

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
: :
THQ INC., *et al.*, : Case No. 12-13398 (MFW)
: :
Debtors.¹ : Jointly Administered
: :
: **Hearing: July 16, 2013 at 10:30 a.m. (ET)**
: :
-----X **RE: Docket Nos. 709 and 780**

NOTICE OF FILING OF ADDITIONAL PLAN SUPPLEMENT DOCUMENTS

PLEASE TAKE NOTICE that on June 25, 2013, THQ Inc. and its affiliated debtors in the above-captioned chapter 11 cases (collectively, the “**Debtors**”) filed the *Notice of Filing of Plan Supplement* [D.I. 780], which relates to the *Amended Chapter 11 Plan of Liquidation of THQ Inc. and Its Affiliated Debtors*, dated May 28, 2013 [D.I. 709] (as it may be amended, modified, or supplemented from time to time).

PLEASE TAKE FURTHER NOTICE that the Debtors hereby file additional Plan Supplement documents attached hereto as **Exhibits 1 and 2**:

1. Stock Trust Agreement; and
2. Litigation Trust Agreement.

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: THQ Inc. (1686); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless, Inc. (7991); Volition, Inc. (4944); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.



PLEASE TAKE FURTHER NOTICE that the Debtors reserve the right to make final and conforming changes to each of the documents contained in the Plan Supplement.

Dated: June 26, 2013
Wilmington, Delaware

/s/ Jaime Luton Chapman
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Counsel to the Debtors and Debtors in Possession

Exhibit 1

Stock Trust Agreement

STOCK TRUST AGREEMENT

STOCK TRUST AGREEMENT, dated as of July __, 2013 (the "Agreement"), between the Debtors (as hereinafter defined) and [_____] (the "Stock Trustee").

RECITALS

WHEREAS, on December 19, 2012 (the "Petition Date"), THQ Inc. ("THQI"), THQ Digital Studios Phoenix, Inc., THQ Wireless, Inc., Volition, Inc., and Vigil Games, Inc. (collectively, the "Debtors") commenced chapter 11 cases (the "Chapter 11 Cases") by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, by Orders of the Bankruptcy Court, the Debtors' Chapter 11 Cases were jointly administered under Case No. 12-13398 (MFW);

WHEREAS, on April 18, 2013, the Debtors filed with the Bankruptcy Court the *Chapter 11 Plan of THQ, Inc. and Its Affiliated Debtors* (as confirmed, the "Plan");

WHEREAS, the Plan, among other things, provides for the creation of a stock trust and the appointment of a stock trustee for such trust;

WHEREAS, the Plan provides for the appointment of the Stock Trustee for the purposes set forth in the Plan and herein; and

WHEREAS, the Stock Trustee has accepted such appointment and has agreed to serve in such capacity under the terms and conditions set forth in the Plan and herein.

NOW THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, the Debtors and the Stock Trustee agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 *Certain Terms Defined.* Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to such terms in the Plan. As used herein, the following terms have the respective meanings specified below:

"Beneficial Interest" shall have the meaning ascribed to such term in Section 3.2.

"Indemnified Parties" shall mean, individually and collectively, each of the Stock Trustee and the Stock Trustee's employees, affiliates, officers, directors, principals, attorneys, accountants, experts, agents, and their respective affiliates.

“Permitted Investments” shall have the meaning ascribed to such term in Section 5.3.

“Proceeds” shall mean the net amount of any and all of the proceeds of or recoveries realized or received on account of the Trust Asset.

“Register” shall have the meaning ascribed to such term in Section 3.4.

“Stock Trust Expenses” shall have the meaning ascribed to such term in Section 5.4.

“Stock Trust Termination Date” shall have the meaning ascribed to such term in Section 2.7.

“Trust Asset” shall mean the sole outstanding share of stock in THQI.

“Trustee Parties” shall have the meaning ascribed to such term in Section 6.1.

Section 1.2 *Interpretation.* When a reference is made in this Agreement to a section or article, such reference shall be to a section or article of this Agreement unless otherwise clearly indicated to the contrary.

(a) Whenever the words “include” “includes” or “including” are used in this Agreement they shall be deemed to be followed by the words “without limitation.”

(b) The words “hereof,” “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified.

(c) The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(d) A reference to any party to this Agreement or any other agreement or document shall include such party’s successors and permitted assigns.

(e) A reference to any legislation or to any provision of any legislation shall include any amendment to, and any modification or reenactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

(f) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(g) Any reference in this Agreement to \$ shall mean U.S. dollars.

ARTICLE II

CREATION/TERMINATION OF STOCK TRUST

Section 2.1 *Creation of the Stock Trust.* The Stock Trust is hereby constituted and created, in accordance with Treasury Regulations Section 301.7701-4(d) and Revenue Procedure 94-45 to hold, on and after the Effective Date of the Plan, the sole outstanding share of THQI stock for the benefit of the Holders of Allowed Equity Interests and Allowed Securities Law Claims.

Section 2.2 *Appointment and Acceptance of the Stock Trustee.* [] is hereby appointed as the Stock Trustee, to act and serve as the Stock Trustee of the Stock Trust. [] hereby accepts the appointment as the Stock Trustee of the Stock Trust, and, in such capacity, agrees to hold the Trust Asset, in trust, in accordance with the terms of this Agreement and to administer the Stock Trust pursuant to the terms and conditions of this Agreement and the Plan.

Section 2.3 *Name of the Trust.* The trust established through the Plan and pursuant to this Agreement shall bear the name "THQ Stock Trust." In connection with the exercise of Stock Trustee's powers under this Agreement, the Stock Trustee may use this name or such variation thereof as the Stock Trustee, in the Stock Trustee's discretion, may determine to be appropriate.

Section 2.4 *Transfer of Asset to the Trust.* Pursuant to the Plan and the Confirmation Order, on the Effective Date, the Trust Asset (the sole share of stock in THQI) shall be unconditionally and irrevocably transferred, assigned and delivered by the Debtors to the Stock Trust, in trust, free and clear of all liens and interests, to be administered for the benefit of Holders of Allowed Equity Interests and Allowed Securities Law Claims.

Section 2.5 *Maintenance of Cash and Proceeds.* Any and all Available Cash and Proceeds shall be maintained by the Stock Trustee in an account designated for such purposes.

Section 2.6 *Fiscal Year.* The fiscal year of the Stock Trust shall be the calendar year.

Section 2.7 *Termination of Stock Trust.* The Stock Trust shall automatically terminate upon the date (the "Stock Trust Termination Date") of the receipt by the Holders of Allowed Equity Interests and Allowed Securities Law Claims, on a Pro Rata basis, of any surplus distributed to the Stock Trust after all Allowed Claims in Classes 1 through 6, inclusive, have been paid in full with Postpetition Interest to the extent provided for in the Plan, in full and complete satisfaction, discharge, exchange, and release of each Holder's Allowed Equity Interest and Allowed Security Law Claim (the "Net Proceeds"); provided, however, that the Stock Trust shall be dissolved no later than five (5) years from the Effective Date, unless the Bankruptcy Court orders otherwise in accordance with Section 6.14(i) of the Plan. The Stock Trustee shall

liquidate the Trust Asset in an orderly and expeditious manner in accordance with this Agreement and the Plan.

ARTICLE III

BENEFICIARIES

Section 3.1 *Stock Trust Beneficiaries.* Holders of Allowed Equity Interests and Allowed Securities Law Claims shall be the beneficiaries of the Stock Trust.

Section 3.2 *Interests of Stock Trust Beneficiaries.* The Stock Trust Beneficiaries shall have undivided beneficial interests in the Trust Asset (the "Beneficial Interests"). The ownership of a Beneficial Interest hereunder shall not entitle any Stock Trust Beneficiary to any title in or to the Trust Asset or to any right to call for a partition or division of Trust Asset or to require an accounting.

Section 3.3 *No Suits by Stock Trust Beneficiaries.* No Stock Trust Beneficiary shall have any right by virtue of any provision of this Agreement to institute any action or proceeding, at law or in equity, against any Person, including the Stock Trustee, with respect to the Trust Asset; provided, however, that a Stock Trust Beneficiary shall be permitted to institute in the Bankruptcy Court an action or proceeding, in law or in equity, against the Stock Trustee solely for acts or omissions constituting gross negligence, intentional misconduct, willful misconduct or actual fraud.

Section 3.4 *Recording of Beneficial Interests in Trust Asset.* As soon as practical after the creation of the Stock Trust, the Stock Trustee or a duly authorized agent of the Stock Trustee shall record all ownership and transfers of Beneficial Interests in a register (the "Register") maintained by the Stock Trustee (or a duly authorized agent of the Stock Trustee) for such purpose.

Section 3.5 *Non-Transferability of Beneficial Interests.* The Beneficial Interests in the Stock Trust shall not be certificated, and no physical certificates shall be issued representing the Beneficial Interests. The Beneficial Interests shall not be transferable, assignable, pledged, sold, or hypothecated, in whole or in part, except with respect to a transfer by will or under the laws of descent and distribution. Any such transfer, however, will not be effective until and unless the Stock Trustee receives written notice of such transfer.

Section 3.6 *Notice of Change of Address; Undeliverable Property.* Each Stock Trust Beneficiary shall be responsible for providing the Stock Trustee with written notice of any change in address. The Stock Trustee is not obligated to make any effort to determine the correct address of a Stock Trust Beneficiary.

