

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

In re:	)	
	)	Chapter 11
PLASTIQ INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 23-10671 (BLS)
Debtors.	)	
	)	(Jointly Administered)
	)	
	)	Ref. Docket No. 229
	)	

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**NOTICE OF FILING OF PLAN SUPPLEMENT**

**PLEASE TAKE NOTICE** that, on July 31, 2023, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the solicitation version of the *Combined Disclosure Statement and Chapter 11 Plan of PlastiQ Inc. and Its Affiliated Debtors* [Docket No. 229] (together with all exhibits and supplements thereto, and as modified or amended from time to time, the “**Plan**”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that the Debtors hereby submit this supplement to the Plan (this “**Plan Supplement**”), consisting of the following document, as may be amended, modified, or supplemented from time to time by the Debtors in accordance with the Plan and as set forth below:

Exhibit	Plan Supplement Document
A	Litigation Trust Agreement

**PLEASE TAKE FURTHER NOTICE** that a hearing to consider confirmation of the Plan will commence at **10:00 a.m. (prevailing Eastern time) on September 14, 2023**, before the Honorable Brendan L. Shannon, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 North Market Street, 6th Floor, Courtroom #1, Wilmington, Delaware 19801. The Confirmation Hearing may be continued from time to time by the Bankruptcy Court or the Debtors without further notice other than by such adjournment being announced in open court or by a notice of adjournment filed with the Bankruptcy Court and served on such parties as the Bankruptcy Court may order. Moreover, the Plan may be modified or amended, if necessary, pursuant to section 1127 of the Bankruptcy Code, prior to, during or as a result of the Confirmation Hearing, without further notice to parties in interest.

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PlastiQ Inc. (6125), PLV Inc. d/b/a/ PLV TX Branch Inc. (5084), and Nearside Business Corp. (N/A). The corporate headquarters and the mailing address for the Debtors is 1475 Folsom Street, Suite 400, San Francisco, California 94103.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan or the Solicitation Procedures Order (as defined in the Plan).



**PLEASE TAKE FURTHER NOTICE** that the deadline for filing objections to the Plan is **September 1, 2023, at 4:00 p.m. (prevailing Eastern Time)**. Any objection to the Plan *must*: (a) be in writing; (b) state the name and address of the objecting party and the nature of the Claim or Interest of such party; (c) state with particularity the basis and nature of such objection; and (d) be filed with the Bankruptcy Court and served on the Notice Parties.

**PLEASE TAKE FURTHER NOTICE** that copies of the Plan and this Plan Supplement may be obtained and reviewed without charge at [www.kccllc.net/plastiq](http://www.kccllc.net/plastiq), or upon request to KCC by (i) telephone at (877) 634-7180 (domestic, toll-free) or +1 (424) 236-7225 (international, toll) or (ii) email at [www.kccllc.net/plastiq/inquiry](mailto:www.kccllc.net/plastiq/inquiry).

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

Dated: August 22, 2023  
Wilmington, Delaware

**YOUNG CONAWAY STARGATT & TAYLOR, LLP**

*/s/ Jared W. Kochenash*

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*Counsel for Debtors and Debtors in Possession*

**EXHIBIT A**

**Litigation Trust Agreement**

## PLASTIQ LITIGATION TRUST AGREEMENT

This Litigation Trust Agreement (the “**Agreement**”) made on **September \_\_, 2023** by and between (a) PlastiQ Inc., PLV Inc. d/b/a PLV TX Branch Inc., and Nearside Business Corp. (the “**Debtors**”), and (b) **[INSERT]**, as trustee for the PlastiQ Litigation Trust established pursuant to this Agreement (together with any successor trustee serving from time-to-time and duly appointed hereunder, the “**Litigation Trustee**”), is executed to facilitate the implementation of the **[AMENDED/MODIFIED]** *Combined Disclosure Statement and Chapter 11 Plan of PlastiQ Inc. and its Affiliated Debtors*, dated **\_\_\_\_\_, 2023** [Docket **No. \_\_\_\_**] (as amended or modified from time to time, the “**Plan**”), which provides for the establishment of the PlastiQ Litigation Trust created hereby (the “**Litigation Trust**”). Each of the Debtors and the Litigation Trustee are sometimes referred to individually as a “**Party**” and collectively as the “**Parties.**”

### RECITALS

**WHEREAS**, on May 24, 2023, the Debtors filed 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**, on **September \_\_, 2023**, the Bankruptcy Court entered its order confirming the Plan (the “**Confirmation Order**”) [Docket **No. \_\_\_\_**];

**WHEREAS**, the Plan provides, among other things, as of the effective date of the Plan (the “**Effective Date**”), for the creation of the Litigation Trust, the transfer to the Litigation Trust of the Litigation Trust Assets, and for the ultimate distribution of such assets to the Beneficiaries, in accordance with this Agreement, the Plan, and the Confirmation Order;

**WHEREAS**, the Litigation Trust is created pursuant to, and to effectuate, the Plan;

**WHEREAS**, the Litigation Trust is created on behalf of, and for the sole benefit of, the Beneficiaries pursuant to the terms of this Agreement and the Plan;

**WHEREAS**, pursuant to Treasury Regulation section 301.7701-4(d), the Litigation Trust is being created for the primary purpose of liquidating the Litigation Trust Assets in an orderly manner for the benefit of the Beneficiaries, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Litigation Trust and the Plan;

**WHEREAS**, the Litigation Trust is intended to qualify as a “grantor trust” for U.S. federal income tax purposes, pursuant to sections 671-677 of the IRC, with the Beneficiaries to be treated as the grantors of the Litigation Trust and deemed to be the owners of their respective shares of Litigation Trust Assets (subject to the rights of creditors of the Litigation Trust) and, consequently, the transfer of the Litigation Trust Assets to the Litigation Trust shall be treated as a deemed transfer of those assets from the Debtors to the Beneficiaries followed by a deemed transfer by such Beneficiaries to the Litigation Trust for federal income tax purposes;

**WHEREAS**, the Litigation Trust is intended to be treated as a grantor trust for federal income tax purposes, subject to the Litigation Trustee's discretion to elect to treat the Litigation Trust as a Disputed Ownership Fund for federal income tax purposes; and

**WHEREAS**, the Litigation Trustee was duly appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to hold and pursue the Retained Causes of Action for the benefit of the Beneficiaries.

**NOW, THEREFORE**, pursuant to the Plan and the Confirmation Order, in consideration of the promises and the mutual covenants contained herein, and other good and valuable consideration, the Parties hereby agree as follows:

## **ARTICLE I DEFINITIONS AND INTERPRETATIONS**

For all purposes of this Agreement, capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Plan. Unless otherwise specified, Article, Section, and Paragraph references herein are to Articles, Sections and Paragraphs of this Agreement.

## **ARTICLE II CREATION OF LITIGATION TRUST**

### **2.1 Creation of Litigation Trust and Appointment of Litigation Trustee.**

(a) Pursuant to the Plan and the Confirmation Order, the Parties hereby establish a trust, on behalf of holders of Allowed Class 4 Claims (including their successors and assigns) (the "**Beneficiaries**" or "**Beneficiary**"), which shall be known as the "Plastiq Litigation Trust."

