of the GUC Settlement Assets to the GUC Trust as a deemed transfer of the GUC Settlement Assets by the Debtors to the GUC Trust Beneficiaries on account of their GUC Trust Beneficiary Claims under the Plan, followed by a deemed transfer of the GUC Settlement Assets by the GUC Trust Beneficiaries to the GUC Trust in exchange for their beneficial interests in the GUC Trust. Thus, the GUC Trust Beneficiaries shall be treated as the grantors and owners of the GUC Trust for U.S. federal income tax purposes.

2.4. Capacity of GUC Trust. Notwithstanding any state or federal law to the contrary or anything herein, the GUC Trust shall itself have the capacity, in its own right and name, to act or refrain from acting, including the capacity to sue and be sued and to enter into contracts. The GUC Trust may alone be the named movant, respondent, party plaintiff, or defendant, or the like in all adversary proceedings, contested matters, and other state or federal proceedings brought by or against it, and may settle and compromise all such matters in its own name.

2.5. Nature of GUC Trust. This GUC Trust Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a liquidating trust. The

GUC Trust is irrevocable, but this GUC Trust Agreement is subject to amendment and waiver as provided herein. The GUC Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, limited liability partnership, joint venture, corporation, limited liability company, joint stock company, or association, nor shall the GUC Trustee, or the GUC Trust Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the GUC Trust Beneficiaries, on the one hand, to the GUC Trust and the GUC Trustee, on the other hand, shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this GUC Trust Agreement, the Plan, and the Confirmation Order.

2.6. Effectiveness. The effectiveness of this GUC Trust Agreement shall occur upon the Effective Date of the Plan.

ARTICLE III ADMINISTRATION OF THE GUC TRUST

3.1. Rights, Powers, and Privileges. In connection with the administration of the GUC Trust, the GUC Trustee is authorized to perform any and all acts necessary or desirable to accomplish the purposes of the GUC Trust; *provided* that the GUC Trustee shall not perform any acts that are inconsistent with this GUC Trust Agreement, the Plan, and/or the Confirmation Order. The GUC Trust, acting by and through the GUC Trustee, shall have all of the rights and powers granted to the Debtors or the Reorganized Debtors in the Plan as it pertains to the GUC Trust Beneficiaries and the power to:

3.1.1 effect all actions and execute all agreements, instruments, and other documents necessary to discharge the Plan provisions regarding the GUC Trust;

3.1.2 hold, manage, sell, invest, and distribute the GUC Trust Net Assets;

3.1.3 establish, as necessary, bank accounts for the deposit and distribution of the GUC Settlement Assets in accordance with the Plan, the Confirmation Order, and this GUC Trust Agreement;

3.1.4 in reliance upon the Schedules of Assets and Liabilities, statements of financial affairs and the official Claims register maintained in the Chapter 11 Cases, maintain a register evidencing the beneficial interest herein held by each GUC Trust Beneficiary and, in accordance with Section 5.4 of this GUC Trust Agreement, such register may be the official Claims register maintained in the Chapter 11 Cases;

3.1.5 review, reconcile, allow, object to, compromise, settle, withdraw, prosecute and resolve objections to Asserted GUC Trust Claims in furtherance of the Unsecured Claims Reconciliation Process (provided nothing herein shall limit the rights of other parties as set forth in the Plan with respect to the Unsecured Claims Reconciliation Process);

3.1.6 commence, pursue, prosecute, enforce, abandon, waive, settle, compromise, release, or withdraw, as appropriate, any and all GUC Causes of Action in accordance with the Plan and this GUC Trust Agreement;

3.1.7 establish, adjust, and maintain reserves for GUC Trust Beneficiary Claims required to be administered by the GUC Trust;

3.1.8 calculate and make Distributions of the GUC Trust Net Assets to the GUC Trust Beneficiaries in accordance with the Plan, the Confirmation Order, and this GUC Trust Agreement;

3.1.9 employ and (to the extent necessary) compensate, without Bankruptcy Court approval, professionals, Professionals employed in the Chapter 11 Cases, and former employees of the Debtors or the Reorganized Debtors, as applicable, to represent and/or aid the GUC Trustee with respect to the GUC Trustee's responsibilities in a manner and upon terms deemed appropriate by the GUC Trustee and such professional, Professional, and/or former employee, and in conformance with, and furtherance of the GUC Trust Agreement and the Plan;

3.1.10 cause the GUC Trust to make all tax withholdings, file tax information returns, file and prosecute tax refund claims, make tax elections by and on behalf of the GUC Trust, and file tax returns for the GUC Trust as a grantor trust under IRC Section 671 and Treasury Regulation Section 1.671-4 pursuant to and in accordance with the Plan, this GUC Trust Agreement, and applicable Law, pay taxes, if any, payable for and on behalf of the GUC Trust, and, annually, furnish to each GUC Trust Beneficiary such information, including the statements required by Treasury Regulations section 1.671-4, regarding the amount of such beneficiary's share in the GUC Trust's items of income, gain, deduction, loss, and credit for such year reasonably necessary to enable such beneficiary to prepare its U.S. federal, state, and other tax returns (as applicable);

3.1.11 appear and participate in any proceeding before the Bankruptcy Court or any other court with respect to any matter regarding or relating to the Asserted GUC Trust Claims, the GUC Settlement Assets, the GUC Trust Beneficiaries, and the purpose of the GUC Trust and be entitled to notice and opportunity for a hearing on all such issues;

3.1.12 pay any U.S. Trustee fees in accordance with the Plan;

3.1.13 pay any fees and expenses incurred in furtherance of the Unsecured Claims Reconciliation Process;

3.1.14 pay all GUC Trust Fees and Expenses without Bankruptcy Court approval;

3.1.15 execute and deliver such other agreements and documents and to perform any other functions as the GUC Trustee deems necessary or desirable to effectuate and carry out the purposes of the GUC Trust as set forth in the Plan and this GUC Trust Agreement; and

3.1.16 exercise such other powers as may be vested in the GUC Trustee by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the GUC Trustee to be necessary and proper to implement the provisions of the Plan as it pertains to the GUC Settlement Assets, the GUC Trust Beneficiaries, and/or the purposes of the GUC Trust.