(a) Subject to Bankruptcy Rule 9010, all Distributions under the Plan and this Agreement shall be made to the Holders of Stock Trust Beneficial Interests on account of such Holders Allowed Equity Interests and Allowed Securities Law Claims at the address of such Holder as listed on the Register as of the Distribution Record Date, unless the Stock Trustee has been notified in writing of a change of address, including, without limitation, by the timely filing

of a proof of claim by such Holder that provides an address for such Holder different from the address reflected on the Register. In the event that any Distribution to any such Holder is returned as undeliverable, no Distribution to such Holder shall be made unless and until the Stock Trustee has been notified of the then current address of such Holder, at which time or as soon as reasonably practicable thereafter, such Distribution shall be made to such Holder without interest. Undeliverable Distributions shall remain in the possession of the Stock Trust until the earlier of (i) such time as the relevant Distribution becomes deliverable and (ii) the time period specified in subsection (b) hereof.

(b) At the later of the expiration of one (1) year from the Effective Date and the date a Claim or Interest becomes an Allowed Equity Interest or an Allowed Securities Law Claim, any undeliverable Distribution shall be deemed unclaimed property and shall revert in the Stock Trust and be distributed to the other Stock Trust Beneficiaries, in accordance with the Plan, this Agreement, or as otherwise ordered by the Bankruptcy Court.

ARTICLE IV

TAX AND SECURITIES MATTERS

Section 4.1 *Tax Treatment.* The Stock Trust is established for the sole purpose of holding the Trust Asset, and any proceeds therefrom, in accordance with Treasury Regulation section 301.7701-4(d) and Revenue Procedure 94-45, with no objective to continue or engage in the conduct of a trade or business. The Stock Trust is intended to qualify as a liquidating trust for U.S. federal income tax purposes. In general, a liquidating trust is not a separate taxable entity for U.S. federal income tax purposes, but is instead treated as a grantor trust, *i.e.*, pass-through entity. All parties must treat the transfer of the portion of the Trust Asset attributable to the Stock Trust Beneficiaries as a transfer of such assets directly to the Stock Trust Beneficiaries followed by a contribution of the Trust Asset to the Stock Trust. Consistent therewith, all parties must treat the Stock Trust as a grantor trust of which the Stock Trust Beneficiaries are the owners and grantors. The Stock Trustee shall determine the fair market value of the Trust Asset as soon as possible after the Effective Date, and the Stock Trust Beneficiaries and the Stock Trustee shall consistently use this valuation for all U.S. federal income tax purposes, including for determining gain, loss, or tax basis.

Section 4.2 *Tax Identification Numbers.* The Stock Trustee may require any Stock Trust Beneficiary to furnish to the Stock Trustee necessary information for tax and reporting purposes, including such Stock Trust Beneficiary's Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service or the Social Security Administration, as the case may be, and the Stock Trustee may condition any Distribution to any Stock Trust Beneficiary upon the receipt of such information.

Section 4.3 *Withholding Taxes.* Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from Distributions hereunder. All Stock Trust Beneficiaries shall be required to provide any information necessary to effect the withholding of such taxes.

Section 4.4 *Securities Laws*. Under section 1145 of the Bankruptcy Code, the issuance of Beneficial Interests in the Stock Trust under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and applicable state and local laws requiring registration of securities.

ARTICLE V

POWERS OF AND LIMITATIONS ON THE STOCK TRUSTEE

Section 5.1 *Powers of the Stock Trustee*. In connection with the administration of the Stock Trust, the Stock Trustee is authorized to perform any and all acts necessary and desirable to accomplish the purposes of the Stock Trust. The Stock Trustee will act for the Stock Trust, the Debtors and the Estates, subject to the provisions of the Plan, the Confirmation Order and this Agreement. On the Effective Date, the Stock Trustee shall succeed to all rights of the Debtors and the Estates with respect to the Trust Asset necessary to protect and conserve the Trust Asset. Without limiting, but subject to, the foregoing, the Stock Trustee shall be expressly authorized to:

- (a) administer and take all actions required to implement the Stock Trust;
- (b) vote 100% of the Equity Interest in THQI on all matters permitting or requiring a shareholder vote;
- (c) elect the Board of Directors of THQI;
- (d) serve as the sole director of THQI;
- (e) serve as chief executive officer of THQI;
- (f) appear and have standing in the Bankruptcy Court (or any other court having jurisdiction over the Trust Asset) to be heard with regard to the Trust Asset and other matters that may affect or relate to the Trust Asset;
- (g) receive, manage, invest, supervise, and protect the Trust Asset, including paying taxes, if any, or other obligations incurred in connection therewith;
- (h) open and maintain bank accounts in the name of the Stock Trust, draw checks and drafts thereon on the sole signature of the Stock Trustee, and terminate such accounts as the Stock Trustee deems appropriate;
- (i) execute any documents and pleadings, and take any other actions related to, or in connection with, the liquidation of the Trust Asset and the exercise of the Stock Trustee's powers granted by the Plan and this Agreement;
- (j) hold legal title to any and all rights of the Stock Trust Beneficiaries in or arising from the Trust Asset;

(k) protect and enforce the rights to the Trust Asset vested in the Stock Trust by this Agreement by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

(l) file, if necessary, any and all tax returns with respect to the Stock Trust, pay taxes, if any, properly payable by the Stock Trust, make Distributions to Stock Trust Beneficiaries net of such taxes, and comply with the requirements of Article V hereof;

(m) oversee compliance with the Stock Trust's accounting, finance, and reporting obligations;

(n) make any and all necessary filings in accordance with any applicable law, statute, or regulation;

(o) determine and satisfy any and all uncontested liabilities created, incurred, or assumed by the Stock Trust;

(p) pay any and all expenses and make all other payments in connection with the Stock Trust without further order of the Bankruptcy Court;

(q) retain professionals, if any, including, without limitation, counsel, accountants, investment advisors, auditors, and other agents on behalf of the Stock Trust necessary or desirable to carry out the obligations of the Stock Trust hereunder. A professional shall not be disqualified from serving as counsel to the Stock Trust solely because of that professional's prior retention by the Debtors, Creditors' Committee, or a member of the Creditors' Committee;

(r) pay, without application to the Bankruptcy Court or any other court of competent jurisdiction, professionals retained by the Stock Trustee;

(s) invest moneys received by the Stock Trust or otherwise held by the Stock Trust in accordance with Section 5.3 hereof;

(t) in the event that the Stock Trustee determines that the Stock Trust Beneficiaries or the Stock Trust may, will, or have become subject to adverse tax consequences, in the Stock Trustee's sole discretion, take such actions that will, or are intended to, alleviate such adverse tax consequences;

(u) utilize the Trust Asset to obtain, purchase and maintain all appropriate insurance policies and pay all insurance premiums and costs the Stock Trustee deems necessary or advisable to insure the acts and omissions of the Stock Trustee;

(v) exercise any and all powers granted to the Stock Trustee under the Plan or Confirmation Order;

(w) employ such employees as the Stock Trustee may deem necessary or appropriate to assist the Stock Trustee in carrying out the Stock Trustee's powers and duties under this Agreement; and

(x) execute and deliver all documents and take all actions that are not inconsistent with the provisions of the Plan, the Confirmation Order, and this Agreement that the Stock Trustee deems reasonably necessary to consummate the Plan or desirable to further the purposes of the Stock Trust.

Notwithstanding the foregoing powers, the Stock Trustee shall not sell the Trust Assets.

Section 5.2 *Limitations on Stock Trustee.* The Stock Trustee shall not at any time, on behalf of the Stock Trust or the Stock Trust Beneficiaries, (i) enter into or engage in any trade or business, or (ii) take any actions that are not related, directly or indirectly, to the purposes of this Agreement and the Stock Trust or the administration or implementation of the terms hereof.

Section 5.3 *Investment of Stock Trust Monies.* The Stock Trustee shall invest any funds held by the Stock Trustee pending the Distribution of such funds pursuant to this Agreement in short-term, tax-exempt investments ("Permitted Investments"). Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Stock Trustee of a private letter ruling if the Stock Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Stock Trustee), the Stock Trustee shall (a) treat the funds and other property held by the Stock Trustee as held in a single trust for federal income tax purposes in accordance with the trust provisions of the Internal Revenue Code (sections 641 *et seq.*), and (b) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes.

Section 5.4 *Payment of Claims, Expenses and Liabilities of the Stock Trust.* THQI shall arrange for the disbursement of funds for the payment of the following claims, expenses and liabilities (collectively, the "Stock Trust Expenses") from the Operating Reserve: (a) all claims, fees, expenses, charges, liabilities, and obligations of the Stock Trust as contemplated by this Agreement and as required by law, (b) compensation to, and reimbursement of expenses incurred (or to be incurred) by, the Stock Trustee, and all professionals retained by the Stock Trust in connection with the performance of the duties of such parties under this Agreement, including, without limitation, the reasonable fees, disbursements, advances and related expenses of the Stock Trustee's agents, advisors, professionals, and experts, and (c) all claims, fees, expenses, charges, liabilities, and obligations of the Stock Trust as set forth in this Agreement for the benefit of an Indemnified Party.