(b) The Litigation Trustee is hereby appointed as trustee of the Litigation Trust on the Effective Date and agrees to accept and hold the Litigation Trust Assets in trust on behalf of and for the benefit of the Beneficiaries subject to the terms of the Plan, the Confirmation Order and this Agreement.

(c) The Litigation Trustee shall have all the rights, powers and duties set forth herein.

(d) Subject to the terms of this Agreement, any action by the Litigation Trustee which affects the interests of more than one Beneficiary shall be binding and conclusive on all Beneficiaries, even if such Beneficiaries have different or conflicting interests.

(e) The Litigation Trustee may serve without bond.

(f) The Litigation Trustee is not an officer, director, or fiduciary of any of the Debtors.

2.2 Transfer of Retained Causes of Action. Pursuant to the Plan, and subject in each case to any and all applicable limitations set forth in the Plan, as of the Effective Date:

(a) The Retained Causes of Action, together with the remainder of the Litigation Trust Assets, are vested in the Litigation Trust free and clear of any and all liens, claims, encumbrances, or interests of any kind (legal, beneficial or otherwise) in such property.

(b) Subject to Section 2.4 hereof, the Debtors shall grant to the Litigation Trustee access all documents and other materials, including electronically stored information, related to the Retained Causes of Action, whether held by the Debtors, their agents, advisors, attorneys, accountants, or any other professional hired by the Debtors. The Debtors shall further provide to the Litigation Trustee with copies any books, records or documents that the Litigation Trustee shall reasonably require for the purpose of performing its duties and exercising its powers under this Agreement, and pursuant to the Plan and Confirmation Order. The Debtors shall reasonably cooperate with the Litigation Trustee to effectuate the terms of this Agreement, including providing reasonable access and information to the Litigation Trustee on a timely basis. Notwithstanding the foregoing, the Debtors or other furnishing party shall provide such documents or other materials described in this paragraph only upon reasonable request by the Litigation Trustee and only if they can be reasonably provided by the Debtors or other furnishing party without significant effort or material expense; provided, that in the event that the furnishing party believes that the requested information cannot be provided without significant effort or material expense, the furnishing party and the Litigation Trustee shall confer in good faith to agree upon appropriate consideration for the furnishing party to provide such information.

(c) For the avoidance of doubt, the transfer, assignment or delivery of the Retained Causes of Action are limited to those set forth in the Plan.

2.3 Funding. The Litigation Trust shall be funded with the Litigation Trust Assets.

2.4 Privilege. No action taken by the Debtors or the Litigation Trustee in connection with the Plan or this Agreement shall be (or be deemed to be) a waiver of any privilege or immunity of the Debtors, including any attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral). Notwithstanding whether any privileged information is provided by the Debtors to the Litigation Trustee, the Litigation Trust, or any party or person associated with the Litigation Trust, in recognition of the joint and/or successorship interest in prosecuting any Claim or Cause of Action on behalf of the Estates, such privileged information shall be deemed to have been provided without waiver and shall in all respects remain privileged. Neither the Litigation Trustee nor the Litigation Trust shall have any right to waive the attorney-client privilege, work product, or other protection of any information received from the Debtors, all of which privileges the Debtors shall retain. Further, nothing herein shall be deemed to operate as a waiver of any rights of the Debtors' Directors or Officers, and none of such Directors' and Officers' respective privileged or confidential documents, communications or information shall be (or be deemed to be) transferred to the Litigation Trustee or the Litigation Trust.

2.5 Transfer of and Title to Litigation Trust Assets. The transfer of the Litigation Trust Assets to the Litigation Trust pursuant to the Plan and to Section 2.2 is being made by the

Debtors for the sole benefit of the Beneficiaries. Upon the transfer of the Litigation Trust Assets to the Litigation Trust, the Litigation Trust shall succeed to all of the Debtors' rights, titles, and interests in the Litigation Trust Assets, and no other entity shall have any interest, legal, beneficial, or otherwise, in the Litigation Trust or the Litigation Trust Assets upon their assignment and transfer to the Litigation Trust (other than as expressly provided herein or in the Plan); *provided, however*, the Litigation Trust Assets shall not include (a) any retainers, deposits, escrows or the like held by the Debtors' professionals; and (b) any Preference Actions or Claims and Causes of Action that have been released under the Plan. Upon the transfer by the Debtors of the Litigation Trust Assets to the Litigation Trust, the Debtors will have no reversionary or further interest in the Litigation Trust Assets.

2.6 Purpose of Litigation Trust. The purpose of the Litigation Trust is to implement the applicable provisions of the Plan and the Confirmation Order. Accordingly, the primary purposes of the Litigation Trust are to: (a) resolve Disputed Claims, (b) prosecute the Retained Causes of Action, (c) make distributions on account of Allowed Claims as provided hereunder and in the Plan, (d) maximize the value of the Litigation Trust Assets for the benefit of the Beneficiaries, (e) distribute proceeds of the Litigation Trust Assets to the Beneficiaries in accordance with the Plan and this Agreement, (f) establish and fund operating and reserve bank accounts, as needed and determined by the Litigation Trustee, (g) file appropriate tax returns for the Litigation Trust, (h) administer the applicable provisions of the Plan in an efficacious manner, and (i) perform all other acts detailed herein, or other acts not expressly set forth herein, as may be reasonably necessary, in the opinion of the Litigation Trustee, to effectuate the Plan, the Confirmation Order and the terms of this Agreement.

### **ARTICLE III LITIGATION TRUST OVERSIGHT BOARD**

3.1 Litigation Trust Oversight Board. Pursuant to the Plan and this Agreement, a Litigation Trust Oversight Board (the "**Oversight Board**") shall be created on the Effective Date. The Oversight Board shall comprise three (3) members. The initial Oversight Board members are:

3.2 Oversight Board Duties and Powers. The duties and powers of the Oversight Board shall be limited to:

(a) Terminate by unanimous vote the Litigation Trustee for cause or upon resignation, death, incapacity or removal of the Litigation Trustee, and appoint a successor Litigation Trustee; *provided, however*, the Oversight Board shall cause to be filed, or shall cause the Litigation Trust to file, with the Bankruptcy Court a notice of the appointment of such successor;

(b) Receive and review any report detailing the means by which the Litigation Trustee invests and/or insures the Litigation Trust Assets pending Final Distribution;

(c) Approve the settlement of any Retained Cause of Action asserted in an amount in excess of \$1,000,000, or asserted in an unliquidated amount but which the Litigation Trustee could assert for an amount in excess of \$1,000,000;

(d) Approve the settlement, compromise or other resolution of any Disputed Claim, where the resulting claim amount exceeds \$500,000;

(e) Approve the abandonment of any non-Cash asset that has a valuation as reasonably determined by the Litigation Trustee (for any individual transaction or series of related transactions) of at least \$250,000;

(f) Approve the borrowing of any funds by the Litigation Trust or pledge of any portion of the Litigation Trust Assets; and

(g) Approve any alteration to arrangements for compensation of the Litigation Trustee.

3.3 Litigation Trust Oversight Board Consultation/Vote. In connection with the performance of its duties hereunder, the Litigation Trustee must consult and cooperate with the Oversight Board. Further, unless otherwise expressly set forth herein, any vote by the Oversight Board shall require that all members of the Oversight Board be (a) given reasonable notice of the subject matter of such consultation or vote, and (b) given an opportunity to review any relevant information relating to, and participate in any call or meeting regarding, such consultation or vote. Any consent right in this Agreement that requires unanimous approval of the Oversight Board may also be determined by order of the Bankruptcy Court if unanimous approval cannot be reached following reasonable time for notice and consideration by each member of the Oversight Board.