3.2. Exclusive Authority to Pursue the GUC Causes of Action. The GUC Trust, acting by and through the GUC Trustee, shall have the exclusive right, power, and interest to review, reconcile, enforce, collect, compromise, settle, pursue, or elect not to pursue the GUC Causes of Action. The GUC Trustee shall be the sole representative of the Estates under section 1123(b)(3) of the Bankruptcy Code with respect to all GUC Causes of Action; *provided, however*, the GUC Causes of Action shall not include any Claims or Causes of Action (a) released pursuant to the Plan, including, for the purposes of clarity and without limiting the provisions of the Plan, any Claims or Causes of Action against the Term Loan Lenders, the Agent, the DIP Agent, each DIP Lender, and current and former directors, officers, advisors, and managers of the Debtors, Term Loan Lenders, the Agent, the DIP Agent, and/or each Lender or otherwise released or settled pursuant to a Bankruptcy Court order, (b) waived or settled during the Chapter 11 Cases or as otherwise agreed by the Committee, (c) in respect of transactions authorized by order of the Bankruptcy Court, including payments or other distributions made or authorized to be made in satisfaction of prepetition claims, (d) any preferential transfer claims pursuant to section 547 of the Bankruptcy Code against transferees who received a Bankruptcy Court-approved payment, and (e) against contractual counterparties whose agreements have been assumed, go-forward vendors, or other go-forward commercial counterparties with the Reorganized Debtors. Without limiting the generality of the foregoing, section 108 of the Bankruptcy Code shall apply to the GUC Trustee, as the section 1123(b)(3) representative of the Estates, with respect to all GUC Causes of Action, and the GUC Trust, by and through the GUC Trustee, shall be entitled to assert, in accordance with the terms of the Plan, all setoffs, and defenses of the Debtors or the GUC Trust to any counterclaims that may be asserted by any defendant with respect to the GUC Causes of Action. The GUC Trust shall also be vested with, and the GUC Trust, by and through the GUC Trustee, shall be entitled to assert, in accordance with the terms of the Plan and solely with respect to the GUC Causes of Action, all of the Debtors' and their Estates' rights with respect to any such counterclaims under section 558 of the Bankruptcy Code. All costs and expenses of pursuing the GUC Causes of Action shall be satisfied from the GUC Settlement Assets. For the avoidance of doubt, notwithstanding anything to the contrary in the Plan or this GUC Trust Agreement, the GUC Trustee shall not pursue any Claims or Causes of Action against any Released Party released pursuant to the Plan.

3.2.1 The Debtors or the Reorganized Debtors, as applicable, shall provide to the GUC Trustee, a confidential list of the GUC Causes of Action (which list may be shared with the GUC Trustee's professionals (if any) on a confidential basis) promptly, but in no event later than thirty (30) days after the Effective Date. After a review of the confidential list of the GUC Causes of Action, the GUC Trustee shall be authorized to reconcile, enforce, collect, compromise, settle, pursue, and/or commence litigation with respect to the GUC Causes of Action. The proceeds of any such reconciliation, enforcement, collection, compromise, settlement, or litigation with respect to the GUC Causes of Action shall be GUC Settlement Assets that shall be distributed by the GUC Trustee to the GUC Trust Beneficiaries in accordance with the Plan and this GUC Trust Agreement.

3.2.2 Notwithstanding the Debtors or Reorganized Debtors providing any privileged information to the GUC Trust or the GUC Trustee, such privileged information shall be without waiver in recognition of the joint and/or successor interest in investigating and prosecuting the GUC Causes of Action and such information shall remain privileged. For the avoidance of doubt, the actions taken by the Committee, the Debtors, and the Reorganized Debtors in connection with the Plan or the formation of the GUC Trust shall not be (or deemed to be) a waiver of any Privilege of any of the Committee, the Debtors, and/or the Reorganized Debtors, as applicable, including any Privilege attaching to any document or communications (whether written or oral) transferred to the GUC Trust.

3.3. Agents and Professionals. The GUC Trustee may, but shall not be required to, consult with and retain attorneys, accountants, financial advisors, appraisers, valuation counselors, transfer agents, a third-party disbursing agent, expert witnesses or other parties deemed by the GUC Trustee to have qualifications necessary to assist in the proper administration of the GUC Trust. The GUC Trustee may consult with and retain professionals that previously represented the Committee or members of the Committee. The GUC Trustee may pay the reasonable salaries, fees, and expenses of such persons, including contingency fees, solely out of the GUC Settlement Assets without further notice, authorization, Bankruptcy Court order or approval.

3.4. Investment and Safekeeping of GUC Settlement Assets. All GUC Settlement Assets received by the GUC Trust shall, until distributed or paid as provided in this GUC Trust Agreement or the Plan, be held in the GUC Trust, including any sub-accounts established by the GUC Trustee, for the benefit of the GUC Trust Beneficiaries. The GUC Trustee shall be under no obligation to generate or produce, or have any liability for, interest or other income on any monies received by the GUC Trust and held for distribution or payment to the GUC Trust Beneficiaries, except as such interest or income shall be actually received by the GUC Trustee. Investments of any monies held by the GUC Trustee shall be administered in view of the manner in which individuals of ordinary prudence, discretion, and judgment would act in the management of their own affairs; *provided, however*, that the right and power of the GUC Trustee to invest monies held by the GUC Trustee, or any income earned by the GUC Trust shall be limited to the right and power to invest such monies, pending periodic Distributions in accordance with the terms hereof and the Plan. For the avoidance of doubt, the investment powers of the GUC Trustee in this GUC Trust Agreement, other than those reasonably necessary to maintain the value of the GUC Settlement Assets and the liquidation purpose of the GUC Trust, are limited to powers to invest in demand and time deposits, such as short-term certificates of deposits, in banks or other savings institutions, or other temporary, liquid investments, such as treasury bills, and in all cases limited only to those assets permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d).

3.5. Limitations on GUC Trustee. On behalf of the GUC Trust or the GUC Trust Beneficiaries, the GUC Trustee shall not at any time: (i) enter into or engage in any trade or business (other than the management and disposition of the GUC Settlement Assets), and no part of the GUC Settlement Assets or the proceeds, revenue, or income therefrom shall be used or disposed of by the GUC Trust in furtherance of any trade or business, (ii) except as provided in Section 3.5 hereof and below, reinvest any GUC Settlement Assets, (iii) take any action that would jeopardize treatment of the GUC Trust as a “liquidating trust” for U.S. federal income tax purposes,

or (iv) review, reconcile, enforce, collect, compromise, settle, or pursue any Claims or Causes of Action that do not constitute GUC Causes of Action.

3.5.1 Other than as contemplated by the Plan or this GUC Trust Agreement, the GUC Trustee is not empowered to incur indebtedness.

3.5.2 The GUC Trustee may invest the Cash of the GUC Trust, including any earnings thereon or proceeds therefrom, any Cash realized from the liquidation of the GUC Settlement Assets, or any Cash that is remitted to the GUC Trust from any other Person, which investments, for the avoidance of doubt, will not be required to comply with section 345(b) of the Bankruptcy Code; *provided, however*, that such investments must be investments that are permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d), as reflected therein, or under applicable guidelines, rulings, or other controlling authorities. The GUC Trustee shall have no liability in the event of the insolvency or failure of any institution in which they have invested any funds of the GUC Trust.

3.6. Bankruptcy Court Approval of GUC Trustee Actions.

3.6.1 Except as provided in the Plan, the Confirmation Order, or otherwise specified in this GUC Trust Agreement, the GUC Trustee need not obtain any further order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred hereunder, or account to the Bankruptcy Court. Except as otherwise expressly provided herein, the GUC Trustee shall exercise its reasonable business judgment for the benefit of the GUC Trust Beneficiaries in order to maximize the value of the GUC Settlement Assets, giving due regard to the cost, risk, and delay of any course of action.

3.6.2 Notwithstanding the foregoing, the GUC Trustee shall have the right to submit to the Bankruptcy Court any question or questions, disputes, or other issues which the GUC Trustee may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the GUC Trust with respect to any of the GUC Settlement Assets, this GUC Trust Agreement, or the Plan as it relates to the prosecution of the GUC Causes of Action or the administration or distribution of any GUC Settlement Assets. The Bankruptcy Court shall retain jurisdiction and power for such purposes and shall approve or disapprove any such proposed action upon motion by the GUC Trust.