Section 5.5 *Application of Trust Asset.* Holders of Allowed Equity Interests and Allowed Securities Law Claims shall receive from the Stock Trust a share of any Net Proceeds. In the event such Net Proceeds exists, the Stock Trustee shall seek a determination by the Bankruptcy Court of the appropriate allocation thereof as between the Holders of Allowed Securities Law Claims, if any, and Allowed Equity Interests.

Section 5.6 *Distributions.* In the event any Net Proceeds remain in THQI, such remaining Net Proceeds shall be transferred to the Stock Trust for the benefit of Holders of Allowed Class 7 Claims (Securities Law Claims) and Allowed Class 8 Equity Interests, for treatment according to section 8.10(d) of the Plan. If there is any Holder of an Allowed Equity Interest or Allowed Securities Law Claim, that Holder shall receive from the Stock Trust a share of any surplus Net Proceeds distributed to the Stock Trust after Distributions to Classes 1 through 6, inclusive, on a Pro Rata basis. In the event that the Stock Trustee elects to make a Distribution prior to the resolution of all Disputed Claims, the Stock Trustee shall hold in trust any Distributions with respect to Disputed Claims of parties asserting an interest in the Trust Asset (*i.e.*, reserve Cash in full amount of such Disputed Claims) until such Disputed Claims (i) become Allowed Claims that entitle the Holder of such Claim to be a Stock Trust Beneficiary, or (ii) become disallowed by Final Order of the Bankruptcy Court. Prior to making any Distributions to the Stock Trust Beneficiaries, the Stock Trustee may retain such amounts (x) as are reasonably necessary to meet contingent liabilities, fund required or appropriate reserves, and to maintain the value of the Trust Asset during the liquidation, (y) to pay reasonable expenses (including, but not limited to, any taxes imposed on the Stock Trust or in respect of the Trust Asset), and (z) to satisfy other liabilities incurred by the Stock Trust in accordance with the Plan and this Agreement.

Section 5.7 *Books and Records.* The Stock Trustee shall maintain, in respect of the Stock Trust and the Stock Trust Beneficiaries, books and records relating to the assets and the income of the Stock Trust and the payment of expenses of the Stock Trust, in accordance with, and for the purposes of complying with, the provisions of Article IV hereof. Any books and records determined by the Stock Trustee, in the Stock Trustee's sole discretion, not to be reasonably necessary for administering the Stock Trust or for the Stock Trustee's compliance with this Agreement may, to the extent not prohibited by applicable law, be destroyed.

Section 5.8 *Cash Payments.* All payments required to be made by the Stock Trustee under the Plan and this Agreement shall be made at the sole discretion of the Stock Trustee, in either Cash, check, or wire transfer and, if in check form, drawn on a domestic bank selected by the Stock Trustee.

Section 5.9 *Minimum Distributions.* The Stock Trustee shall not be obligated to make any payment of Cash of less than fifty dollars to any Stock Trust Beneficiary. Notwithstanding anything contained in this Agreement to the contrary, if, on any Distribution Date there remains \$10,000 or less available for Distribution to the Stock Trust Beneficiaries, such amount shall be carried forward for Distribution to the next Distribution Date.

Section 5.10 *Fractional Cents.* Any other provision of this Agreement to the contrary notwithstanding, no payment of fractions of cents will be made. Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding down of such fraction to the nearest whole cent.

ARTICLE VI

CONCERNING THE STOCK TRUSTEE

Section 6.1 *Generally.* The Stock Trustee accepts and undertakes to discharge the Stock Trust created by this Agreement upon the terms and conditions hereof. The Stock Trustee shall exercise such of the rights and powers vested in the Stock Trustee by this Agreement, and use the same degree of care and skill in the Stock Trustee's exercise as a prudent person would exercise or use under the circumstances in the conduct of the Stock Trustee's own affairs. No provision of this Agreement shall be construed to relieve the Stock Trustee or the Stock Trustee's employees, affiliates, officers, directors, principals, attorneys, accountants, experts, and agents (collectively with the Stock Trustee, the "Trustee Parties") from liability for that Trustee Party's own gross negligence, intentional misconduct, willful misconduct, or fraud, except that:

(a) the Trustee Parties shall not be liable for any action taken in good faith in reliance upon the advice of attorneys, accountants, and other professionals;

(b) the Trustee Parties undertake to perform such duties and only such duties as are specifically set forth in this Agreement, and to the fullest extent permitted by applicable law no implied covenants or obligations shall be read into this Agreement against the Trustee Parties;

(c) the Trustee Parties shall not be liable for any error of judgment made in good faith; and

Whether or not therein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee Parties shall be subject to the provisions of this section.

Section 6.2 *Certain Rights of the Stock Trustee.* Except as otherwise provided in this Agreement:

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

(b) the Stock Trustee may consult with counsel, and the advice or opinion of counsel shall be full and complete protection to the Stock Trustee in respect of any action taken, suffered, or omitted by the Stock Trustee in good faith and in reliance on, or in accordance with, such advice or opinion;

(c) persons dealing with the Stock Trustee shall look only to the Trust Asset to satisfy any liability incurred by the Stock Trustee to such person in carrying out the terms of this Agreement and the Stock Trustee shall have no personal or individual obligation to satisfy any such liability;

(d) whenever, in the administration of this Agreement, the Stock Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Stock Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on the part of the Stock Trustee, rely upon an opinion of counsel or certificate furnished to the Stock Trustee by or on behalf of the Stock Trust Beneficiaries;

(e) the Stock Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, or other paper or document, but the Stock Trustee, in the Stock Trustee's discretion, may make such further inquiry or investigation into such facts or matters as the Stock Trustee may see fit, and, if the Stock Trustee shall determine to make such further inquiry or investigation, the Stock Trustee shall be entitled to examine the books, records and premises of the relevant person or entity, personally or by agent or attorney; and

(f) the Stock Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Stock Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by the Stock Trustee hereunder.

Section 6.3 *Liability to Third Persons.* Except with regard to Trust Asset erroneously or improperly received or held by such Stock Trust Beneficiary, no Stock Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract, or otherwise, to any Person in connection with the Trust Asset or the affairs of the Stock Trust, except for such Stock Trust Beneficiary's own gross negligence, intentional misconduct, willful misconduct, or fraud. The Stock Trustee and any agent of the Stock Trustee shall not be subject to any personal liability whatsoever, in tort, contract, or otherwise, to any Person in connection with the Trust Asset or the affairs of the Stock Trust, except for the gross negligence, intentional misconduct, willful misconduct, or fraud of the Stock Trustee or any such agent of the Stock Trustee. Any Person shall look solely to the Trust Asset for satisfaction of claims of any nature arising in connection with affairs of the Stock Trust.

Section 6.4 *Indemnity.* Indemnified Parties shall be indemnified by the Stock Trust from any losses, claims, damages, liabilities, or expenses (including, without limitation, reasonable attorneys' fees, disbursements, and related expenses) that such Indemnified Parties may incur or to which such Indemnified Parties may become subject in connection with any action, suit, proceeding, or investigation brought by or threatened against such Indemnified Parties on account of the acts or omissions of such Indemnified Parties in connection the Stock Trust or this Agreement; provided, however, that the Stock Trust shall not be liable to indemnify the Indemnified Parties for any such Indemnified Parties' acts or omissions constituting gross negligence, intentional misconduct, willful misconduct, or fraud; and, provided further, that nothing in this Section 6.4 shall be deemed to restrict any Trustee Party's right to receive indemnity based on acts or omissions taken in accordance with the provisions of Sections 6.1 and 6.2, as applicable.

Section 6.5 *Compensation and Reimbursement.*

(a) The Stock Trustee shall be entitled to payment and reimbursement pursuant to the terms of that certain letter agreement dated [____], 2013, attached hereto as Exhibit A (the “[insert Trustee name] Letter Agreement”).

(b) The Stock Trustee may retain counsel, accountants, or other professionals, including but not limited to those previously retained by the Debtors or the Creditors’ Committee, without further approval by the Bankruptcy Court, on terms the Stock Trustee determines to be reasonable.

(c) Subsequent to the Effective Date, the reasonable fees and expenses of any professionals retained by the Stock Trustee shall be (i) deemed an expense of the Stock Trust, and (ii) paid by the Stock Trust in accordance with any applicable retention agreements without any requirement of approval by the Bankruptcy Court of the retention, fees or expenses payable to such professionals.

Section 6.6 *Exculpatory Provisions.*

(a) If (i) in performing the Stock Trustee’s duties under this Agreement the Stock Trustee is required to decide between alternative courses of action, or (ii) the Stock Trustee is unsure of the application of any provision of this Agreement, then the Stock Trustee may promptly deliver a notice to the Bankruptcy Court and to all Stock Trust Beneficiaries pursuant to Section 8.5, requesting written instructions of the Bankruptcy Court as to the course of action deemed appropriate by the Bankruptcy Court. The Bankruptcy Court shall make any determination required pursuant to this section. If the Stock Trustee does not receive such written direction or instruction within five (5) Business Days after the Stock Trustee has given such notice, or such shorter period of time set forth in such notice, the Stock Trustee may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Agreement as the Stock Trustee shall deem advisable.