3.4 Reports to Oversight Board. Notwithstanding any other provision of this Agreement, the Litigation Trustee shall report to the Oversight Board on at least a quarterly basis, which reports shall include such matters and information as reasonably requested by the Oversight Board. The Oversight Board shall keep all such information strictly confidential, except to the extent that the Oversight Board deems it reasonably necessary to disclose such information to the Bankruptcy Court (in which case, a good faith effort shall be made to file such information under seal). For avoidance of doubt, the individual members of the Oversight Board may disclose any information received from the Litigation Trustee to their respective legal counsels for the purpose of obtaining legal advice regarding their rights and duties as members of the Oversight Board.

3.5 Compensation of Oversight Board. Members of the Oversight Board shall not be entitled to receive compensation in connection with his or her duties.

3.6 Litigation Trust Oversight Board Insurance. The Oversight Board is hereby authorized, but not directed, to obtain and pay for out of the Litigation Trust Assets reasonably necessary insurance coverage for its members, its agents, and/or representatives, in connection with the liabilities, duties and obligations of the Oversight Board and its agents and representatives under this Agreement and the Plan, which insurance coverage may remain in effect for a reasonable period of time as determined by the Litigation Trustee after the termination of this Agreement.

3.7 Vacancies. Vacancies on the Oversight Board may be filled by a person designated by the Litigation Trustee, in consultation with the remaining members of the



Oversight Board. Upon appointment of a successor member of the Oversight Board, notice of such appointment shall be filed with the Bankruptcy Court by the Litigation Trustee. Unless and until such vacancy is filled, the Oversight Board shall function with such reduced membership.

3.8 Termination. The Oversight board shall continue in existence until such time as a final decree closing the Chapter 11 Cases is entered by the Bankruptcy Court or at such other time as its members unanimously elect to disband and dissolve the Oversight Board.

#### **ARTICLE IV LITIGATION TRUSTEE**

4.1 Appointment of Litigation Trustee. [INSERT] is hereby appointed as Litigation Trustee of the Litigation Trust pursuant to the Plan.

4.2 General Powers. Subject to the terms of the Plan, the Confirmation Order and this Agreement, the Litigation Trustee's powers shall include: (a) the power to use funds from the Litigation Trust to invest, make Plan Distributions, and pay taxes and other obligations in accordance with the Plan, the Confirmation Order and this Agreement; (b) the power to convey, transfer, assign and otherwise deal with the Litigation Trust Assets and to take all necessary actions to effectuate the same; (c) the power to engage employees and professionals to assist the Litigation Trustee with respect to its responsibilities under this Agreement; (d) the power to litigate, compromise, and settle claims and causes of action on behalf of or against the Litigation Trust; (e) the power to file pleadings and papers and seek relief before the Bankruptcy Court or other courts of competent jurisdiction; and (f) such other powers as may be vested in or assumed by the Litigation Trust or Litigation Trustee under the Plan, the Confirmation Order or this Agreement. Nothing in this Agreement shall be deemed to prevent the Litigation Trustee from taking, or failing to take, any action that, based upon the advice of counsel or other professionals, the Litigation Trustee determines it is obligated to take (or fail to take) in the performance of any fiduciary or similar duty which the Litigation Trustee owes to the Beneficiaries. Subject to the terms of the Plan and this Agreement, the Litigation Trustee is hereby authorized to implement the Plan and any applicable orders of the Bankruptcy Court and shall have the power to take the actions granted herein, and any powers reasonably incidental thereto, including, but not limited to:

(a) Take any action necessary to transfer to the Litigation Trust Assets to the Litigation Trust;

(b) Retain and compensate, without further order of the Bankruptcy Court, the services of employees, professionals, attorneys, advisors and other professionals (including, without limitation, any professionals previously retained in the Chapter 11 Cases) as may be necessary and appropriate to advise and assist with the commencement, prosecution and/or settlement of the Retained Causes of Action, and the administration and distribution of the Litigation Trust Assets;

(c) Act for the Litigation Trust with the fiduciary duties imposed under applicable law, subject to and limited by the provisions of the Plan and the Litigation Trust (and

all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same);

(d) Exercise all power and authority that may be or could have been exercised and take all actions that may be or could have been taken solely with respect to the Litigation Trust Assets by any officer, director, shareholder or other party acting in the name of the Debtors or their Estates with like effect as if duly authorized, exercised, and taken by action of such officers, directors, shareholders, or other party;

(e) Open, maintain, and administer bank accounts on behalf of or in the name of the Litigation Trust;

(f) Administer, sell, invest, liquidate, or otherwise dispose of the Litigation Trust Assets in accordance with the Plan; *provided, however*, the scope of any investment shall be limited to include only those investments permitted to be made by a “liquidating trust” within the meaning of Treas. Reg. section 301.7701-4(d) or under applicable Internal Revenue Service (“IRS”) guidelines, whether set forth in IRS rulings, revenue procedures, other IRS pronouncements, or otherwise;

(g) Receive, manage, sell, liquidate, supervise, control, exercise authority over, and protect the Litigation Trust Assets, subject to the limitations provided herein and under the Plan;

(h) Calculate and make distributions to Holders of Allowed Claims, including Claims in Class 4, in accordance with this Agreement, the Plan, and the Confirmation Order;

(i) Represent the Debtors’ estates before the Bankruptcy Court and other courts of competent jurisdiction solely with respect to matters concerning all matters, including without limitation, the Litigation Trust Assets;

(j) Pay all lawful expenses, debts, charges, taxes, and liabilities of the Litigation Trust;

(k) Implement, enforce, or discharge all of the terms, conditions, and all other provisions of, and all duties and obligations under, the Plan, the Confirmation Order, and this Agreement;

(l) Purchase (using Litigation Trust Assets) and carry customary insurance policies, pay all insurance premiums and costs as the Litigation Trustee deems reasonably necessary or advisable, and request and receive reports from any insurer regarding the payment of any proceed of such insurance policies;

(m) Implement, enforce, or discharge all of the terms, conditions, and all other provisions of, and all duties and obligations under, the Plan, the Confirmation Order, and this Agreement;

(n) Maintain the books and records of the Litigation Trust;

(o) Enter into any agreement or execute any document or instrument required by or consistent with the Plan, the Confirmation Order or this Agreement and perform all obligations thereunder;

(p) Investigate, commence, prosecute, compromise, and settle in accordance with the specific terms of this Agreement and the Plan, the Retained Causes of Action or other legal rights vested in the Litigation Trust;

(q) File tax returns or other reports required by governmental entities and pay taxes or other obligations incurred by the Litigation Trust and the Debtors to the extent payable consistent with the Plan, the Bankruptcy Code, or order of the Bankruptcy Court;

(r) Establish reserves as may be necessary or appropriate for distributions and/or the operation of matters incident to the Litigation Trust;

(s) To the extent not contrary to Section 2.4, enforce, waive, assign or release any rights, privileges or immunities of any kind;

(t) Communicate periodically with Beneficiaries regarding operations of the Litigation Trust and the Litigation Trust Assets;

(u) Send annually to each Beneficiary a report on the status of the Litigation Trust Assets, and a separate statement stating the Beneficiary's share of income, gain, loss, deduction or credit and instructing all such Beneficiaries to report such items on their federal tax returns;

(v) Comply with the applicable orders of the Bankruptcy Court and any other court of competent jurisdiction over the matters set forth in the Plan, and all applicable laws and regulations concerning the matters set forth in the Plan; and

(w) Take all other actions consistent with the provisions of the Plan that the Litigation Trustee deems reasonably necessary to administer the Litigation Trust and the Plan.