3.7. Reliance by GUC Trustee:

3.7.1 The GUC Trustee may rely upon, and shall be fully protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties.

3.7.2 The GUC Trustee may consult with any and all of the GUC Trustee’s professionals and the GUC Trustee shall not be liable for any action taken or omitted to be taken by the GUC Trustee in accordance with the advice of such professionals.

3.7.3 Persons dealing with the GUC Trustee shall look only to the GUC Settlement Assets, and to no other asset or property of any kind or character to satisfy any liability incurred, including judgments or orders of any court, by the GUC Trustee to such Person in carrying out the terms of this GUC Trust Agreement, and the GUC Trustee shall not have any personal obligation to satisfy any such liability.

3.8. Valuation of GUC Settlement Assets. The GUC Trustee shall determine the value of the GUC Settlement Assets as soon as reasonably practicable after the Effective Date. All parties, including the GUC Trustee and the GUC Trust Beneficiaries, shall consistently use this valuation for all U.S. federal, state, local, and other applicable income tax purposes, including for determining gain, loss, or tax basis.

3.9. Additional Tax Compliance. All of the GUC Trust's income shall be treated as subject to tax on a current basis. Allocations of taxable income with respect to the GUC Trust shall be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed (without regard to any restriction on distributions described herein) if, immediately before such deemed distribution, the GUC Trust had distributed all of its other assets (valued for this purpose at their tax book value) to the GUC Trust Beneficiaries, taking into account all prior and concurrent distributions from the GUC Trust. Similarly, taxable losses of the GUC Trust will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining assets. The tax book value of the assets for this purpose shall equal their respective fair market values on the Effective Date or, if later, the date such assets were acquired, adjusted in either case in accordance with the tax accounting principles prescribed by the applicable provisions of the IRC, Treasury Regulations and other applicable administrative and judicial authorities and pronouncements.

3.10. No Implied Obligations. No other further covenants or obligations of the GUC Trustee shall be implied into this GUC Trust Agreement.

ARTICLE IV DISTRIBUTIONS FROM THE TRUST

4.1. Distributions to GUC Trust Beneficiaries from GUC Settlement Assets. The GUC Trust shall have the sole power and authority to distribute the GUC Trust Net Assets to Holders of GUC Trust Beneficiary Claims, in accordance with the treatment set forth in Article III of the Plan on account of their GUC Trust Interests. All payments to be made by the GUC Trust to any GUC Trust Beneficiary shall be made only in accordance with the Plan, the Confirmation Order, and this GUC Trust Agreement and from the GUC Trust Net Assets net of the Disputed Claims Reserve, and other reserves established by the GUC Trustee in its sole discretion or otherwise required by the Plan; *provided*, such payments will only be made to the extent that the GUC Trust has sufficient GUC Trust Net Assets to make such payments in accordance with and to the extent provided for in the Plan, the Confirmation Order, and this GUC Trust Agreement. Any reserve account created by the GUC Trustee may be established by opening a separate bank account for the GUC Trust, bookkeeping entries, or similar method.

4.2. Distributions; Withholding. The GUC Trust shall make Distributions to the GUC Trust Beneficiaries as provided in the Plan and the Confirmation Order; *provided, however*, that the GUC Trust may establish a reserve from the GUC Settlement Assets (the “GUC Trust Reserve”) in order to pay accrued and projected GUC Trust Fees and Expenses. The funding of the GUC Trust Reserve may preclude or reduce Distributions to GUC Trust Beneficiaries. All such Distributions shall be made as provided, and subject to any withholding or reserve, in this GUC Trust Agreement, the Plan, or the Confirmation Order. Additionally, the GUC Trust may withhold from amounts distributable to any GUC Trust Beneficiary any and all amounts, determined in the GUC Trustee’s sole discretion, to be (i) required by any law, regulation, rule, ruling, directive, or other governmental requirement or (ii) otherwise necessary or appropriate for the GUC Trust Reserve.

4.3. Timing of Distributions. The GUC Trust shall endeavor to distribute the GUC Trust Net Assets to the GUC Trust Beneficiaries as quickly as reasonably possible. Any payment or other distribution required to be made under this GUC Trust Agreement 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 this GUC Trust Agreement, 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.

4.4. Fees and Expenses. From and after the Effective Date, the GUC Trust is authorized to pay all GUC Trust Fees and Expenses from the GUC Settlement Assets. The Debtors, the Reorganized Debtors, or any of their Affiliates (or anyone acting on their behalf) shall not be responsible for any costs, fees, or expenses of the GUC Trust.

4.5. Payments Limited to GUC Settlement Assets. All payments to be made by the GUC Trust to or for the benefit of any GUC Trust Beneficiary shall be made only to the extent that the GUC Trust has sufficient funds or reserves to make such payments in accordance with this GUC Trust Agreement, the Plan, and the Confirmation Order. Each GUC Trust Beneficiary shall have recourse only to the GUC Trust Net Assets for Distributions under this GUC Trust Agreement and the Plan.

4.6. Compliance with Laws. Any and all Distributions of GUC Settlement Assets shall be in compliance with applicable laws except as may be expressly provided herein, in the Plan, or in the Confirmation Order. Without limiting the generality of the foregoing, (a) the GUC Trust shall make Distributions from the GUC Trust to the GUC Trust Beneficiaries at least annually, to the extent the GUC Trustee determines the GUC Trust has sufficient cash available for distribution from all net cash income and all other cash received by the GUC Trust; *provided, however*, that the GUC Trust may, to the extent consistent with applicable law as to liquidating trusts (*e.g.*, Revenue Procedure 82-58, 1982-2 C.B. 847, as amplified by Revenue Procedure 91-15, 1991-1 C.B. 484 and Revenue Procedure 94-45, 1994-2 C.B. 684), retain such amounts (i) as are reasonably necessary to meet contingent liabilities (including Disputed General Unsecured Claims and Disputed 2027 Convertible Notes Claims), and to maintain the value of the GUC Settlement

Assets during the term of the GUC Trust, (ii) to pay reasonable administrative expenses including, without limitation, the compensation and the reimbursement of reasonable, actual and necessary costs, fees (including attorneys' and other professional fees) and expenses of the GUC Trustee in connection with the performance of the GUC Trustee's duties in connection with this GUC Trust Agreement and any amounts owed to the GUC Trustee pursuant to the terms hereof, and (iii) to satisfy all other liabilities incurred, assumed or projected by the GUC Trust in accordance with the Plan and this GUC Trust Agreement and (b) the GUC Trustee, in its discretion, may cause the GUC Trust to withhold and / or pay to the appropriate tax authority from amounts distributable from the GUC Trust to any Holder of a GUC Trust Beneficiary Claim any and all amounts as may be sufficient to pay the maximum amount of any tax or other charge that has been or might be assessed or imposed by any law, regulation, rule, ruling, directive, or other governmental requirement on such Holder or the GUC Trust with respect to the amount to be distributed to such Holder. The GUC Trustee shall determine such maximum amount to be withheld by the GUC Trust in its sole, reasonable discretion and shall cause the GUC Trust to distribute to the Holder any excess amount withheld. All such amounts withheld and paid to the appropriate tax authority (or reserved pending resolution of the need to withhold) shall be treated as amounts distributed to such Holders of Claims for all purposes of this GUC Trust Agreement.