(b) The Stock Trustee shall not have any obligation, responsibility or liability for: (i) the validity, execution (except the Stock Trustee’s own execution), enforceability, legality, or sufficiency of this Agreement; and (ii) taking any action under this Agreement, if taking such action (x) would subject the Stock Trustee to a tax in any jurisdiction where the Stock Trust is not then subject to a tax, or (y) would require the Stock Trust to qualify to do business in any jurisdiction where it is not then so qualified, unless the Stock Trustee receives an indemnity satisfactory to the Stock Trustee against such tax (or equivalent liability), or any liability resulting from such qualification.

ARTICLE VII

STOCK TRUSTEE AND SUCCESSOR STOCK TRUSTEES

Section 7.1 *Resignation or Removal.* The Stock Trustee may resign and be discharged by giving at least 60 days’ prior written notice thereof to THQI. Such resignation shall become effective on the later to occur of (i) the date specified in such written notice and (ii)

the effective date of the appointment of a successor Stock Trustee in accordance with Section 7.3 hereof and such successor's acceptance of such appointment.

Section 7.2 *Removal.* After the payment of all outstanding fees and expenses of the Stock Trustee and the professionals retained by the Stock Trust through such date, the Stock Trustee may be removed, with or without cause, by the written consent of the Holders of at least ninety percent (90%) of all Beneficial Interests in the Stock Trust. Such removal shall become effective on the later to occur of (i) the date such action is taken by the requisite Holders of Beneficial Interests in the Stock Trust and (ii) the effective date of the appointment of a successor Stock Trustee in accordance with Section 7.3 hereof and such successor's acceptance of such appointment.

Section 7.3 *Appointment of Successor.* In the event of the death, incapacitation, resignation, or removal of the Stock Trustee, a vacancy shall be deemed to exist, in which case (i) the Litigation Trustee appointed pursuant to the Litigation Trust Agreement dated [_____], 2013 shall be appointed the successor, or (ii) the Litigation Trustee shall appoint a successor; provided, however, any appointment shall be subject to Bankruptcy Court approval.

Section 7.4 *Acceptance of Appointment by Successor Stock Trustee.* The death, incapacitation, resignation, or removal of the Stock Trustee shall not operate to terminate the Stock Trust created by this Agreement or to revoke any existing agency created pursuant to the terms of this Agreement or invalidate any action theretofore taken by the Stock Trustee. Any successor Stock Trustee appointed hereunder shall execute an instrument accepting such successor Stock Trustee's appointment and shall deliver one counterpart thereof to the Bankruptcy Court for filing, and, in case of the Stock Trustee's resignation or removal, to the retiring Stock Trustee. Thereupon, such successor Stock Trustee shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion, and privileges of the predecessor Stock Trustee in the Stock Trust with like effect as if originally named Stock.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.1 *Debtors' Further Assurances.* The Debtors and their respective officers, directors, professionals, and agents will take such actions and execute such documents as are reasonably requested by the Stock Trustee to implement the provisions of this Agreement including, without limitation, cooperating with the Stock Trustee's reasonable requests for books, records, and both written and oral information.

Section 8.2 *Construction.* This Agreement and the Stock Trust created hereby shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to choice of law principles. The Stock Trustee's interpretation of the provisions of this Agreement and the provisions of the Plan shall be deemed conclusive in the absence of a contrary interpretation of a court of competent jurisdiction.

Section 8.3 *Jurisdiction.* The parties agree that the Bankruptcy Court shall have exclusive jurisdiction to determine all controversies and disputes arising under or in connection with this Agreement.

Section 8.4 *Severability.* In the event any provision of this Agreement shall be determined by Final Order of a court of proper jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 8.5 *Notices.* Any notice, consent, approval or other communication required or permitted to be given in accordance with this Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by facsimile or mailed by first class mail to the following address (it being understood that any party may change its address by similar written notice to the other party):

- (i) if to the Stock Trustee:

[TO BE INSERTED]

With a copy to:

Jonathan I. Levine, Esq.
Andrews Kurth LLP
450 Lexington Avenue
New York, NY 10017
Facsimile: (213) 229-6995
Email: JonathanLevine@andrewskurth.com

- (ii) if to any Stock Trust Beneficiary, to the address or facsimile number of such Stock Trust Beneficiary as reflected in the Register.

- (iii) if to Debtors:

c/o Edward L. Kaufman, Esq.
29903 Agoura Road
Agoura Hills, CA 91301
Facsimile: (818) 591-7400
Email: ed.kaufman@thq.com

With a copy to:

Jeffrey C. Krause, Esq.
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Facsimile: (213) 229-6995
Email: jkrause@gibsondunn.com

M. Blake Cleary
Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Facsimile: (302) 576-3312
Email: mbcleary@ycst.com

Section 8.6 *Entire Agreement.* This Agreement (including the recitals hereof and, to the extent applicable, the Plan, and the Confirmation Order) constitutes the entire agreement by and among the parties with respect to the subject matter hereof, and there are no representations, warranties, covenants, or obligations except as set forth herein, in the Plan, and in the Confirmation Order. This Agreement (together with the Plan and the Confirmation Order) supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, if any, of the parties hereto relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, nothing in this Agreement is intended or shall be construed to confer upon or to give any Person other than the parties hereto and the Stock Trust Beneficiaries any rights or remedies under or by reason of this Agreement. This Agreement shall be binding on the parties hereto and their successors.

Section 8.7 *Relationship Created.* Nothing contained herein shall be construed to constitute any relationship created by this Agreement as an association, partnership, or joint venture of any kind.

Section 8.8 *Effective Date.* This Agreement shall become effective as of the Effective Date.

Section 8.9 *Amendment.* This Agreement may from time to time be amended, supplemented or modified by the Stock Trustee, but only with approval of the Bankruptcy Court.

Section 8.10 *Headings.* The headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof.

Section 8.11 *Counterparts.* This Agreement may be executed in facsimile and in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 8.12 *No Bond.* The Stock Trustee shall serve without a bond.

Section 8.13 *Relationship to the Plan.* The principal purpose of this Agreement is to aid in the implementation of the Plan and therefore this Agreement incorporates the provisions of the Plan. To that end, the Stock Trustee shall have full power and authority to take any action consistent with the purpose and provisions of the Plan, and to seek any orders from the Bankruptcy Court in furtherance of the implementation of the Plan and this Agreement. If any provisions of this Agreement are found to be inconsistent with provisions of the Plan, the provisions of the Plan shall control.

Section 8.14 *Confidentiality.* The Stock Trustee shall, during the period that such Stock Trustee serves as Stock Trustee under this Agreement and for a period of twelve (12) months following the termination of this Agreement or such Stock Trustee's removal or resignation hereunder, hold strictly confidential and not use for personal gain, any material, non-public information of or pertaining to any entity to which the Trust Asset relates or of which such Stock Trustee has become aware in that Stock Trustee's capacity as Stock Trustee, except as otherwise required by law.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first above written.

STOCK TRUSTEE

By: _____
Name:
Title:

THQ INC.
THQ DIGITAL STUDIOS PHOENIX, INC.
THQ WIRELESS, INC.
THQ VOLITION, INC.
VIGIL GAMES, INC.

By: _____
Name: Edward L. Kaufman
Title: President

Exhibit 2

Litigation Trust Agreement

LITIGATION TRUST AGREEMENT

LITIGATION TRUST AGREEMENT, dated as of July __, 2013 (the “Agreement”), between the Debtors (as hereinafter defined) and [_____] (the “Litigation Trustee”).

RECITALS

WHEREAS, on December 19, 2012 (the “Petition Date”), THQ Inc. (“THQI”), THQ Digital Studios Phoenix, Inc., THQ Wireless, Inc., Volition, Inc., and Vigil Games, Inc. (collectively, the “Debtors”) commenced chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

WHEREAS, by Orders of the Bankruptcy Court, the Debtors’ Chapter 11 Cases were jointly administered under Case No. 12-13398 (MFW);

WHEREAS, on April 18, 2013, the Debtors filed with the Bankruptcy Court the *Chapter 11 Plan of THQ, Inc. and Its Affiliated Debtors* (as confirmed, the “Plan”);

WHEREAS, the Plan, among other things, provides for the creation of a litigation trust and the appointment of a litigation trustee for such trust;

WHEREAS, the primary purposes of the Litigation Trust are to (a) administer, hold, and liquidate the Derivative Actions listed in Exhibit 3 of the Plan; (b) administer, investigate, prosecute, settle or abandon all derivative actions in the name of, and for the benefit of, the estates created in the Chapter 11 Cases pursuant to section 541 of the Bankruptcy Code, subject to the limitations set forth in the Plan; and (c) after payment of the expenses of the Derivative Actions, to distribute surplus amounts recovered from the Derivative Actions to THQI, as agent of the Litigation Trust, for Distribution to Holders of Litigation Trust Beneficial Interests on account of such Holders Allowed General Unsecured Claims as provided for in section 4.05(b) of the Plan

WHEREAS, the Plan provides for the appointment of the Litigation Trustee for the purposes set forth in the Plan and herein; and

WHEREAS, the Litigation Trustee has accepted such appointment and has agreed to serve in such capacity under the terms and conditions set forth in the Plan and herein.

NOW THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, the Debtors and the Litigation Trustee agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 *Certain Terms Defined.* Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to such terms in the Plan. As used herein, the following terms have the respective meanings specified below:

“Beneficial Interest” shall have the meaning ascribed to such term in Section 3.2.

“Confirmation Date” shall mean the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the Bankruptcy Court’s docket.