4.3 Limitation of Litigation Trustee. Notwithstanding anything in this Agreement to the contrary, the Litigation Trustee will not have the authority to: (a) take any action in contravention of this Agreement, the Plan, or the Confirmation Order, (b) take any action which would make it impossible to carry on the activities of the Litigation Trust, (c) possess property of the Litigation Trust or assign the Litigation Trust's rights in specific property other than for Litigation Trust purposes and as provided in the Plan, Confirmation Order or herein, (d) engage in any trade or business, except as expressly permitted herein, (e) receive any property, make any distribution, satisfy or discharge any claims, expenses, charges, liabilities and obligations or otherwise take any action which would jeopardize the status of the Litigation Trust as a "liquidating trust" for United States federal income tax purposes within the meaning of Treasury Regulations Section 301.7701-4(d).

4.4 Compensation and Reimbursement Expenses. On the Effective Date, the Litigation Trust shall, upon receipt of periodic billings, reimburse the Litigation Trustee for the actual reasonable out-of-pocket expenses incurred by the Litigation Trustee in connection with

its duties under this Agreement. The Litigation Trustee and its agents shall be entitled to receive reasonable compensation for services rendered on behalf of the Litigation Trust, which shall be billed at such individual's hourly rates as set forth in the engagement terms attached hereto as **Exhibit A**, and which shall be subject to a monthly cap of \$[\_\_\_\_], plus a contingent amount from any recoveries received with respect to the Retained Causes of Action as set forth in the engagement terms; *provided, however*, the Litigation Trustee's compensation may be adjusted by agreement of the Litigation Trustee and the Oversight Board; *provided, further, however*, compensation of any successor Litigation Trustee may be different from the terms provided herein and in any event shall be approved by the Oversight Board prior to the retention of any subsequent Litigation Trustee.

4.5 Payment. Any fees and expenses, to the extent payable, due to the Litigation Trustee (including any professionals and advisors retained by the Litigation Trustee) shall be paid out of the Litigation Trust Assets, in each case, without necessity for review or approval by the Bankruptcy Court or any other Person (as defined in section 101(41) of the Bankruptcy Code).

4.6 Term of Service. The Litigation Trustee shall serve until: (a) the completion of all the Litigation Trustee's duties, responsibilities, and obligations under this Agreement and the Plan; (b) the Litigation Trustee's death, dissolution, incapacitation, resignation, or removal, as set forth herein; or (c) termination of the Litigation Trust in accordance with this Agreement.

4.7 Removal, Resignation, and Appoint of Successor Litigation Trustee. The Litigation Trustee may resign at any time upon thirty (30) days' prior written notice delivered to members of the Oversight Board; *provided, however*, such resignation shall only become effective upon appointment of a permanent or interim successor Litigation Trustee. The Litigation Trustee may be also removed as Litigation Trustee: (a) with or without cause, by unanimous vote of the Oversight Board, and/or (b) only for cause, by any Beneficiary or interested party upon motion and prior written notice and service thereof to the Bankruptcy Court, the Litigation Trustee, the members of the Oversight Board, and those parties receiving current electronic notice in the cases, and then, with respect to sub-clause (b) of this sentence, only to the extent approved by the Bankruptcy Court; *provided, however*, such removal shall only become effective upon appointment of a permanent or interim successor Litigation Trustee. If there is any dispute or motion regarding removal of the Litigation Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement), the Bankruptcy Court shall have jurisdiction to consider and adjudicate any such dispute. In the event of resignation, removal, death, or incapacity of the Litigation Trustee, the Bankruptcy Court shall appoint a successor Litigation Trustee based upon submissions by members of the Oversight Board and thereupon the successor Litigation Trustee shall become fully vested with all of the rights, powers, duties, and obligations of the predecessor Litigation Trustee under this Agreement, the Plan and the Confirmation Order, and all responsibilities of the predecessor Litigation Trustee relating to the Litigation Trust shall be terminated; *provided, however*, the provisions of sections 5.1, 5.2, 5.3, 5.4 and 6.2 shall continue to apply following the date of such termination. For purposes of this Section 4.8, "cause" includes, without limitation, incapacity, failure, or refusal to perform its duties under the Plan, this Agreement, and the Confirmation Order.

4.8 Litigation Trust Continuance. The death, dissolution, liquidation, resignation, or removal of the Litigation Trustee shall not terminate the Litigation Trust or revoke any existing agency created by the Litigation Trustee pursuant to this Agreement or invalidate any action taken by the Litigation Trustee, and the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Litigation Trustee and all its successors or assigns.

4.9 Bankruptcy Court Approval of Litigation Trustee Actions. Except as provided in the Plan or in this Agreement, the Litigation Trustee need not obtain an order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred hereunder, or account to the Bankruptcy Court with respect to such exercise; *provided, however*, the Litigation Trustee may seek Bankruptcy Court approval for authority to take any action it may desire to have explicit approval of the Bankruptcy Court with respect to the Litigation Trust Assets, the Litigation Trust, and the Debtors, and as provided in the Plan or this Agreement, including administration and distribution of the Litigation Trust Assets. Except as provided in the Plan or in this Agreement, the Litigation Trustee shall exercise its business judgment for the benefit of the Beneficiaries in order to maximize the value of the Litigation Trust Assets and distributions to the Beneficiaries, giving due regard to the cost, risk, and delay of any course of action.

## ARTICLE V LIABILITY AND INDEMNIFICATION

5.1 Exculpation. Neither the Litigation Trustee, any member of the Oversight Board, nor any director, officer, member, affiliate, employee, employer, professional, successor, assign, agent, or representative of the foregoing, each in its capacity as such (each, an “**Exculpated Party**” and collectively, the “**Exculpated Parties**”) shall be liable for any losses, claims, damages, liabilities, obligations, settlements, proceedings, suits, judgments, causes of action, litigation, actions, or investigations (whether civil or administrative and whether sounding in tort, contract or otherwise), penalties, costs, and expenses, including reasonable fees and disbursements (collectively referred to herein as “**Losses**”), incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Exculpated Party’s execution, delivery, and acceptance of or the performance or nonperformance of its powers, duties, and obligations under this Agreement, the Plan, or the Confirmation Order, or, any other order of the Bankruptcy Court or applicable law or as may arise by reason of any action, omission, or error of an Exculpated Party; *provided, however*, that the foregoing limitation shall not apply to any acts or omissions ultimately and finally determined by a final and non-appealable order of a court of competent jurisdiction to be the direct result of such Exculpated Party’s fraud, self-dealing, gross negligence or willful misconduct. Every act taken or omitted, power exercised, or obligation assumed by any Exculpated Party pursuant to the provisions of this Agreement shall be held to be taken or omitted, exercised, or assumed, as the case may be, by the Exculpated Party acting for and on behalf of the Litigation Trust and not otherwise; *provided, further, however*, that none of the Exculpated Parties is deemed to be responsible for any other Exculpated Party’s actions or inactions. Except as provided in this Agreement, any Person contracting or otherwise dealing with or having any relationship with the Litigation Trust or any Exculpated Party shall have recourse only to the Litigation Trust Assets for payment of any liabilities or other obligations arising in connection with such contracts, dealings, or relationships, and the Litigation Trust and the Exculpated Parties shall not be individually liable therefore. Without limiting the foregoing,

the Litigation Trustee shall be entitled to the benefits of the limitation of liability and exculpation provisions under the Plan and the Confirmation Order.