4.7. Setoff Rights. The GUC Trustee may, but shall not be required to, setoff against or recoup from the Holder of any GUC Trust Beneficiary Claim on which payments or other Distributions are to be made hereunder, claims or defenses of any nature that the GUC Trust may have against such Person. However, neither the failure to do so, nor the allowance of any General Unsecured Claim, 2027 Convertible Notes Claim, or Term Loan Deficiency Claim under the Plan or otherwise, shall constitute a waiver or release of any such claim, defense, right of setoff, or right of recoupment against the Holder of such Allowed General Unsecured Claim, Allowed 2027 Convertible Notes Claim, or Allowed Term Loan Deficiency Claim.

4.8. Right to Object to Claims. The GUC Trust shall file all objections to General Unsecured Claims and 2027 Convertible Notes Claims within 180 days of the Effective Date, unless extended by order of the Bankruptcy Court. The GUC Trust at any time may move the Bankruptcy Court for an extension (including multiple extensions) of such claim objection deadline, solely with notice via the Bankruptcy Court's ECF system. The GUC Trust shall prosecute objections to Asserted GUC Trust Claims, including those pending as of the Effective Date and any additional objections to Asserted GUC Trust Claims that it determines to file from and after the Effective Date, but the GUC Trustee shall be entitled to exercise any and all judgment and discretion with respect to the manner in which to defend against or settle any General Unsecured Claims and 2027 Convertible Notes Claims; *provided* that the Debtors and Required Consenting Term Loan Lenders, in consultation with the GUC Trustee, shall have express rights to object to and prosecute such objections to General Unsecured Claims and 2027 Convertible Notes Claims not Allowed under the Plan. In addition, subject to the foregoing sentence, the GUC Trust may, at any time, request that the Bankruptcy Court estimate any Asserted GUC Trust Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether any party previously objected to or sought estimation of such claim.

4.9. No Distributions Pending Allowance. If an Asserted GUC Trust Claim or if any portion of any such Claim is Disputed, no payment or distribution shall be made on account of any

portion of such Claim unless and until all objections to such Claim are resolved by Final Order or as otherwise permitted by the Plan or this GUC Trust Agreement.

4.10. Minimum Distributions. The GUC Trustee shall not make any Distributions to a Holder of an Allowed General Unsecured Claim or Allowed 2027 Convertible Notes Claim on account of such Allowed General Unsecured Claim or Allowed 2027 Convertible Notes Claim of Cash or otherwise where such distribution is valued, in the reasonable discretion of the GUC Trustee, at less than \$250. Each Allowed General Unsecured Claim or Allowed 2027 Convertible Notes Claim to which this limitation applies shall be discharged pursuant to the Plan, and its Holder shall be forever barred pursuant to the Plan from asserting that Claim against the Debtors, the GUC Trust, or the Reorganized Debtors or their property.

4.11. Unclaimed and Undeliverable Distributions. In the event that any distribution to any GUC Trust Beneficiary is returned as undeliverable or any GUC Trust Beneficiary refuses to provide updated contact information within the time specified by the GUC Trustee, who may, but shall not be obligated to, make two (2) attempts to obtain such information, no further distribution to such GUC Trust Beneficiary shall be made, and (a) the GUC Trust shall have no further responsibility to such GUC Trust Beneficiary, and (b) any distribution to such GUC Trust Beneficiary shall be deemed unclaimed property upon the expiration of the time specified by the GUC Trustee in its last correspondence to such GUC Trust Beneficiary. All unclaimed property or interests in property shall revert to the GUC Trust without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary), the Claim of any GUC Trust Beneficiary to such unclaimed property or Interest in property shall be disallowed, discharged, and forever barred, and the GUC Trust may amend the register, including the Claims Register, to reflect such disallowance without further order by the Bankruptcy Court. If such GUC Trust Beneficiary timely provides the GUC Trustee with such missing information, all missed Distributions shall be made to such GUC Trust Beneficiary as soon as is reasonably practicable, without interest.

4.12. Conflicting Claims.

4.12.1 If any conflicting claims or demands are made or asserted with respect to the beneficial interest of a GUC Trust Beneficiary under this GUC 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 GUC Trustee shall be entitled, in its sole discretion, to refuse to comply with any such conflicting claims or demands.

4.12.2 The GUC Trustee, at its sole election, may elect to cause the GUC Trust to make no payment or distribution with respect to the beneficial 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 GUC Trust nor the GUC 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 GUC Trust or GUC Trustee be liable for interest on any funds which may be so withheld.

4.12.3 The GUC 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 GUC Trustee, which agreement shall include a complete release of the GUC Trust and GUC Trustee. Until the GUC Trustee receives written notice that one of the conditions of the preceding sentence is met, the GUC Trustee may deem and treat as the absolute owner under this GUC Trust Agreement of the beneficial interest in the GUC Trust the GUC Trust Beneficiary identified as the owner of that interest in the books and records maintained by the GUC Trustee. The GUC Trustee may deem and treat such GUC Trust Beneficiary as the absolute owner for purposes of receiving Distributions and any payments on account thereof for U.S. federal and state income tax purposes, and for all other purposes whatsoever.

4.12.4 In acting or refraining from acting under and in accordance with this Section 4.12 of the GUC Trust Agreement, the GUC Trustee shall be fully protected and incur no liability of any kind to any purported claimant or any other Person to the extent set forth in Article VI of this GUC Trust Agreement.

4.13. Dissolution of the GUC Trust. Upon dissolution of the GUC Trust, any remaining GUC Settlement Assets shall be distributed to the GUC Trust Beneficiaries in accordance with the Plan, the Confirmation Order, and this GUC Trust Agreement as appropriate; *provided, however*, that if the GUC Trustee reasonably determines that such remaining GUC Settlement Assets are insufficient to render a further distribution practicable, the GUC Trustee may (i) reserve any amount necessary to dissolve the GUC Trust, (ii) donate any balance to a charitable organization (A) described in section 501(c)(3) of the IRC, (B) exempt from U.S. federal income tax under section 501(a) of the IRC, (C) not a “private foundation” as defined in section 509(a) of the IRC, and (D) that is unrelated to the Debtors, the Reorganized Debtors, the GUC Trust, and any insider or affiliate of the GUC Trustee, and (iii) dissolve the GUC Trust.