“Indemnified Parties” shall mean, individually and collectively, each of the Litigation Trustee and the Litigation Trustee’s employees, affiliates, officers, directors, principals, attorneys, accountants, experts, agents, and their respective affiliates.

“Litigation Trust Expenses” shall have the meaning ascribed to such term in Section 5.4.

“Litigation Trust Termination Date” shall have the meaning ascribed to such term in Section 2.7.

“Permitted Investments” shall have the meaning ascribed to such term in Section 5.3.

“Proceeds” shall mean the net amount of any and all of the proceeds of or recoveries realized or received from the Derivative Actions.

“Register” shall have the meaning ascribed to such term in Section 3.4.

“Trust Assets” shall mean the Derivative Actions vested in the Litigation Trust free and clear of liens, claims, encumbrances, charges and interests of Holders of Claims and Equity Interests and other interests.

“Trustee Parties” shall have the meaning ascribed to such term in Section 6.1.

Section 1.2 *Interpretation.* When a reference is made in this Agreement to a section or article, such reference shall be to a section or article of this Agreement unless otherwise clearly indicated to the contrary.

(a) Whenever the words “include” “includes” or “including” are used in this Agreement they shall be deemed to be followed by the words “without limitation.”

(b) The words “hereof,” “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule

references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified.

(c) The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(d) A reference to any party to this Agreement or any other agreement or document shall include such party's successors and permitted assigns.

(e) A reference to any legislation or to any provision of any legislation shall include any amendment to, and any modification or reenactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

(f) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(g) Any reference in this Agreement to \$ shall mean U.S. dollars.

ARTICLE II

CREATION/TERMINATION OF LITIGATION TRUST

Section 2.1 *Creation of the Litigation Trust.* The Litigation Trust is hereby constituted and created, in accordance with Treasury Regulations Section 301.7701-4(d) and Revenue Procedure 94-45 (i) to administer, hold, and liquidate the Derivative Actions; (ii) to administer, investigate, prosecute, settle or abandon all Derivative Actions in the name of, and for the benefit of, the Estates, subject to the limitations set forth in the Plan; (iii) after payment of the expenses of the Derivative Actions, to distribute surplus amounts recovered from the Derivative Actions to THQI, as agent of the Litigation Trust, for Distribution to Holders of Litigation Trust Beneficial Interests on account of such Holders Allowed General Unsecured Claims as provided for in section 4.05(b) of the Plan; and (iv) to the extent Holders of Allowed General Unsecured Claims are paid in full under the terms of the Plan and there remain amounts recovered by the Litigation Trustee for Distribution, to turn over the remaining funds to THQI for Distribution in the same manner as the Revested Assets in accordance with the terms of the Plan.

Section 2.2 *Appointment and Acceptance of the Litigation Trustee.*
[] is hereby appointed as the Litigation Trustee, to act and serve as the Litigation Trustee of the Litigation Trust. [] hereby accepts the appointment as the Litigation Trustee of the Litigation Trust, and, in such capacity, agrees to hold the Trust Assets, in trust, in accordance with the terms of this Agreement and to administer the Litigation Trust pursuant to the terms and conditions of this Agreement and the Plan.

Section 2.3 *Name of the Trust.* The trust established through the Plan and pursuant to this Agreement shall bear the name “THQ Litigation Trust.” In connection with the exercise of Litigation Trustee’s powers under this Agreement, the Litigation Trustee may use this name or such variation thereof as the Litigation Trustee, in the Litigation Trustee’s discretion, may determine to be appropriate.

Section 2.4 *Transfer of Assets to the Trust.* Pursuant to the Plan and the Confirmation Order, on the Effective Date, the Trust Assets shall be unconditionally and irrevocably transferred, assigned and delivered by the Debtors to the Litigation Trust, in trust, to be administered for the benefit of Holders of Litigation Beneficial Trust Interests on account of such Holders Allowed General Unsecured Claims, as provided for in section 4.05 of the Plan, free and clear of all Claims, Liens, encumbrances, charges and other interests. Any Cash, proceeds or other property received from third parties arising from or related to the prosecution, settlement, or compromise of any Derivative Actions shall constitute Trust Assets for purposes of Distributions under this Agreement. Upon the transfer of the Trust Assets, the Litigation Trust shall succeed to all of the Debtors’ and the Estates’ rights, title, and interests in and to the Trust Assets, and the Debtors and the Estates will have no further interest in or with respect to the Trust Assets or the Litigation Trust.

Section 2.5 *Maintenance of Cash and Proceeds.* Any and all Available Cash and Proceeds shall be maintained by the Litigation Trustee in an account designated for such purposes.

Section 2.6 *Fiscal Year.* The fiscal year of the Litigation Trust shall be the calendar year.

Section 2.7 *Termination of Litigation Trust.* The Litigation Trust shall automatically terminate upon the date (the “Litigation Trust Termination Date”) of the final Distribution of the Trust Assets to the Litigation Trust Beneficiaries pursuant to Plan, the Confirmation Order, and this Agreement; provided, however, that the Litigation Trust shall be dissolved no later than five (5) years from the Effective Date, unless the Bankruptcy Court orders otherwise in accordance with Section 6.14(i) of the Plan. The Litigation Trustee shall liquidate the Trust Assets in an orderly and expeditious manner in accordance with this Agreement and the Plan.

ARTICLE III

BENEFICIARIES

Section 3.1 *Litigation Trust Beneficiaries.* Holders of Allowed General Unsecured Claims, as provided for in section 4.05 of the Plan, shall be the beneficiaries of the Litigation Trust. In the event Holders of Allowed General Unsecured Claims are paid in full under the terms of the Plan and there remain amounts recovered by the Litigation Trustee for Distribution, the remaining funds shall be turn over to THQI for Distribution in the same manner as the Revested Assets in accordance with the terms of the Plan.

Section 3.2 *Interests of Litigation Trust Beneficiaries.* The Litigation Trust Beneficiaries shall have undivided beneficial interests in the Trust Assets (the “Beneficial Interests”). The ownership of a Beneficial Interest hereunder shall not entitle any Litigation Trust Beneficiary to any title in or to the Trust Assets or to any right to call for a partition or division of Trust Assets or to require an accounting.

Section 3.3 *No Suits by Litigation Trust Beneficiaries.* No Litigation Trust Beneficiary shall have any right by virtue of any provision of this Agreement to institute any action or proceeding, at law or in equity, against any Person, including the Litigation Trustee, with respect to the Trust Assets; provided, however, that a Litigation Trust Beneficiary shall be permitted to institute in the Bankruptcy Court an action or proceeding, in law or in equity, against the Litigation Trustee solely with respect to this Agreement or the Trust Assets, and the Litigation Trustee shall have no liability to any Litigation Trust Beneficiary except for acts or omissions arising from gross negligence, intentional misconduct, willful misconduct or actual fraud.

Section 3.4 *Recording of Beneficial Interests in Trust Assets.* As soon as practical after the creation of the Litigation Trust, the Litigation Trustee or a duly authorized agent of the Litigation Trustee shall record all ownership and transfers of Beneficial Interests in a register (the “Register”) maintained by the Litigation Trustee (or a duly authorized agent of the Litigation Trustee) for such purpose.

Section 3.5 *Non-Transferability of Beneficial Interests.* The Beneficial Interests in the Litigation Trust shall not be certificated and no physical certificates shall be issued representing the Beneficial Interests. The Beneficial Interests shall not be transferable, assignable, pledged, sold, or hypothecated, in whole or in part, except with respect to a transfer by will or under the laws of descent and distribution. Any such transfer, however, will not be effective until and unless the Litigation Trustee receives written notice of such transfer.

Section 3.6 *Notice of Change of Address; Undeliverable Property.* Each Litigation Trust Beneficiary shall be responsible for providing the Litigation Trustee with written notice of any change in address. The Litigation Trustee is not obligated to make any effort to determine the correct address of a Litigation Trust Beneficiary.

(a) Subject to Bankruptcy Rule 9010, all Distributions under the Plan and this Agreement shall be made to the Holders of Litigation Trust Beneficial Interests on account of such Holders Allowed General Unsecured Claims at the address of such Holder as listed on the Register as of the Distribution Record Date, unless the Litigation Trustee has been notified in writing of a change of address, including, without limitation, by the timely filing of a proof of claim by such Holder that provides an address for such Holder different from the address reflected on the Register. In the event that any Distribution to any such Holder is returned as undeliverable, no Distribution to such Holder shall be made unless and until the Litigation Trustee has been notified of the then current address of such Holder, at which time or as soon as reasonably practicable thereafter, such Distribution shall be made to such Holder without interest. Undeliverable Distributions shall remain in the possession of the Litigation Trust until the earlier of (i) such time as the relevant Distribution becomes deliverable and (ii) the time period specified in subsection (b) hereof.

(b) At the later of the expiration of one (1) year from the Effective Date and the date a Claim becomes an Allowed General Unsecured Claim, any undeliverable Distribution shall be deemed unclaimed property and shall revert in the Litigation Trust and be distributed to the other Litigation Trust Beneficiaries, in accordance with the Plan, this Agreement, or as otherwise ordered by the Bankruptcy Court.