5.2 Indemnification. The Oversight Board, the Litigation Trustee, and any director, officer, member, affiliate, employee, employer, professional, successor, assign, agent, or representative of the Litigation Trustee (each, an “**Indemnified Party**” and collectively, the “**Indemnified Parties**”) shall be defended, held harmless, and indemnified from time to time by the Litigation Trust against any and all Losses, including, without limitation, the costs for counsel or others in investigating, preparing, defending, or settling any action or claim, whether or not in connection with litigation in which any Indemnified Party is a party, or enforcing this Agreement (including these indemnity provisions), as and when imposed on the Indemnified Party, incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Litigation Trustee’s execution, delivery, and acceptance of, or the performance or nonperformance of its powers, duties, and obligations under this Agreement, the Plan, or the Confirmation Order, or as may arise by reason of any action, omission, or error of an Indemnified Party; *provided, however*, such indemnity shall not apply to any such Losses to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal or review) to have resulted primarily and directly from the Indemnified Party’s fraud, self-dealing, gross negligence, or willful misconduct. Notwithstanding any other provision herein to the contrary, the Indemnified Parties shall be entitled to obtain advances from the Litigation Trust to cover their reasonable expenses of defending themselves in any action brought against them as a result of the acts and omissions, actual or alleged, of an Indemnified Party in its capacity as such; *provided, further, however*, that the Indemnified Parties receiving such advances shall repay the amounts so advanced to the Litigation Trust immediately upon the entry of a final, non-appealable judgment or order finding that such Indemnified Parties were not entitled to any indemnity under the provisions of this Section 5.2. The foregoing indemnity in respect of any Indemnified Party shall survive the termination of such Indemnified Party from the capacity for which they are indemnified. Termination or modification of this Agreement shall not affect any indemnification rights or obligations then existing. Except for their own fraud, gross negligence or willful misconduct, the Litigation Trustee, the Oversight Board and their employees, members, agents, professionals and advisors shall not be personally liable under any circumstances, including for (a) any error of judgment made in good faith, or (b) any representation, warranty, covenant, agreement, or indebtedness of the Litigation Trust.

5.3 No Liability for Acts of Successor/Predecessor Litigation Trustee. Upon the appointment of a successor Litigation Trustee and the delivery of the Litigation Trust Assets to the successor Litigation Trustee, the predecessor Litigation Trustee and any director, officer, affiliate, employee, employer, professional, agent, or representative of the predecessor Litigation Trustee shall have no further liability or responsibility with respect thereto. A successor Litigation Trustee shall not be liable for the acts or omissions of any predecessor Litigation Trustee unless a successor Litigation Trustee expressly assumes such responsibility in writing. A predecessor Litigation Trustee shall have no liability for the acts or omissions of any immediate or subsequent successor Litigation Trustee for any events or occurrences subsequent to the cessation of its role as Litigation Trustee.

5.4 Reliance by Litigation Trustee on Documents or Advice of Counsel or Other Professionals. Except as otherwise provided in this Agreement, the Litigation Trustee, any

director, officer, member, affiliate, employee, employer, professional, agent, or representative of the Litigation Trustee may rely, and shall be protected from liability for acting or failing to act, upon any resolution, certificate, 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 presented by an authorized party. The Litigation Trustee and any director, officer, member, affiliate, employee, employer, professional, agent, or representative of the Litigation Trustee shall not be liable for any action taken or omitted or suffered by the Litigation Trustee in reasonable reliance upon the advice of counsel or other professionals engaged by the Litigation Trustee in accordance with this Agreement. The Litigation Trustee shall be fully indemnified by the Litigation Trust for or in respect of any action taken, suffered, or omitted by it and in accordance with such advice or opinion.

5.5 Insurance. The Litigation Trustee may purchase (using Litigation Trust Assets) and carry customary insurance policies, all insurance premiums and costs the Litigation Trustee deems reasonably necessary or advisable including, without limitation, purchasing any errors and omissions insurance with regard to any Losses the Litigation Trustee may incur, arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the implementation and administration of the Plan or this Agreement..

5.6 Survival. This Article V shall survive the termination of this Agreement.

## **ARTICLE VI GENERAL PROVISIONS CONCERNING ADMINISTRATION OF THE LITIGATION TRUST**

6.1 Books and Records. The Litigation Trustee shall maintain the books and records of the Litigation Trust relating to Claims of the Beneficiaries, the Litigation Trust Assets, the income and proceeds of the Litigation Trust, and the payment of expenses of, and liabilities or claims against or assumed by, the Litigation Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting requirements of the Litigation Trust.

6.2 Confidentiality. The Litigation Trustee shall forever 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 Litigation Trust Assets relates, or of which the Litigation Trustee has become aware of in its capacity as such; *provided, however*, this Section 6.2 shall not apply to information disclosed in compliance with a court order requiring such disclosure, provided that the Litigation Trustee shall disclose only that portion of such information that is required to be disclosed and shall seek a protective order or other appropriate remedy to prevent public disclosure of such information.

6.3 Reporting and Filing Requirements. For each calendar quarter in which the Litigation Trust shall remain in existence, the Litigation Trustee shall timely file a post-confirmation report, substantially in compliance with UST Form 11-PCR or such other form as then required by the Office of the United States Trustee, with the Bankruptcy Court containing

such information required by such form related to the Litigation Trust during the preceding period calendar quarter.

6.4 Abandon; Donation. If, in the Litigation Trustee's reasonable judgment, any Litigation Trust Assets cannot be liquidated, monetized, sold or distributed in a commercially reasonable manner or the Litigation Trustee believes in good faith that such property has inconsequential value to the Litigation Trust or its Beneficiaries or is insufficient to render a further Distribution practicable, then the Litigation Trustee may cause the Litigation Trust to abandon or otherwise dispose of such property, including by donation to a charitable institution qualified as a not-for-profit corporation, under applicable federal and state laws, selected by the Litigation Trustee.

6.5 Fiduciary. The Litigation Trustee, in a fiduciary capacity, shall exercise its powers and obligations under this Agreement and the Plan for the Beneficiaries, as a whole; *provided, however,* the Litigation Trustee shall not owe fiduciary obligations to any Beneficiary or defendants or potential defendants of any Retained Causes of Action in their capacities as such.

## ARTICLE VII BENEFICIAL INTERESTS AND BENEFICIARIES

7.1 Incidents of Ownership. The Beneficiaries shall be the sole beneficiaries of the Litigation Trust and the Litigation Trust Assets, and the Litigation Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized in this Agreement, the Plan, and the Confirmation Order.