ARTICLE V INTERESTS AND BENEFICIARIES

5.1. Identification and Addresses of GUC Trust Beneficiaries. In order to determine the actual names and addresses of the GUC Trust Beneficiaries, the GUC Trust may, but is under no obligation to, deliver a notice to the GUC Trust Beneficiaries. Such notice may include a form for each GUC Trust Beneficiary to complete in order to be properly registered as a GUC Trust Beneficiary and be eligible for Distributions under the GUC Trust. Such form may request the GUC Trust Beneficiary’s U.S. federal taxpayer identification number or social security number if the GUC Trustee determines that such information is necessary to fulfill the GUC Trust’s tax reporting and withholding obligations. A GUC Trust Beneficiary may, after the Effective Date, select an alternative mailing address, but only by notifying the GUC Trustee in writing via prepaid U.S. certified mail, return receipt requested, to the address listed in Section 10.2 of this Agreement, of such alternative distribution address. Absent receipt of such notice, the GUC Trust shall not be obligated to recognize any such change of address. For Distributions, the GUC Trust shall use the address set forth in the applicable proof of claim (or in the Schedules of Assets and Liabilities if no proof of claim was filed). The GUC Trust shall have no obligation to refer to or use for Distributions, objections to General Unsecured Claims or 2027 Convertible Notes Claims, or

otherwise, any other address of any GUC Trust Beneficiary, including addresses set forth on ballots, pleadings or otherwise. The GUC Trustee, in its reasonable discretion, may suspend Distributions to any GUC Trust Beneficiary that has not provided to the GUC Trust its U.S. federal taxpayer identification number or social security number, as the case may be, after a request is made pursuant to this Section 5.1. If tax information is not provided within forty-five (45) days after an initial request, the applicable GUC Trust Beneficiary's underlying claim will be expunged and its GUC Trust Interest disallowed for all purposes of this GUC Trust Agreement to the extent provided under the Plan. The GUC Trust may cause any such disallowance to be reflected on the GUC Trust's register, including the Claims Register, without any further order of the Bankruptcy Court.

5.2. Beneficial Interest Only. A GUC Trust Beneficiaries' interest in the GUC Trust shall not entitle any such GUC Trust Beneficiary to any title in or to, possession of, management of, or control of any of the GUC Settlement Assets or to any right to call for a partition or division of such GUC Settlement Assets or to require an accounting, except as specifically provided herein. Except as expressly provided in this GUC Trust Agreement, a GUC Trust Beneficiary shall not have standing to direct or to seek to direct the GUC Trust or GUC Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any Person upon or with respect to the GUC Settlement Assets.

5.3. Ownership of Beneficial Interests Hereunder. Each GUC Trust Beneficiary shall own a beneficial interest in the GUC Trust (as represented by the GUC Trust Interest(s) issued to such GUC Trust Beneficiaries consistent with the Plan). The record holders of the GUC Trust Interests shall be recorded and set forth in a registry maintained by, or at the direction of, the GUC Trust expressly for such purpose.

5.4. Evidence of Beneficial Interest. Ownership of a GUC Trust Interest shall not be evidenced by any certificate, security, or receipt (unless otherwise determined by the GUC Trustee) or in any other form or manner whatsoever. Ownership of the GUC Trust Interests shall be maintained on books and records of the GUC Trust maintained by the GUC Trustee, which may be the official Claims Register maintained in the Chapter 11 Cases. The GUC Trustee shall, upon the written request of a Holder of a beneficial interest, provide reasonably adequate documentary evidence of such Holder's Claim, as indicated on the books and records of the GUC Trust. The expense of providing such documentation shall be borne by the requesting Holder.

5.5. No Right to Accounting. Except as set forth in Sections 7.4 and 7.9 of this GUC Trust Agreement, neither the GUC Trust Beneficiaries nor their successors, assigns, creditors, or any other Person shall have any right to an accounting by the GUC Trust, and the GUC Trust shall not be obligated to provide any accounting to any Person. Nothing in this GUC Trust Agreement is intended to require the GUC Trustee at any time or for any purpose to file any accounting or seek approval of any court with respect to the administration of the GUC Trust or as a condition for making any advance, payment, or distribution out of proceeds of GUC Settlement Assets.

5.6. Requirement of Undertaking. The GUC Trust may request the Bankruptcy Court to require, in any suit for the enforcement of any right or remedy under this GUC Trust Agreement, or in any suit against the GUC Trust or the GUC Trustee for any action taken or omitted by the

GUC Trust or the GUC Trustee, as applicable, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, including reasonable attorneys' fees, against any party litigant in such suit; *provided, however*, that the provisions of this Section 5.6 shall not apply to any suit by the GUC Trust.

5.7. Limitation on Transferability. It is understood and agreed that the GUC Trust Interests shall be non-transferable and non-assignable during the term of this GUC Trust Agreement other than if transferred by will, intestate succession, or otherwise by operation of law; *provided however*, GUC Trust Interests shall be transferrable upon the consent of (a) the GUC Trust, and (b) the Reorganized Debtors (such consent not to be unreasonably withheld). Any such Transfer by operation of law shall not be effective until appropriate notification and proof thereof is submitted to the GUC Trust, and the GUC Trustee may continue to cause the GUC Trust to pay all amounts to or for the benefit of the assigning GUC Trust Beneficiaries until receipt of proper notification and proof of such Transfer. The GUC Trustee may rely upon such proof without the requirement of any further investigation. Notwithstanding any other provision to the contrary, the GUC Trust may disregard any purported Transfer of Claims by will, intestate succession or operation of law if sufficient necessary information (as reasonably determined by the GUC Trustee), including applicable tax-related information, is not provided by such purported transferee or assignee to the GUC Trust.

5.8. Exemption from Registration. The parties hereto intend that the rights of the GUC Trust Beneficiaries arising under this GUC Trust Agreement shall not be "securities" under applicable laws and shall not be registered pursuant to the Securities Act or any applicable state or local securities law. None of the parties hereto represent or warrant that such rights of the GUC Trust Beneficiaries shall be entitled to exemption from registration under applicable securities law. To the extent beneficial interests in the GUC Trust are deemed to be "securities" as defined in section 2(a)(1) of the Securities Act, section 101 of the Bankruptcy Code, and applicable state securities laws, the parties (including the Reorganized Debtors) intend that the exemption provisions of section 1145 of the Bankruptcy Code will apply to such beneficial interests.

ARTICLE VI THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY

6.1. Parties Dealing With the GUC Trustee. In the absence of actual knowledge to the contrary, any Person dealing with the GUC Trust or the GUC Trustee shall be entitled to rely on the authority of the GUC Trustee or any of the GUC Trustee's agents to act in connection with the GUC Trust Agreement. No Person that may deal with the GUC Trustee shall have any obligation to inquire into the validity or expediency or propriety of any transaction by the GUC Trustee or any agent of the GUC Trustee.