ARTICLE IV

TAX AND SECURITIES MATTERS

Section 4.1 *Tax Treatment.* The Litigation Trust is established for the sole purpose of liquidating, monetizing, and distributing the Trust Assets, and any proceeds therefrom, in accordance with Treasury Regulation section 301.7701-4(d) and Revenue Procedure 94-45, with no objective to continue or engage in the conduct of a trade or business. The Litigation Trust is intended to qualify as a liquidating trust for U.S. federal income tax purposes. In general, a liquidating trust is not a separate taxable entity for U.S. federal income tax purposes, but is instead treated as a grantor trust, *i.e.*, pass-through entity. All parties must treat the transfer of the portion of the Trust Assets attributable to the Litigation Trust Beneficiaries as a transfer of such assets directly to the Litigation Trust Beneficiaries followed by a contribution of the Trust Assets to the Litigation Trust. Consistent therewith, all parties must treat the Litigation Trust as a grantor trust of which the Litigation Trust Beneficiaries are the owners and grantors. The Litigation Trustee shall determine the fair market value of the Trust Assets as soon as possible after the Effective Date, and the Litigation Trust Beneficiaries and the Litigation Trustee shall consistently use this valuation for all U.S. federal income tax purposes, including for determining gain, loss, or tax basis.

Section 4.2 *Tax Basis.* For all federal income tax purposes, a Distribution will be allocated to the principal amount of an Allowed General Unsecured Claim first and then, to the extent the Distribution exceeds the principal amount of the Allowed General Unsecured Claim, to the portion of the Allowed General Unsecured Claim representing accrued but unpaid interest.

Section 4.3 *Tax Identification Numbers.* The Litigation Trustee may require any Litigation Trust Beneficiary to furnish to the Litigation Trustee necessary information for tax and reporting purposes, including such Litigation Trust Beneficiary's Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service or the Social Security Administration, as the case may be, and the Litigation Trustee may condition any Distribution to any Litigation Trust Beneficiary upon the receipt of such information.

Section 4.4 *Withholding Taxes.* Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from Distributions hereunder. All Litigation Trust Beneficiaries shall be required to provide any information necessary to effect the withholding of such taxes.

Section 4.5 *Securities Laws.* Under section 1145 of the Bankruptcy Code, the issuance of Beneficial Interests in the Litigation Trust under the Plan shall be exempt from

registration under the Securities Act of 1933, as amended, and applicable state and local laws requiring registration of securities.

ARTICLE V

POWERS OF AND LIMITATIONS ON THE LITIGATION TRUSTEE

Section 5.1 *Powers of the Litigation Trustee.* In connection with the administration of the Litigation Trust, the Litigation Trustee is authorized to perform any and all acts necessary and desirable to accomplish the purposes of the Litigation Trust. The Litigation Trustee will act for the Litigation Trust, the Debtors and the Estates, subject to the provisions of the Plan, the Confirmation Order and this Agreement. On the Effective Date, the Litigation Trustee shall succeed to all rights of the Debtors and the Estates with respect to the Trust Assets necessary to protect, conserve and liquidate all the Trust Assets. Without limiting, but subject to, the foregoing, the Litigation Trustee shall be expressly authorized to:

(a) prosecute, collect, compromise, settle, or abandon any Derivative Action without further approval of or application to the Bankruptcy Court (except to the extent required by this Agreement, the Plan, or the Confirmation Order);

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

(c) act on behalf of the Debtors, the Estates or the Litigation Trust in prosecuting, compromising, settling, or defending any Derivative Actions or rights (whether legal or equitable) pertaining to the Trust Assets or the Litigation Trust that exist as of the Effective Date or could arise at any time thereafter, whether under the Bankruptcy Code or other applicable law, including in all adversary proceedings and contested matters then pending (whether or not originally asserted in the name of the Debtors, the Estates, or the Litigation Trust, or any other authorized Estate representative, such as the Creditors' Committee) or that can be commenced in the Bankruptcy Court and in all actions and proceedings that may be pending (whether or not originally asserted in the name of the Debtors, the Estates, or the Litigation Trust, or any other authorized Estate authorized representative, such as the Creditors' Committee) or that can be commenced elsewhere;

(d) receive, manage, invest, supervise, and protect the Trust Assets, including paying taxes, if any, or other obligations incurred in connection therewith;

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

(f) liquidate and monetize the Trust Assets;

(g) execute any documents and pleadings, and take any other actions related to, or in connection with, the liquidation of the Trust Assets and the exercise of the Litigation

Trustee's powers granted by the Plan and this Agreement, including, but not limited to, the exercise of the Debtors' rights to conduct discovery and oral examination of any Person under Rule 2004 of the Federal Rules of Bankruptcy Procedure;

(h) hold legal title to any and all rights of the Litigation Trust Beneficiaries in or arising from the Trust Assets;

(i) protect and enforce the rights to the Trust Assets vested in the Litigation Trust by this Agreement by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

(j) make Distributions to THQI, as agent of the Litigation Trust, for Distribution to Holders of Litigation Trust Beneficial Interests on account of such Holders Allowed General Unsecured Claims or such other Distributions as may be authorized by Order of the Bankruptcy Court, this Agreement, or the Plan;

(k) file, if necessary, any and all tax returns with respect to the Litigation Trust, pay taxes, if any, properly payable by the Litigation Trust, make Distributions to THQI, as agent of the Litigation Trust, for Distribution to Litigation Trust Beneficiaries net of such taxes, and comply with the requirements of Article V hereof;

(l) oversee compliance with the Litigation Trust's accounting, finance, and reporting obligations;

(m) make any and all necessary filings in accordance with any applicable law, statute, or regulation;

(n) determine and satisfy any and all uncontested liabilities created, incurred, or assumed by the Litigation Trust;

(o) pay any and all expenses and make all other payments in connection with the Litigation Trust without further order of the Bankruptcy Court;

(p) retain professionals, if any, including, without limitation, counsel, accountants, investment advisors, auditors, and other agents on behalf of the Litigation Trust necessary or desirable to carry out the obligations of the Litigation Trust hereunder. A professional shall not be disqualified from serving as counsel to the Litigation Trust solely because of that professional's prior retention by the Debtors, Creditors' Committee, or a member of the Creditors' Committee;

(q) pay, without application to the Bankruptcy Court or any other court of competent jurisdiction, professionals retained by the Litigation Trust;

(r) invest moneys received by the Litigation Trust or otherwise held by the Litigation Trust in accordance with Section 5.3 hereof;

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

(t) assign, in whole or part, the right to prosecute any Derivative Action to another individual or entity and to negotiate, in the Litigation Trustee's sole discretion, an allocation of the costs, expenses and fees of prosecuting such assigned Derivative Action and an allocation of the net proceeds of such Derivative Action between such other individual or entity and the Litigation Trust;

(u) utilize Trust Assets to obtain, purchase and maintain all appropriate insurance policies and pay all insurance premiums and costs the Litigation Trustee deems necessary or advisable to insure the acts and omissions of the Litigation Trustee;

(v) exercise any and all powers granted to the Litigation Trustee under the Plan or Confirmation Order;

(w) employ such employees as the Litigation Trustee may deem necessary or appropriate to assist the Litigation Trustee in carrying out the Litigation Trustee's powers and duties under this Agreement;

(x) pay all fees payable pursuant to section 1930 of chapter 123 of title 28 of the United States Code until such time as the Bankruptcy Court enters a final decree closing each of the Chapter 11 Cases;

(y) execute and deliver all documents and take all actions that are not inconsistent with the provisions of the Plan, the Confirmation Order, and this Agreement that the Litigation Trustee deems reasonably necessary to consummate the Plan or desirable to further the purposes of the Litigation Trust; and

(z) use, sell at public or private sale, assign, transfer, abandon or otherwise dispose of the Trust Assets or convert the same to Cash without Bankruptcy Court approval, but consistent with the provisions herein.

Section 5.2 *Limitations on Litigation Trustee.* The Litigation Trustee shall not at any time, on behalf of the Litigation Trust or the Litigation Trust Beneficiaries, (i) enter into or engage in any trade or business, or (ii) take any actions that are not related, directly or indirectly, to the purposes of this Agreement and the Litigation Trust or the administration or implementation of the terms hereof.

Section 5.3 *Investment of Litigation Trust Monies.* The Litigation Trustee shall invest any funds held by the Litigation Trustee pending the Distribution of such funds pursuant to this Agreement in short-term, tax-exempt investments ("Permitted Investments"). Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Litigation Trustee), the Litigation Trustee shall (a) treat the funds and other property held

by the Litigation Trustee as held in a single trust for federal income tax purposes in accordance with the trust provisions of the Internal Revenue Code (sections 641 *et seq.*), and (b) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes.

Section 5.4 *Payment of Claims, Expenses and Liabilities of the Litigation Trust.* THQI shall arrange for the disbursement of funds for the payment of the following claims, expenses and liabilities (collectively, the “Litigation Trust Expenses”) from the Operating Reserve: (a) all claims, fees, expenses, charges, liabilities, and obligations of the Litigation Trust as contemplated by this Agreement and as required by law, (b) compensation to, and reimbursement of expenses incurred (or to be incurred) by, the Litigation Trustee, and all professionals retained by the Litigation Trust in connection with the performance of the duties of such parties under this Agreement, including, without limitation, the reasonable fees, disbursements, advances and related expenses of the Litigation Trustee’s agents, advisors, professionals, and experts, and (c) all claims, fees, expenses, charges, liabilities, and obligations of the Litigation Trust as set forth in this Agreement for the benefit of an Indemnified Party.