7.2 Rights of Beneficiaries. Each Beneficiary shall be entitled to participate in the rights due to such Beneficiary under the Plan and this Agreement, (b) take and hold its uncertificated Litigation Trust interest subject to all the terms and provisions of this Agreement, the Plan, and the Confirmation Order, and any other order of the Bankruptcy Court, and (c) receive distributions as set forth in the Plan.

7.3 Interest Beneficial Only. The ownership of a beneficial interest in the Litigation Trust shall not entitle any Beneficiary or the Debtor to: (a) any title in or to the Litigation Trust Assets, (b) any right to call for a partition or division of such assets, or (c) require an accounting, except as specifically provided herein or in the Plan.

7.4 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Litigation Trust or the Litigation Trust Assets shall not be evidenced by any certificate, security, or receipt, or in any other form or manner whatsoever, except as maintained on the books and records of the Litigation Trust by the Litigation Trustee. In the absence of manifest error, ownership of beneficial interests in the Litigation Trust Assets as reflected on the books and records of the Litigation Trust maintained by the Litigation Trustee shall be conclusive and binding on all owners of such beneficial interests. The Litigation Trustee may rely on the official register of Claims maintained by the Claims Agent or the Bankruptcy Court (the "**Claims Register**") for all other purposes. Such Claims Register shall be updated promptly upon a Disputed Claim becoming an Allowed Claim.



7.5 Notice of Transfer of Beneficial Interest. Beneficial interests in the Litigation Trust and the Litigation Trust Assets, other than such beneficial interests held by the Secured Parties, shall not be assignable or transferable except upon death of the interest holder or by operation of law. Any assignment or transfer shall not be effective until appropriate notification and proof thereof is submitted to the Litigation Trustee, and the Litigation Trustee may continue to pay all amounts to or for the benefit of the assigning or transferring Beneficiary until receipt of proper (and acceptable) notification and proof of assignment or transfer. The Litigation Trustee may rely upon such proof without the requirement of any further investigation, and may require any assignment or transfer agreement to be formally filed on the docket with the Bankruptcy Court prior to any decision by the Litigation Trustee that such assignment or transfer will be valid and accepted.

7.6 Change of Address. After the Effective Date, a Beneficiary may select an alternative distribution address by serving a notice upon the Litigation Trustee (either directly or through Kurtzman Carson Consultants LLC, solely in its capacity as claims agent (the “**Claims Agent**”)) that identifies such alternative distribution address. Such notification shall be effective only upon receipt by the Litigation Trustee. Absent such notice, the Litigation Trustee is not required to recognize any change of distribution address.

7.7 Effect of Death, Dissolution, Incapacity, or Bankruptcy of Beneficiary. The death, dissolution, incapacity, or bankruptcy of a Beneficiary during the term of the Litigation Trust shall not (a) operate to terminate the Litigation Trust during the term of the Litigation Trust or (b) entitle any representative or creditors of the deceased, incapacitated or bankrupt Beneficiary to an accounting, to take any action in any court or elsewhere for the distribution of the Litigation Trust Assets or for a partition thereof, or otherwise affect the rights and obligations of the Beneficiary under this Agreement or in the Litigation Trust or the Litigation Trust Assets.

7.8 Limited Beneficiary Rights. Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, a Beneficiary may not direct the Litigation Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Litigation Trust Assets.

## **ARTICLE VIII PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS**

8.1 Prosecution of Objections to Claims and Claims Procedures. The Litigation Trustee shall have and retain any rights and defenses the Debtors had with respect to any Claims, including Claims in Class 4, against, or assumed by, the Litigation Trust, except with respect to any Claim in Class 4 deemed Allowed as of the Effective Date. The Litigation Trustee shall have the authority, but not the obligation to (a) file objections to Claims in Class 4; and (b) subject to Section 3.2, settle, compromise, withdraw, or litigate to judgment objections on behalf of the Debtors’ estates to any and all such Claims. The Litigation Trustee shall have the authority to administer and adjust the Claims Register, as applicable, with respect to Claims in Class 4 to reflect any such settlements or compromises and no further notice to or action, order, or approval of the Bankruptcy Court with respect to such settlements or compromises shall be required.

8.2 Distributions Regarding Disputed Claims. No payments or distributions shall be made with respect to any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by a final order of the Bankruptcy Court, and the Disputed Claim has become an Allowed Claim. Any Distribution made after the Effective Date pursuant to the Plan on account of a Disputed Claim that is later deemed an Allowed Claim by the Bankruptcy Court shall be made together with any dividends, payments, or other distributions made on account of, as well as any obligations arising from, the distributed property as if such Allowed Claim had been an Allowed Claim on the dates distributions were previously made to Holders of Allowed Claims included in the applicable Class.

8.3 Claims Estimation. On the Effective Date, the Litigation Trustee, pursuant to section 502(c) of the Bankruptcy Code, may at any time, request that the Bankruptcy Court estimate: (a) any Disputed Claim, and (b) any contingent or unliquidated Claim, for any reason, regardless of whether any party previously has objected to such Claim, or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Disputed Claim or contingent or unliquidated Claim, including during the litigation of any objection to such claim or during the pendency of any appeal relating to such objection.

8.4 Expungement or Adjustment to Claims Without Objection. Any Claim in Classes 1, 2, 3 and 4 that has been paid, satisfied, or superseded may be expunged on the Claims Register by the Litigation Trustee, as applicable, and any Claim in Class 4, that has been amended may be adjusted thereon by the Litigation Trustee without a claims objection having to be filed and without any further notice or action, order, or approval of the Bankruptcy Court.

## **ARTICLE IX DISTRIBUTIONS**

9.1 Distribution Agent. Except as otherwise provided in the Plan, the Litigation Trustee shall serve as Disbursement Agent with respect to Allowed Claims, including Allowed Claims in Class 4, and the Distribution Agent shall make all distributions on account of Allowed Claims in Class 4.

9.2 Distributions from Litigation Trust Assets. All payments to be made by the Litigation Trust to any Beneficiary shall be made only in accordance with the Plan, the Confirmation Order, and this Agreement and out of the Litigation Trust Assets (or from the income and proceeds realized from the Litigation Trust Assets). The Litigation Trustee shall make reasonable efforts to collect, liquidate, and dispose of the Litigation Trust Assets, make timely distributions, and not unduly prolong the duration of the Litigation Trust.

9.3 Distributions and Withholding. The Distribution Agent shall make distributions to Holders of Allowed Claims in Class 4 as provided in the Plan. The Distribution Agent, as applicable, shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. The Distribution Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements,

including liquidating a portion of the distributions to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Distribution Agent reserves the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances. Amounts so withheld or allocated and paid over to the applicable Governmental Unit in accordance with applicable law shall be treated for all purposes of this Plan as having been paid to the person in respect of whom such withholding or allocation was made.

9.4 Undeliverable and Unclaimed Distributions. If any distribution to a Holder of an Allowed Claim is returned to the Litigation Trustee as undeliverable or is otherwise an Unclaimed Distribution, no further Distributions shall be made to such Holder unless and until the Litigation Trustee is notified in writing of such Holder's then-current address, at which time all missed Distributions shall be made to such Holder without interest, dividends, or accruals of any kind. Unclaimed Distributions shall be returned to the Litigation Trust until such distributions are claimed. Any distribution under the Plan that is an Unclaimed Distribution for a period of ninety (90) days after such distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and such Unclaimed Distribution shall revert to and vest in the Litigation Trust, as applicable, free of any restrictions thereon and shall be redistributed to Beneficiaries after reserving for Litigation Trust expenses. Upon vesting, the claim of any Holder or successor to such Holder with respect to such property shall be cancelled, discharged and forever barred, notwithstanding federal or state escheat, abandoned, or unclaimed property laws to the contrary.