6.2. Limitation of GUC Trustee's Liability. Notwithstanding anything herein, the Plan, or the Confirmation Order to the contrary, in exercising the rights granted herein, the GUC Trustee shall exercise its best reasonable judgment, to properly manage the affairs of the GUC Trust and reasonably safeguard the interests of all the GUC Trust Beneficiaries. Notwithstanding the foregoing sentence or anything to the contrary in this GUC Trust Agreement, the GUC Trustee shall not incur any responsibility or liability of any kind for any reason, including by reason of any

error of law or of any matter or thing done or suffered or omitted to be done under or related to this GUC Trust Agreement, its duties, obligations, activities, or actions as GUC Trustee or otherwise related directly or indirectly thereto, unless a court determines in a Final Order that such action or omission complained of or damage allegedly incurred thereby is solely a direct result of the GUC Trustee's gross negligence, fraud, or willful misconduct. The GUC Trustee's obligations, duties, and responsibilities under the Plan, the Confirmation Order, and this GUC Trust Agreement are qualified in their entirety by the availability of and reasonable likelihood of recovery of sufficient assets or Cash to fund the GUC Trustee's activities. Upon the appointment of a successor GUC Trustee and the delivery of the then remaining GUC Settlement Assets to the successor GUC Trustee, the predecessor GUC Trustee and any of its respective accountants, agents, assigns, attorneys, bankers, consultants, directors, employees, executors, financial advisors, investment bankers, real estate brokers, transfer agents, distribution agents, managers, members, officers, partners, predecessors, principals, professional persons, representatives, affiliate, employer, and successors shall have no further liability or responsibility with respect thereto (other than liabilities arising prior to the cessation of its role as GUC Trustee). A successor GUC Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor, and no successor GUC Trustee shall be in any way liable for the acts or omissions of any predecessor GUC Trustee, unless a successor GUC Trustee expressly assumes such responsibility. A predecessor GUC Trustee shall have no liability for the acts or omissions of any immediate or subsequent successor GUC Trustee for any events or occurrences subsequent to the cessation of its role as GUC Trustee.

6.3. Indemnification. The GUC Trustee and each of its respective accountants, agents, assigns, attorneys, bankers, consultants, directors, employees, executors, financial advisors, investment bankers, real estate brokers, transfer agents, independent contractors, managers, members, officers, partners, predecessors, principals, professional persons, representatives, affiliate, employer, and successors (each, an "Indemnified Party") shall be indemnified for, and defended and held harmless against, by the GUC Trust and solely from the GUC Settlement Assets, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost, or expense (including the reasonable attorney, other professional and related costs of defense) actually incurred without gross negligence, willful misconduct, or fraud on the part of the applicable Indemnified Party (which gross negligence, willful misconduct, or fraud, if any, must be determined by a Final Order of a court of competent jurisdiction) for any action taken, suffered, or omitted to be taken by the Indemnified Parties in connection with the acceptance, administration, exercise, and performance of their duties under the Plan or this GUC Trust Agreement. An act or omission taken with the approval of the Bankruptcy Court, and not inconsistent therewith, will be conclusively deemed not to constitute gross negligence, willful misconduct, or fraud. The amounts necessary for the indemnification provided in this Section 6.3 (including, but not limited to, any costs and expenses incurred in enforcing the right of indemnification in this Section 6.3) shall be paid solely by the GUC Trust out of the GUC Settlement Assets. Neither the Debtors, the Reorganized Debtors, the GUC Trustee, nor any other Indemnified Party, shall be liable for the payment of any GUC Trust expense or claim or other liability of the GUC Trust, and no Person shall look to the Debtors, the Reorganized Debtors, the GUC Trustee, or any other Indemnified Party for the payment of any such expense or liability. The indemnification provided in this Section 6.3 shall survive the death, dissolution, incapacity, resignation, or removal of the GUC

Trustee, Indemnified Party, or the termination of the GUC Trust, and shall inure to the benefit of each Indemnified Party's heirs and assigns. If the GUC Trustee becomes involved in any action, lawsuit, proceeding, or investigation in connection with any matter arising directly or indirectly out of or in connection with the Plan, this GUC Trust Agreement, Confirmation Order, or the affairs of the GUC Trust, the GUC Trust shall periodically advance or otherwise reimburse on demand the reasonable and documented legal and other expenses including, without limitation, the cost of any investigation and preparation and attorney's fees, disbursements, and related expenses of the GUC Trustee incurred in connection therewith as a GUC Trust Fee and Expense, but the GUC Trustee shall be required to repay promptly to the GUC Trust the amount of any such advanced or reimbursed expense paid to the GUC Trustee to the extent that it shall be ultimately determined by Final Order that the GUC Trustee engaged in fraud, willful misconduct, or gross negligence in connection with the affairs of the GUC Trustee with respect to which such expenses were paid. The GUC Trust shall indemnify and hold harmless the officers, employees, agents, attorneys, advisors, affiliates, and other professionals of the GUC Trust and the GUC Trustee to the same extent as provided in this Section 6.3 for the GUC Trustee. The provisions of this Section 6.3 shall remain available to any former GUC Trustee or the estate of any decedent GUC Trustee. The indemnification provided for herein shall be a GUC Trust Fee and Expense. For the avoidance of doubt, neither the Debtors, the Reorganized Debtors, nor their Related Parties (as applicable), shall have any liability with respect to the indemnification under this Section 6.3.

6.4. Reliance by the GUC Trustee. Except as otherwise provided in this GUC Trust Agreement, the Plan, or the Confirmation Order, the GUC Trustee may rely and shall be protected in acting upon the advice of counsel or other professional advisors and/or upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by the GUC Trustee to be genuine and to have been signed or presented by the proper party or parties.

6.5. Confirmation of Survival of Provisions. Without limitation in any way of any provision of this GUC Trust Agreement, the provisions of this Article VI shall survive the death, dissolution, liquidation, resignation, replacement, or removal, as may be applicable, of the GUC Trustee, or the termination of the GUC Trust or this GUC Trust Agreement and shall inure to the benefit of the GUC Trustee's and the Indemnified Parties' heirs and assigns.

ARTICLE VII SELECTION, REMOVAL AND COMPENSATION OF GUC TRUSTEE

7.1. Appointment. The GUC Trustee has been selected pursuant to the provisions of the Plan to effectuate an orderly and efficient transition of the administration, in accordance herewith, of the GUC Settlement Assets for the benefit of the GUC Trust Beneficiaries.

7.2. Term of Service. The GUC Trustee shall serve until the earlier to occur of (a) the termination of the GUC Trust in accordance with this GUC Trust Agreement and the Plan, and (b) the GUC Trustee's death, dissolution, incapacity, or resignation.

7.3. Removal of the GUC Trustee. Any Person serving as GUC Trustee may be removed and replaced by an order of the Bankruptcy Court and a showing of good cause. The

removal shall be effective on the date specified in the order of the Bankruptcy Court. Notwithstanding the removal of the GUC Trustee pursuant to this Section 7.3, the rights of the resigning GUC Trustee under this GUC Trust Agreement with respect to acts or omissions occurring prior to the effectiveness of such removal will continue for the benefit of such resigning GUC Trustee following the effectiveness of such resignation.

7.4. Resignation of GUC Trustee. The GUC Trustee may resign at any time upon providing prior written notice of the GUC Trustee's intention to do so to its counsel, counsel to the Reorganized Debtors, counsel to the DIP Lenders, and the Bankruptcy Court, which notice shall be at least thirty (30) days prior to such resignation unless the resignation is due to a disability or other incapacity. The resignation shall be effective on the later of (a) the date specified in the notice of resignation and (b) the date on which a successor GUC Trustee has been appointed in accordance with Section 7.5. Without limiting any other reporting or accounting obligations under the Plan or this GUC Trust Agreement, in the event of a resignation, the resigning GUC Trustee shall File with the Bankruptcy Court a full and complete written accounting of monies and GUC Settlement Assets received, disbursed, and held during the term of office of that GUC Trustee.