Section 5.5 *Application of Trust Assets.* The Litigation Trustee shall apply all Trust Assets, or the Proceeds thereof, as follows:

First: to pay, in full, the expenses of investigating, prosecuting or settling the Derivative Actions;

Second: distributed to THQI, as agent of the Litigation Trust, to pay, in full, to the extent unpaid, the Allowed General Unsecured Claims, including Postpetition interest to the extent provided in the Plan; and

Third: distributed to THQI for Distribution in the same manner as the Revested Assets in accordance with the Plan.

Section 5.6 *Non-Cash Trust Assets.* To the extent Trust Assets consist of property other than Cash or Permitted Investments, the Litigation Trustee shall reduce such Trust Assets to Cash and Permitted Investments. The Litigation Trustee shall determine the preferred timing of reducing such Trust Assets to Cash and Permitted Investments.

Section 5.7 *Distributions.* After the Effective Date and the establishment and funding of any necessary reserves, on any Distribution Date, the Litigation Trustee shall distribute from the Litigation Trust the Available Cash to THQI for Distribution to Holders of Allowed General Unsecured Claims in accordance with the terms of the Plan and this Agreement. In the event that the Litigation Trustee elects to make a Distribution prior to the resolution of all Disputed Claims, the Litigation Trustee shall hold in trust any Distributions with respect to Disputed Claims of parties asserting an interest in the Trust Assets until such Disputed Claims (i) become Allowed General Unsecured Claims that entitle the Holder of such Claim to be a Litigation Trust Beneficiary, or (ii) become disallowed by Final Order of the Bankruptcy Court. Prior to making any Distributions to THQI for Distribution to the Litigation Trust

Beneficiaries, the Litigation Trustee may retain such amounts (x) as are reasonably necessary to meet contingent liabilities, fund required or appropriate reserves, and to maintain the value of the Trust Assets during the liquidation, (y) to pay reasonable expenses (including, but not limited to, any taxes imposed on the Litigation Trust or in respect of the Trust Assets), and (z) to satisfy other liabilities incurred by the Litigation Trust in accordance with the Plan and this Agreement.

Section 5.8 *Books and Records.* The Litigation Trustee shall maintain, in respect of the Litigation Trust and the Litigation Trust Beneficiaries, books and records relating to the assets and the income of the Litigation Trust and the payment of expenses of the Litigation Trust, in accordance with, and for the purposes of complying with, the provisions of Article IV hereof. Any books and records determined by the Litigation Trustee, in the Litigation Trustee's sole discretion, not to be reasonably necessary for administering the Litigation Trust or for the Litigation Trustee's compliance with this Agreement may, to the extent not prohibited by applicable law, be destroyed.

Section 5.9 *Cash Payments.* All payments required to be made by the Litigation Trustee under the Plan and this Agreement, including, without limitation, all payments made to THQI for Distribution to Holders of Allowed General Unsecured Claims and payments on account of Litigation Trust Expenses shall be made, at the sole discretion of the Litigation Trustee, in either Cash, check, or wire transfer and, if in check form, drawn on a domestic bank selected by the Litigation Trustee.

Section 5.10 *Settlement of Derivative Actions.* The Litigation Trustee shall be authorized to settle Derivative Actions without notice to any party or approval of the Bankruptcy Court.

Section 5.11 *Sale of Trust Assets.* The Litigation Trustee may sell Trust Assets without Bankruptcy Court approval or notice to any party.

Section 5.12 *Minimum Distributions.* The Litigation Trustee shall not be obligated to make any payment of Cash of less than fifty dollars to any Litigation Trust Beneficiary. Notwithstanding anything contained in this Agreement to the contrary, if, on any Distribution Date there remains \$10,000 or less available for Distribution to the Litigation Trust Beneficiaries, such amount shall be carried forward for Distribution to the next Distribution Date.

Section 5.13 *Fractional Cents.* Any other provision of this Agreement to the contrary notwithstanding, no payment of fractions of cents will be made. Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding down of such fraction to the nearest whole cent.

ARTICLE VI

CONCERNING THE LITIGATION TRUSTEE

Section 6.1 *Generally.* The Litigation Trustee accepts and undertakes to discharge the Litigation Trust created by this Agreement upon the terms and conditions hereof.

The Litigation Trustee shall exercise such of the rights and powers vested in the Litigation Trustee by this Agreement, and use the same degree of care and skill in the Litigation Trustee's exercise as a prudent person would exercise or use under the circumstances in the conduct of the Litigation Trustee's own affairs. No provision of this Agreement shall be construed to relieve the Litigation Trustee or the Litigation Trustee's employees, affiliates, officers, directors, principals, attorneys, accountants, experts, and agents (collectively with the Litigation Trustee, the "Trustee Parties") from liability for that Trustee Party's own gross negligence, intentional misconduct, willful misconduct, or fraud, except that:

(a) the Trustee Parties shall not be liable for any action taken in good faith in reliance upon the advice of attorneys, accountants, and other professionals;

(b) the Trustee Parties undertake to perform such duties and only such duties as are specifically set forth in this Agreement, and to the fullest extent permitted by applicable law no implied covenants or obligations shall be read into this Agreement against the Trustee Parties;

(c) the Trustee Parties shall not be liable for any error of judgment made in good faith; and

Whether or not therein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee Parties shall be subject to the provisions of this section.

Section 6.2 *Certain Rights of the Litigation Trustee.* Except as otherwise provided in this Agreement:

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

(b) the Litigation Trustee may consult with counsel, and the advice or opinion of counsel shall be full and complete protection to the Litigation Trustee in respect of any action taken, suffered, or omitted by the Litigation Trustee in good faith and in reliance on, or in accordance with, such advice or opinion;

(c) persons dealing with the Litigation Trustee shall look only to the Trust Assets to satisfy any liability incurred by the Litigation Trustee to such person in carrying out the terms of this Agreement and the Litigation Trustee shall have no personal or individual obligation to satisfy any such liability;

(d) whenever, in the administration of this Agreement, the Litigation Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Litigation Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on the part of the Litigation Trustee, rely upon an opinion of counsel or certificate furnished to the Litigation Trustee by or on behalf of the Litigation Trust Beneficiaries;

(e) the Litigation Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, or other paper or document, but the Litigation Trustee, in the Litigation Trustee's discretion, may make such further inquiry or investigation into such facts or matters as the Litigation Trustee may see fit, and, if the Litigation Trustee shall determine to make such further inquiry or investigation, the Litigation Trustee shall be entitled to examine the books, records and premises of the relevant person or entity, personally or by agent or attorney; and

(f) the Litigation Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Litigation Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by the Litigation Trustee hereunder.

Section 6.3 *Liability to Third Persons.* Except with regard to Trust Assets erroneously or improperly received or held by such Litigation Trust Beneficiary, no Litigation Trust Beneficiary shall be subject to any personal liability whatsoever, in tort, contract, or otherwise, to any Person in connection with the Trust Assets or the affairs of the Litigation Trust, except for such Litigation Trust Beneficiary's own gross negligence, intentional misconduct, willful misconduct, or fraud. The Litigation Trustee and any agent of the Litigation Trustee shall not be subject to any personal liability whatsoever, in tort, contract, or otherwise, to any Person in connection with the Trust Assets or the affairs of the Litigation Trust, except for the gross negligence, intentional misconduct, willful misconduct, or fraud of the Litigation Trustee or any such agent of the Litigation Trustee. Any Person shall look solely to the Trust Assets for satisfaction of claims of any nature arising in connection with affairs of the Litigation Trust.

Section 6.4 *Indemnity.* Indemnified Parties shall be indemnified by the Litigation Trust from any losses, claims, damages, liabilities, or expenses (including, without limitation, reasonable attorneys' fees, disbursements, and related expenses) that such Indemnified Parties may incur or to which such Indemnified Parties may become subject in connection with any action, suit, proceeding, or investigation brought by or threatened against such Indemnified Parties on account of the acts or omissions of such Indemnified Parties in connection the Litigation Trust or this Agreement; provided, however, that the Litigation Trust shall not be liable to indemnify the Indemnified Parties for any such Indemnified Parties' acts or omissions constituting gross negligence, intentional misconduct, willful misconduct, or fraud; and, provided further, that nothing in this Section 6.4 shall be deemed to restrict any Trustee Party's right to receive indemnity based on acts or omissions taken in accordance with the provisions of Sections 6.1 and 6.2, as applicable.

Section 6.5 *Compensation and Reimbursement.*

(a) The Litigation Trustee shall be entitled to payment and reimbursement pursuant to the terms of that certain letter agreement dated [____], 2013, attached hereto as Exhibit A (the "[insert Trustee name] Letter Agreement").

(b) The Litigation Trustee may retain counsel, accountants, or other professionals, including but not limited to those previously retained by the Debtors or the

Creditors' Committee, without further approval by the Bankruptcy Court, on terms the Litigation Trustee determines to be reasonable.

(c) Subsequent to the Effective Date, the reasonable fees and expenses of any professionals retained by the Litigation Trustee in connection with the prosecution of the Derivative Actions shall be (i) deemed an expense of the Litigation Trust, and (ii) paid by the Litigation Trust in accordance with any applicable retention agreements without any requirement of approval by the Bankruptcy Court of the retention, fees or expenses payable to such professionals.