9.5 Expenses of Distribution. All distributions to be made by the Litigation Trust under the Plan shall be made net of the actual and reasonable costs of making such distributions.

9.6 Minimum; De Minimis Distributions. The Disbursement Agent shall not be required to make a distribution on account of an Allowed Claim if the Holder of an Allowed Claim would be entitled to receive less than \$100.00. Any Holder of an Allowed Claim on account of which such amount of cash or other property to be distributed is less than \$100.00 shall be forever barred from asserting such claim against Litigation Trust Assets.

9.7 Distribution Record Date. On the Distribution Record Date, the Claims Register shall be closed and the Litigation Trustee shall be authorized and entitled to recognize only those record Holders listed on the Claims Register as of the close of business on the Distribution Record Date.

9.8 Manner of Payment Under the Plan. Unless the Distribution Agent and the entity receiving a payment agrees otherwise, any payment in cash to be made by the Distribution Agent under the Plan shall be made either by check drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Distribution Agent, except cash payments made to foreign creditors may be made in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

9.9 Setoff. Except as otherwise set forth in the Plan, the Litigation Trustee may, pursuant to applicable law (including sections 553 and 558 of the Bankruptcy Code), offset against any claim, including an Administrative Claim, before any Distribution is made on account of such claim, any and all of the claims, rights and Retained Causes of Action of any nature that the Litigation Trustee may hold against the Holder of such claim; *provided, however*, that neither the failure to effect such setoff nor allowance of any claim pursuant to the Plan shall constitute a waiver or release by the Litigation Trustee of any such Claims, rights, and Retained Causes of Action that the Litigation Trust may possess against such Holder.

## ARTICLE X TAXES

10.1 Litigation Trustee's Tax Responsibilities. The Litigation Trustee shall be responsible for handling all of the Litigation Trust's tax matters, including, without limitation, the filing of all tax returns, and the handling of tax audits and proceedings of the Litigation Trust. The Litigation Trustee may make an election under Treasury Regulations Section 1.468B-9(c)(2)(ii) to treat the Litigation Trust (or any portion thereof) as a disputed ownership fund as set forth in section 9.11(e) of the Plan. The Litigation Trustee shall be responsible for filing information on behalf of the Litigation Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) or as a disputed ownership fund.

10.2 Treatment of Litigation Trust Assets. For all federal income tax purposes, subject to Section 10.3, all parties shall treat the transfer of the Litigation Trust Assets to the Litigation Trust including any amounts or other assets subsequently transferred to the Litigation Trust (but only at such time as actually transferred) as (a) a transfer of the Litigation Trust Assets, for all purposes of the IRC, directly to the beneficiaries of the Litigation Trust, followed by (b) the transfer by such persons to the Litigation Trust of such Litigation Trust Assets in exchange for beneficial interests in the Litigation Trust.

10.3 Income Tax Status. Subject to the election of the Litigation Trustee as set forth in Section 10.1, and further 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), for United States federal income tax purposes (and for purposes of all state, local, and other jurisdictions to the extent applicable), this Litigation Trust is intended to qualify as a "liquidating trust" pursuant to Treasury Regulation section 301.7701-4 and as a grantor trust pursuant to IRC sections 671-677. To the extent consistent with Revenue Procedure 94-45 and not otherwise inconsistent with this Agreement, this Agreement shall be construed so as to satisfy the requirements for liquidating trust status. Except as provided in this Section 10.3, (a) the Beneficiaries will be treated as both the grantors and the deemed owners of the Litigation Trust, and (b) any items of income, deduction, credit, and loss of the Litigation Trust shall be allocated for federal income tax purposes to the Beneficiaries in accordance with Section 10.4. The Litigation Trust shall at all times be administered so as to constitute a domestic trust for United States federal income tax purposes and shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth in this Agreement, the Plan, or the Confirmation Order.

10.4 Tax Returns. In accordance with IRC section 6012 and Treasury Regulation section 1.671-4(a), the Litigation Trust shall file with the IRS annual tax returns on Form 1041 and may provide each Beneficiary with a copy of the Form 1041 for the Litigation Trust (without attaching any other Beneficiary's Schedule K1 or other applicable information form) along with such Beneficiary's Schedule K-1 or other applicable information form in order to satisfy the foregoing requirement. In addition, the Litigation Trust shall file in a timely manner such other tax returns, including any state and local tax returns, as required by applicable law and pay any taxes shown as due thereon of the Litigation Trust. Within a reasonable time following the end of the taxable year, and to the extent applicable, the Litigation Trust shall send to each Beneficiary a separate statement regarding the receipt and expenditures of the Litigation Trust and setting forth the Beneficiary's share of items of income, gain, loss, deduction or credit and instruct the Beneficiary to report such items on its applicable income tax return. The Litigation Trustee shall allocate the taxable income, gain, loss, deduction, or credit of the Litigation Trust with respect to each Beneficiary as follows: (a) allocations of Litigation Trust taxable income shall be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed (without regard to any restriction on distributions described herein or in the Plan) if, immediately prior to such deemed distribution, the Litigation Trust had distributed all of its other assets (valued at their tax book value) to the Beneficiaries, in each case up to the tax book value of the assets treated as contributed by such holders, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Litigation Trust; and (b) allocations of taxable loss of the Litigation Trust shall be determined by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Litigation Trust Assets. For these purposes, the tax book value of the Litigation Trust Assets shall equal the fair market value of the Litigation Trust Assets on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the IRC, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

10.5 Withholding of Taxes and Reporting Related to Litigation Trust Operations. The Litigation Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all distributions made by the Litigation Trust shall be subject to any such withholding and reporting requirements. To the extent that the operation of the Litigation Trust or the liquidation of the Litigation Trust Assets creates a tax liability imposed on the Litigation Trust, the Litigation Trust shall timely pay such tax liability (out of the Litigation Trust Assets) and any such payment shall be considered a cost and expense of the operation of the Litigation Trust payable without order of the Bankruptcy Court. Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from distributions hereunder. All Beneficiaries shall be required to provide any information necessary to effect the withholding of such taxes.

10.6 Valuation. The valuation of the Litigation Trust Assets agreed to by the Parties shall be used consistently by all parties for all federal income tax purposes. The Litigation Trust also shall file (or cause to be filed) any other statements, returns or disclosures relating to the Litigation Trust that are required by any governmental unit.

10.7 Expedited Determination of Taxes. The Litigation Trustee may request an expedited determination of taxes of the Debtors and the Litigation Trust, under section 505(b) of

the Bankruptcy Code, for all returns filed for, or on behalf of, the Debtors and the Litigation Trust for all taxable periods through the termination of the Litigation Trust, and to take any and all action necessary to obtain payment of any tax refund due to the Debtors, its Estate and/or the Litigation Trust.