7.5. Appointment of Successor GUC Trustee. Upon the resignation, death, dissolution, incapacity, or removal of a GUC Trustee, counsel to the GUC Trustee, at the time of such resignation, death, dissolution, incapacity, or removal of such GUC Trustee, shall, in consultation with the Reorganized Debtors, file a notice of appointment of such successor GUC Trustee on the docket of the Chapter 11 Cases. Any successor GUC Trustee so appointed (a) shall consent to and accept his, her or its appointment as successor GUC Trustee, which may be done by e- mail or through acquiescence in not objecting to a motion for approval of his, her or its appointment as successor GUC Trustee; (b) accept in writing the terms of the GUC Trust Agreement and agree that the provisions of this GUC Trust Agreement shall be binding upon and inure to the benefit of the successor GUC Trustee; and (c) shall not have any liability or responsibility for the acts or omissions of any predecessor(s).

7.6. Powers and Duties of Successor Trustee. A successor GUC Trustee shall have all the rights, privileges, powers, and duties of its predecessor under this GUC Trust Agreement and the Plan. Notwithstanding anything to the contrary herein, a removed or resigning GUC Trustee shall, when requested in writing by the successor GUC Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor GUC Trustee under the GUC Trust all the estates, properties, rights, powers, and trusts of such predecessor GUC Trustee.

7.7. GUC Trust Continuance. The death, resignation, dissolution, incapacity, or resignation of the GUC Trustee shall not terminate the GUC Trust or revoke any then-existing agency created pursuant to this GUC Trust Agreement or invalidate any action theretofore taken by the GUC Trustee.

7.8. Compensation and Costs of Administration. The GUC Trustee shall receive fair and reasonable compensation for its services as determined by the GUC Trust Agreement between the GUC Trustee and the Committee either on an hourly basis at the GUC Trustee's standard hourly billing rates or a flat monthly fee, plus all reasonable and documented costs and expenses. Such fees and compensation, plus all reasonable costs and expenses, shall be charged against and

paid solely out of the GUC Settlement Assets without further Bankruptcy Court approval or order (subject to the limitations set forth in this GUC Trust Agreement and the Plan). All costs, expenses, and obligations, including filing fees, incurred by the GUC Trustee (or professionals who may be employed by the GUC Trustee in administering the GUC Trust and GUC Settlement Assets, in carrying out their responsibilities under this GUC Trust Agreement, or in any manner connected, incidental, or related thereto) shall be paid solely from the GUC Settlement Assets prior to any distribution to the GUC Trust Beneficiaries.

7.9. Periodic Reporting; Filing Requirements.

7.9.1 The GUC Trustee shall provide the U.S. Trustee and Bankruptcy Court the information and reports they may reasonably request concerning GUC Trust administration.

7.9.2 The tax returns filed by the GUC Trustee shall report all GUC Trust earnings for the taxable year being reported. The “taxable year” of the GUC Trust shall be the “calendar year” as those terms are defined in IRC Section 441.

7.10. Confidentiality. Except as required in the performance of its duties, the GUC Trustee shall, while serving as GUC Trustee under this GUC Trust Agreement, 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 GUC Settlement Assets relate or of which it has become aware in its capacity as GUC Trustee.

ARTICLE VIII MAINTENANCE OF RECORDS

8.1. The GUC Trustee shall maintain accurate records of the administration of GUC Settlement Assets, including receipts and disbursements and other activity of the GUC Trust, in such detail and for such periods of time as may be necessary to enable it to make full and proper accounting in respect thereof.

8.2. The Debtors or the Reorganized Debtors, as applicable, shall, upon reasonable notice, cooperate with the GUC Trustee in the administration of the GUC Trust, including by providing the GUC Trustee reasonable access, during normal business hours, to the Debtors’ or the Reorganized Debtors, as applicable, personnel and books and records, to the extent the Debtors or the Reorganized Debtors, as applicable, have such information and/or documents, to enable the GUC Trustee to perform its duties expressly authorized hereunder and in the Plan. Such access and documents shall be provided to the GUC Trust and GUC Trustee without charge; *provided, however*, that to the extent that the Reorganized Debtors determine that responding to any particular information request from the GUC Trustee requires the Reorganized Debtors or their personnel to expend material time or resources outside the ordinary course of their operations or responsibilities, the Reorganized Debtors or their personnel shall communicate the same to the GUC Trustee, together with a range of expected costs to satisfy such information request. To the extent the parties are unable to reach an agreement on such costs, the GUC Trustee may withdraw its information request and the Reorganized Debtors may determine not to satisfy such request, and all parties’ rights are reserved to raise any such disputes with the Bankruptcy Court.

8.3. The books and records maintained by the GUC Trustee and any records of the Debtors or Reorganized Debtors transferred to the GUC Trust may be disposed of by the GUC Trust at the later of (a) such time as the GUC Trustee determines that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the GUC Trust or the GUC Trust Beneficiaries and (b) upon the termination and completion of the winding down of the GUC Trust.

ARTICLE IX DURATION OF TRUST

9.1. Duration. This GUC Trust Agreement shall remain and continue in full force and effect until the GUC Trust is terminated in accordance with the provisions of this GUC Trust Agreement and the Plan.

9.2. Termination of the Trust. The GUC Trustee and the GUC Trust shall be discharged or terminated, as the case may be, at such time as all Distributions required to be made by the GUC Trustee to the GUC Trust Beneficiaries have been made, but in no event shall the GUC Trust be terminated later than five (5) years from the Effective Date unless the Bankruptcy Court, upon a motion made within the six-month period before such fifth anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made within six (6) months before the end of the preceding extension) determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, unless a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the GUC Trust as a liquidating trust for U.S. federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the GUC Settlement Assets. In connection with the termination of the GUC Trust, notwithstanding other provisions hereof, any remaining GUC Settlement Assets that the GUC Trustee determines, in its sole discretion, are of inconsequential value or otherwise insufficient to support the cost of a distribution, may be transferred by the GUC Trustee to a non-profit charitable organization qualifying under Section 501(c)(3) of the IRC.

9.3. Continuance of GUC Trust for Winding Up. After the termination of the GUC Trust and for the purpose of liquidation and winding up the affairs of the GUC Trust, the GUC Trustee shall continue to act as such until its duties have been fully performed, including such post-distribution tasks as necessary to wind up the affairs of the GUC Trust. Subject to the foregoing sentence, after the termination of the GUC Trust, the GUC Trustee, for a time, may (but is under no obligation) retain or cause to be retained certain books, records, GUC Trust Beneficiary lists, and certificates and other documents and files that shall have been delivered to or created by the GUC Trustee. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the GUC Trust and final distribution of the GUC Trust, the GUC Trustee shall have no further duties or obligations hereunder.

9.4. No Termination by GUC Trust Beneficiaries. The GUC Trust may not be terminated at any time by the GUC Trust Beneficiaries.

**ARTICLE X
MISCELLANEOUS**

10.1. Preservation of Privilege. In connection with the right and claims that constitute GUC Settlement Assets, any attorney-client privilege, work-product doctrine, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the GUC Trust pursuant to the terms of the Plan or otherwise shall vest in the GUC Trustee and the GUC Trustee's representatives (if any), and the GUC Trustee is authorized to take all necessary actions to effectuate the transfer of such privileges, as necessary. The GUC Trustee's receipt of such privileges shall not operate as a waiver of any other privileges or immunities possessed or retained by the Debtors or the Reorganized Debtors, as applicable.