Section 6.6 Exculpatory Provisions.

(a) If (i) in performing the Litigation Trustee's duties under this Agreement the Litigation Trustee is required to decide between alternative courses of action, or (ii) the Litigation Trustee is unsure of the application of any provision of this Agreement, then the Litigation Trustee may promptly deliver a notice to the Bankruptcy Court and to all Litigation Trust Beneficiaries pursuant to Section 8.6, requesting written instructions of the Bankruptcy Court as to the course of action deemed appropriate by the Bankruptcy Court. The Bankruptcy Court shall make any determination required pursuant to this section. If the Litigation Trustee does not receive such written direction or instruction within five (5) Business Days after the Litigation Trustee has given such notice, or such shorter period of time set forth in such notice, the Litigation Trustee may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Agreement as the Litigation Trustee shall deem advisable.

(b) The Litigation Trustee shall not have any obligation, responsibility or liability for: (i) the validity, execution (except the Litigation Trustee's own execution), enforceability, legality, or sufficiency of this Agreement; and (ii) taking any action under this Agreement, if taking such action (x) would subject the Litigation Trustee to a tax in any jurisdiction where the Litigation Trust is not then subject to a tax, or (y) would require the Litigation Trust to qualify to do business in any jurisdiction where it is not then so qualified, unless the Litigation Trustee receives an indemnity satisfactory to the Litigation Trustee against such tax (or equivalent liability), or any liability resulting from such qualification.

ARTICLE VII

LITIGATION TRUSTEE AND SUCCESSOR LITIGATION TRUSTEES

Section 7.1 *Resignation or Removal.* The Litigation Trustee may resign and be discharged by giving at least 60 days' prior written notice thereof to THQI. Such resignation shall become effective on the later to occur of (i) the date specified in such written notice and (ii) the effective date of the appointment of a successor Litigation Trustee in accordance with Section 7.3 hereof and such successor's acceptance of such appointment.

Section 7.2 *Removal.* After the payment of all outstanding fees and expenses of the Litigation Trustee and the professionals retained by the Litigation Trust through such date, the Litigation Trustee may be removed, with or without cause, by the written consent of the Holders of at least sixty-five percent (65%) of all Beneficial Interests in the Litigation Trust.

Such removal shall become effective on the later to occur of (i) the date such action is taken by the requisite Holders of Beneficial Interests in the Litigation Trust and (ii) the effective date of the appointment of a successor Litigation Trustee in accordance with Section 7.3 hereof and such successor's acceptance of such appointment.

Section 7.3 *Appointment of Successor.* In the event of the Litigation Trustee's resignation, the Litigation Trustee shall appoint a successor. In the event of the Litigation Trustee's failure to appoint a successor, death, or if the Litigation Trustee is removed pursuant to Section 7.2 hereof, then a successor shall be appointed by a vote of the Holders of at least a majority of the Beneficial Interests in the Litigation Trust. In either case, however, such appointment shall be subject to Bankruptcy Court approval.

Section 7.4 *Acceptance of Appointment by Successor Litigation Trustee.* The death, incapacitation, resignation, or removal of the Litigation Trustee shall not operate to terminate the Litigation Trust created by this Agreement or to revoke any existing agency created pursuant to the terms of this Agreement or invalidate any action theretofore taken by the Litigation Trustee. Any successor Litigation Trustee appointed hereunder shall execute an instrument accepting such successor Litigation Trustee's appointment and shall deliver one counterpart thereof to the Bankruptcy Court for filing, and, in case of the Litigation Trustee's resignation or removal, to the retiring Litigation Trustee. Thereupon, such successor Litigation Trustee shall, without any further act, become vested with all the liabilities, duties, powers, rights, title, discretion, and privileges of the predecessor Litigation Trustee in the Litigation Trust with like effect as if originally named Litigation Trustee and shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to retain and enforce the Derivative Actions and Proceeds for the benefit of the Litigation Trust Beneficiaries.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.1 *Debtors' Further Assurances.* The Debtors and their respective officers, directors, professionals, and agents will take such actions and execute such documents as are reasonably requested by the Litigation Trustee to implement the provisions of this Agreement including, without limitation, cooperating with the Litigation Trustee's reasonable requests for books, records, and both written and oral information.

Section 8.2 *Attorney-Client Privileges.* Without compromising any other attorney-client privileges of the Debtors vis-à-vis any other Person, any and all attorney-client privileges, work product immunity, and other privileges of the Debtors related solely to the Derivative Actions shall vest in the Litigation Trust and the Litigation Trustee. For the limited purpose of retaining the attorney-client privileges of the Debtors alone, the Litigation Trustee shall be deemed to be an officer of each of the Debtors and, as such, no communications between any of the Debtors, any of the Debtors' officers, directors, professionals, and agents on the one hand, and the Litigation Trustee and the Litigation Trustee's professionals and agents on the other, shall be deemed to have waived the attorney-client privileges held by the Debtors.

Section 8.3 *Construction.* This Agreement and the Litigation Trust created hereby shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to choice of law principles. The Litigation Trustee's interpretation of the provisions of this Agreement and the provisions of the Plan shall be deemed conclusive in the absence of a contrary interpretation of a court of competent jurisdiction.

Section 8.4 *Jurisdiction.* The parties agree that the Bankruptcy Court shall have exclusive jurisdiction to determine all controversies and disputes arising under or in connection with this Agreement. The Litigation Trustee shall have power and authority to bring any action in any court of competent jurisdiction to prosecute Derivative Actions, including without limitation, the Bankruptcy Court.

Section 8.5 *Severability.* In the event any provision of this Agreement shall be determined by Final Order of a court of proper jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 8.6 *Notices.* Any notice, consent, approval or other communication required or permitted to be given in accordance with this Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if delivered personally or by facsimile or mailed by first class mail to the following address (it being understood that any party may change its address by similar written notice to the other party):

- (i) if to the Litigation Trustee:

[TO BE INSERTED]

With a copy to:

Jonathan I. Levine, Esq.
Andrews Kurth LLP
450 Lexington Avenue
New York, NY 10017
Facsimile: (213) 229-6995
Email: JonathanLevine@andrewskurth.com

- (ii) if to any Litigation Trust Beneficiary, to the address or facsimile number of such Litigation Trust Beneficiary as reflected in the Register.
- (iv) if to Debtors:

c/o Edward L. Kaufman, Esq.
29903 Agoura Road
Agoura Hills, CA 91301
Facsimile: (818) 591-7400
Email: ed.kaufman@thq.com

With a copy to:

Jeffrey C. Krause, Esq.
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Facsimile: (213) 229-6995
Email: jkrause@gibsondunn.com

M. Blake Cleary
Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Facsimile: (302) 576-3312
Email: mblecleary@ycst.com

Section 8.7 *Entire Agreement.* This Agreement (including the recitals hereof and, to the extent applicable, the Plan, and the Confirmation Order) constitutes the entire agreement by and among the parties with respect to the subject matter hereof, and there are no representations, warranties, covenants, or obligations except as set forth herein, in the Plan, and in the Confirmation Order. This Agreement (together with the Plan and the Confirmation Order) supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, if any, of the parties hereto relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, nothing in this Agreement is intended or shall be construed to confer upon or to give any Person other than the parties hereto and the Litigation Trust Beneficiaries any rights or remedies under or by reason of this Agreement. This Agreement shall be binding on the parties hereto and their successors.

Section 8.8 *Relationship Created.* Nothing contained herein shall be construed to constitute any relationship created by this Agreement as an association, partnership, or joint venture of any kind.

Section 8.9 *Effective Date.* This Agreement shall become effective as of the Effective Date.

Section 8.10 *Amendment.* This Agreement may from time to time be amended, supplemented or modified by the Litigation Trustee, but only with approval of the Bankruptcy Court.

Section 8.11 *Headings.* The headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof.

Section 8.12 *Counterparts.* This Agreement may be executed in facsimile and in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 8.13 *No Bond.* The Litigation Trustee shall serve without a bond.

Section 8.14 *Relationship to the Plan.* The principal purpose of this Agreement is to aid in the implementation of the Plan and therefore this Agreement incorporates the provisions of the Plan. To that end, the Litigation Trustee shall have full power and authority to take any action consistent with the purpose and provisions of the Plan, and to seek any orders from the Bankruptcy Court in furtherance of the implementation of the Plan and this Agreement. If any provisions of this Agreement are found to be inconsistent with provisions of the Plan, the provisions of the Plan shall control.

Section 8.15 *Confidentiality.* The Litigation Trustee shall, during the period that such Litigation Trustee serves as Litigation Trustee under this Agreement and for a period of twelve (12) months following the termination of this Agreement or such Litigation Trustee's removal or resignation hereunder, hold strictly confidential and not use for personal gain, any material, non-public information of or pertaining to any entity to which any of the Trust Assets relates or of which such Litigation Trustee has become aware in that Litigation Trustee's capacity as Litigation Trustee, except as otherwise required by law.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first above written.

LITIGATION TRUSTEE

By: _____

Name:

Title:

THQ INC.
THQ DIGITAL STUDIOS PHOENIX, INC.
THQ WIRELESS, INC.
THQ VOLITION, INC.
VIGIL GAMES, INC.

By: _____

Name: Edward L. Kaufman

Title: President