10.8 Tax Identification Numbers. The Litigation Trustee may require any Beneficiary to furnish to the Litigation Trustee its employer or taxpayer identification number as assigned by the IRS or otherwise certify to the Litigation Trustee's satisfaction that distributions to the Beneficiary are exempt from backup withholding. The Litigation Trustee may condition distribution to any Beneficiary upon the receipt of such identification number. If such information is not provided to the Litigation Trustee within ninety (90) days of being requested, all Distributions to which such Beneficiary are or become entitled shall be cancelled, discharged and forever barred, notwithstanding federal or state escheat, abandonment or unclaimed property laws to the contrary, unless determined otherwise in the discretion of the Litigation Trustee.

## **ARTICLE XI DURATION AND TERMINATION OF LITIGATION TRUST**

11.1 Termination. Subject to the Plan and the Confirmation Order, the Litigation Trustee and the Litigation Trust shall be discharged or dissolved, as the case maybe, at such time as (a) the Litigation Trustee determines, in consultation with the Oversight Board, that the pursuit of additional Retained Causes of Action is not likely to yield sufficient additional proceeds to justify further pursuit of such claims, (b) all Disputed Claims have been resolved, (c) all of Litigation Trust Assets have been liquidated or abandoned, (d) all duties and obligations of the Litigation Trustee hereunder and in the Plan have been fulfilled, (e) all distributions required to be made by the Litigation Trust under the Plan, the Confirmation Order, and this Agreement have been made, and (f) the Chapter 11 Cases has been closed.

11.2 Maximum Term. In no event shall the Litigation Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion by the Litigation Trustee within the six-month period prior to the fourth anniversary (or the end of any extension period previously approved by order of the Bankruptcy Court), determines that a fixed period extension (not to exceed five (5) years, together with any prior extensions) is necessary to facilitate or complete the liquidation, recovery, and distribution of the Litigation Trust Assets.

11.3 Events Upon Termination. At the conclusion of the term of the Litigation Trust, the Litigation Trustee shall distribute the remaining Litigation Trust Assets, if any, in its reasonable discretion, including to a charitable organization, in accordance with the Plan, the Confirmation Order, and this Agreement.

11.4 Winding Up, Discharge, and Release of Litigation Trustee. The Litigation Trustee shall seek authority from the Bankruptcy Court to close the Chapter 11 Cases once (a) all Disputed Claims have become an Allowed or disallowed, (b) the Litigation Trust is terminated in accordance with the Plan, (c) all remaining Litigation Trust Assets have been distributed in accordance with the Plan, and (d) the business and affairs of the Debtors have been otherwise wound down. For purposes of winding up the affairs of the Litigation Trust at the conclusion of its term, the Litigation Trustee shall continue to act as the Litigation Trustee until its duties under

this Agreement have been fully discharged or its role as Litigation Trustee is otherwise terminated under this Agreement and the Plan. Upon motion of the Litigation Trustee, the Bankruptcy Court may enter an order relieving the Litigation Trustee, its agents and employees of any further duties, discharging, and releasing the Litigation Trustee and releasing its bond, if any.

## **ARTICLE XII MISCELLANEOUS PROVISIONS**

12.1 Effectiveness. This Agreement shall become effective on the Effective Date.

12.2 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be taken together to constitute one and the same instrument.

12.3 Jurisdiction. The Bankruptcy Court shall have jurisdiction over the Litigation Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, including, without limitation, this Agreement, or any Party's obligations incurred in connection herewith, including, without limitation, any action against the Litigation Trust, the Litigation Trustee or any professional retained by the Litigation Trustee, in each case in its capacity as such. Each Party to this Agreement hereby irrevocably consents to the exclusive jurisdiction and venue of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Agreement or of any other agreement or document delivered in connection with this Agreement, and also hereby irrevocably waives any defense of improper venue, *forum non conveniens* or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each Party further irrevocably agrees that any action to enforce, interpret, or construe any provision of this Agreement will be brought only in the Bankruptcy Court. Each Party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, of any process in any action to enforce, interpret or construe any provision of this Agreement.

12.4 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, without giving effect to conflicts of law principles.

12.5 Headings. Sections, subheadings and other headings used in this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement or any provision thereof.

12.6 Amendments. This Agreement may be amended, modified, or supplemented with the unanimous consent of the Oversight Board; provided, however, no amendment, modification, or supplement to this Agreement shall be effective if it would materially and adversely affect Distributions contemplated by the Plan.

12.7 No Waiver. No failure by the Litigation Trust, the Litigation Trustee, or its agents, professionals and employees to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

12.8 Notices. All notices, requests or other communications, required or permitted to be made in accordance with this Agreement including any change of address of any Beneficiary for the purposes of receiving distributions from the Litigation Trust shall be in writing and shall be delivered personally or by first class or express mail, return receipt requested or fax with confirmation of receipt or email with receipt acknowledgement. Notices should be directed to:

If to the Litigation Trustee:

If to Counsel to the Debtors:

Matthew B. Lunn and Joseph M. Mulvihill  
Young Conaway Stargatt & Taylor LLP  
1000 North King Street  
Rodney Square  
Wilmington, DE 19801  
Email:mlunn@ycst.com; jmulvihill@ycst.com

If to a Beneficiary:

To the name and distribution address set forth in the Claims Register with respect to such Beneficiary.

The parties to this Agreement may designate in writing (with email being an acceptable method of communication) from time to time other and additional places to which notices may be sent.

12.9 No Bond. Notwithstanding any state or other applicable law to the contrary, the Litigation Trustee (including any successor Litigation Trustee) shall be exempt from giving any bond or other security in any jurisdiction.

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

12.11 No Execution. All funds in the Litigation Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to, or for the benefit of, a Beneficiary, and no Beneficiary or any other Person or Entity can bind, pledge, encumber, execute upon, garnish, or attach the Litigation Trust Assets or the Litigation Trust in any manner or compel payment from the Litigation Trust except by final order of the Bankruptcy Court.



12.12 Relationship to the Plan and the Confirmation Order. The principal purpose of this Agreement is to aid in the implementation of the Plan and, therefore, this Agreement incorporates and is subject to, and the Litigation Trust and Litigation Trustee is bound by, the provisions of the Plan and the Confirmation Order, including, for the avoidance of doubt, the Global Settlement provided in the Plan and approved by the Confirmation Order and in the Final DIP Order. In the event that any provision of this Agreement is found to be inconsistent with a provision of the Plan, the provisions of this Agreement shall control. In the event that any provision of the Plan is found to be inconsistent with a provision of the Confirmation Order, the Confirmation Order shall control.

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

12.14 Entire Agreement; No Waiver; Cumulative Rights and Remedies. The entire agreement of the parties relating to the subject matter of this Agreement is contained herein and in the Plan and Confirmation Order referred to herein, and this Agreement and such documents supersede any prior oral or written agreements, understandings, negotiations, and discussions, written or oral, of the Parties hereto, concerning the subject matter hereof. No failure to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of rights under law or in equity.

*[Remainder of page intentionally left blank]*

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

**DEBTORS:**

PLASTIQ INC.; PLV INC. d/b/a PLV TX  
BRANNCH INC.; and NEARSIDE BUSINESS  
CORP.

By: \_\_\_\_\_  
Name: Vladamir Kasparov  
Title: Chief Restructuring Officer

**LITIGATION TRUSTEE:**

[INSERT]

By: \_\_\_\_\_  
Name: [Insert]  
Title: [Insert]