10.1.1 The Debtors, the Reorganized Debtors, and the GUC Trust (through the GUC Trustee) shall be deemed to be working in common interest whereby the Debtors and the Reorganized Debtors will be able to share documents, information, or communications (whether written or oral), including as relating to the GUC Causes of Action, subject to a common interest privilege and immunity. The GUC Trust's or the GUC Trustee's receipt of such documents, information, or communications shall not constitute a waiver of any privilege or immunity.

10.2. Notices. Unless otherwise expressly provided herein, all notices to be given to the GUC Trust Beneficiaries may be given by ordinary mail, or may be delivered personally, to the Holders at the addresses appearing on the books kept by the GUC Trustee. Unless the GUC Trustee directs otherwise in writing, any notice or other communication which may be or is required to be given, served, or sent to the GUC Trust shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery (if receipt is confirmed) addressed as follows:

If to the GUC Trustee:

U.S. Bank Trust Company, National Association
Global Corporate Trust
60 Livingston Avenue
EP-MN-S3DD
Saint Paul, MN 55107
Attn: Peter Finkel, Vice President
Email: peter.finkel@usbank.com

with a copy to:

Kelley Drye & Warren LLP
3 World Trade Center
175 Greenwich Street
New York, New York 10007
Attn: James S. Carr
Kristin S. Elliott
E-mail: jcarr@kelleydrye.com

kelliott@kelleydrye.com

10.3. No Bond / Insurance. Notwithstanding any state law to the contrary, the GUC Trustee (including any successor) shall be exempt from giving any bond or other security in any jurisdiction, unless the GUC Trustee decides in its reasonable judgment to obtain such bond or other security. The GUC Trustee is hereby authorized, but not required, to obtain all reasonable insurance coverage for itself, its agents, representatives, employees or independent contractors, including coverage with respect to the liabilities, duties and obligations of the GUC Trustee and its agents, representatives, employees or independent contractors under this GUC Trust Agreement and the Plan (“Insurance Coverages”). The cost of any such Insurance Coverage shall be an expense of the GUC Trust and paid out of the GUC Settlement Assets.

10.4. Governing Law. This GUC Trust Agreement shall be governed by and construed in accordance with the laws of the State of New York (excluding conflict of laws rules), including all matters of validity, construction, and administration; provided, however, that there shall not be applicable to the GUC Trust, the GUC Trustee, or this GUC Trust Agreement, any provisions of the laws (statutory or common) of the State of New York pertaining to trusts that relate to or regulate, in a manner inconsistent with the terms hereof, (i) the filing with any court or governmental body or agency of trustee accounts or schedule 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 and 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 or investing trust assets, or (vii) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees.

10.5. Successors and Assigns. This GUC Trust Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

10.6. Headings. The various headings of this GUC Trust Agreement are inserted for convenience only and shall not affect the meaning or understanding of this GUC Trust Agreement or any provision hereof.

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

10.8. No Execution. All funds in the GUC Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a GUC Trust Beneficiary, and no GUC Trust Beneficiary or any other Person can execute upon, garnish or attach the GUC Settlement Assets or the GUC Trust in any manner or compel payment from the GUC Trust except by Final Order of the Bankruptcy Court. Payment will be solely governed by this GUC Trust Agreement and the Plan.

10.9. Intention of Parties to Establish Grantor Trust. This GUC Trust Agreement is intended to create a grantor trust for U.S. federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a grantor trust. Consistent with Revenue Procedure 82-58, 1982-2 C.B. 847, as amplified by Revenue Procedure 91-15, 1991-1 C.B. 484 and Revenue Procedure 94-45, 1994-2 C.B. 684, the GUC 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 IRC. As such, for U.S. federal income tax purposes, the GUC Trust Beneficiaries will be treated as both the grantors and the deemed owners of the GUC Trust.

10.10. Tax Treatment of Reserves for Disputed Claims. The GUC Trustee shall maintain reserves for Disputed Asserted GUC Trust Claims as provided in the Plan. The GUC Trustee may, in the GUC Trustee's sole discretion, determine the best way to report for tax purposes with respect to any reserve for any Disputed Asserted GUC Trust Claims, including, but not limited to, (i) filing a tax election to treat any and all reserves for Disputed Asserted GUC Trust Claims as a Disputed Ownership Fund ("DOF") within the meaning of Treasury Regulation Section 1.468B-9 for U.S. federal income tax purposes rather than to tax such reserve as a part of the GUC Trust or (ii) electing to report as a separate trust or sub-trust or other entity. If an election is made to report any reserve for Disputed Asserted GUC Trust Claims as a DOF, the GUC Trust shall comply with all U.S. federal and state tax reporting and tax compliance requirements of the DOF, including, but not limited to, the filing of a separate U.S. federal income tax return for the DOF and the payment of U.S. federal and/or state income tax due. For the avoidance of doubt, all of the GUC Trust's income shall be treated as subject to tax on a current basis consistent with Revenue Procedure 82-58, 1982-2, C.B. 847, as amplified by Revenue Procedure 91-15, 1991-1 C.B. 484 and Revenue Procedure 94-45, 1994-2 C.B. 684.

10.11. Amendment. The GUC Trustee may, from time to time, modify, supplement, or amend this GUC Trust Agreement but only to clarify any ambiguity or inconsistency and only if such amendment (a) does not materially and adversely affect the interests, rights, treatment, or Distributions of any GUC Trust Beneficiary, (b) is not in any way inconsistent with the Plan or the Confirmation Order, and (c) does not affect the scope of the (i) GUC Settlement Assets, (ii) the GUC Trust, or (iii) powers of the GUC Trustee. The GUC Trustee, with the approval of the Bankruptcy Court may, from time to time, modify, supplement, or amend this GUC Trust Agreement in any way that is not inconsistent with the Plan or the Confirmation Order.

10.12. Waiver. No failure by any Party 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.

10.13. Severability. If any term, provision, covenant or restriction contained in this GUC Trust Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable, or against its regulatory policy, the remainder of the terms, provisions, covenants, and restrictions contained in this GUC Trust Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

10.14. Further Assurances. The Parties agree to execute and deliver all such documents and notices and to take all such further actions that are not inconsistent with the Plan or the Confirmation Order as may reasonably be required from time to time to carry out the intent and purposes and provide for the full implementation of this GUC Trust Agreement and the pertinent provisions of the Plan, and to consummate the transactions contemplated thereby.

10.15. Counterparts and Facsimile Signatures. This GUC Trust Agreement may be executed in counterparts and a facsimile or other electronic form of signature shall be of the same force and effect as an original.

10.16. Interpretation. Use of the word “including” necessarily means “including without limitation” without repeating same each time “including” is used in this GUC Trust Agreement.

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

IN WITNESS WHEREOF, the parties have executed this GUC Trust Agreement as of the day and year written above.

DEBTORS:

Vertex Energy, Inc., *et al.*

By: _____

Name:

Title:

GUC TRUSTEE:

U.S. Bank Trust Company, National Association,
not in any individual capacity, but solely in its
capacity as the GUC Trustee of the GUC Trust

By: _____

Name:

Title: