



**ORDERED** in the Southern District of Florida on June 18, 2014.

**John K. Olson, Judge  
United States Bankruptcy Court**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

<p>In re:</p> <p>COMPREHENSIVE CLINICAL DEVELOPMENT, INC.,</p> <p>COMPREHENSIVE CLINICAL DEVELOPMENT NW, INC.,</p> <p>Debtors.</p>	<p>Chapter 7</p> <p>Case No. 13-17273-JKO</p> <p>Case No. 13-17282-JKO</p> <p>Jointly Administered Under Case No. 13-17273-JKO</p>
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**ORDER GRANTING MOTION OF TRUSTEE AND CERTAIN PHARMACEUTICAL SPONSORS AND APPROVING (1) GLOBAL PROTOCOL FOR COORDINATED RETRIEVAL, REVIEW, AND RETURN OF CERTAIN SPONSOR RECORDS, (2) RETENTION OF CERTAIN SERVICE PROVIDERS; (3) RELEASE AND EXCULPATION OF TRUSTEE, PARTICIPATING SPONSORS, AND OTHER PARTIES; AND GRANTING RELATED RELIEF**

THESE JOINTLY ADMINISTERED CASES came before the Court for hearing

on June 10, 2014, at 1:30 p.m. (the “**Hearing**”) upon the motion [ECF No. 804] (the “**Motion**”) of Marc P. Barmat, Trustee (the “**Trustee**”), and certain pharmaceutical companies that are former customers of the Debtors and comprise the members of the Sponsor Committee, pursuant to Sections 102, 105, 363 and 554 of the Bankruptcy Code and Rules 2002, 9007 and 9019 of the Federal Rules of Bankruptcy Procedure, for entry of an order (i) approving a global protocol for the coordinated retrieval, review and return of certain sponsor records (as described more fully herein, the “**Global Protocol**”); (ii) approving the retention by the Participating Sponsors (as defined in the Retrieval Protocol) of certain service providers to assist in administering the Global Protocol; (iii) approving a release (the “**Global Release**”) and exculpation in favor of the Trustee, the Participating Sponsors and certain other parties; and (iv) granting related relief. For the reasons stated in the Motion and in this Order and for the additional reasons stated in open court, the Court, having considered the Motion; the exhibits to the Motion; the record in these cases; the declarations of David W. Dykhouse (the “**Dykhouse Declaration**”), Judy Lewis (the “**Abraxas Declaration**”), Charles M. Berk (the “**CBIZ Declaration**”) and Dr. Jon L. Ruckle (the “**PPG Declaration**”) and, collectively with the Dykhouse Declaration, the Abraxas Declaration and the CBIZ Declaration, the “**Supporting Declarations**”); the representations of counsel and other evidence proffered at the Hearing, makes the following findings of fact and conclusions of law:

THE COURT HEREBY FINDS THAT:

**Global Protocol**

- A. The Global Protocol comprises the following documents:
- the Retrieval Protocol annexed hereto as Exhibit 1;
  - the Global Release, substantially in the form annexed hereto as Exhibit 2;

- the Retention Agreements annexed hereto as Exhibits 3, 4, 5 and 6;
- the Budget annexed hereto as Exhibit 7;
- the Non-Binding Election Form, substantially in the form annexed hereto as Exhibit 8;
- the Commitment Letter, substantially in the form annexed hereto as Exhibit 9; and
- the Universal Contract Terms annexed hereto as Exhibit 10.

B. Entry into the Global Protocol is a reasonable exercise of the discretion afforded to the Trustee under the Bankruptcy Code.

C. The disposition of the Materials other than through a collaborative process such as the Global Protocol would present a significant hardship for these bankruptcy estates and the Sponsors.

D. Absent approval of the Global Protocol, determination of the amounts owed to the Storage Facilities (as defined below) and the Sponsors (as defined in the Motion), as well as the possessory rights of Sponsors with respect to Materials, would likely need to be resolved through litigation. Such litigation would be costly, time-consuming, complex and uncertain and would require the Trustee and the Sponsors to incur significant expenses and professional fees.

E. The members of the Sponsor Committee represented the competing interests of all Sponsors fairly and at arm's length in the negotiation and creation of the Global Protocol. As a result, the Global Protocol is a fair, reasonable and efficient compromise that ensures that Materials and other important records in the custody of the Trustee are retrieved and

returned to Sponsors in a manner that is fair, efficient and consistent. The relief sought by the Motion is entirely appropriate under the circumstances of these cases.

F. The Sponsor Committee conducted a fair, efficient and reasonable process in developing the Global Protocol including the solicitation of comments from the Trustee and other Sponsors. The Sponsor Committee further provided periodic reporting to the Trustee, the other Sponsors and this Court regarding the development of the Global Protocol through multiple iterations.

### **Materials**

G. The Sponsor Materials are not and have never been property of the Debtors or their bankruptcy estates pursuant to Section 541 of the Bankruptcy Code or otherwise.

H. The Common Materials and the CCD Materials (as defined in the Retrieval Protocol), to the extent that they were ever property of the Debtors or their bankruptcy estates pursuant to Section 541 of the Bankruptcy Code and were not previously transferred by the Debtors when they were debtors-in-possession prior to the conversion of these cases from Chapter 11 to Chapter 7, are burdensome to the estates. It therefore is a sound exercise of discretion by the Trustee to abandon the Common Materials and the CCD Materials in the manner and at the times set forth in the Retrieval Protocol.

### **Retention of Service Providers**

I. The Sponsor Committee conducted a fair, efficient and reasonable process for the selection of Team Support Services, LLC, d/b/a Abraxas Worldwide (“**Abraxas**”), for the roles of both “IM Consultant” and “AIM Consultant” under the Retrieval Protocol, CBIZ MHM, LLC (“**CBIZ**”), Epiq Bankruptcy Solutions, LLC (“**Epiq**”) and Pacific Pharma Group, LLC

(“**PPG**” and, together with Abraxas, CBIZ and Epiq, the “**Service Providers**”) to provide the services necessary to implement the Global Protocol as described therein and to further negotiate the terms under which those services will be rendered.

J. Abraxas neither represents nor holds any interest adverse to the Debtors or their estates, and its retention by and at the expense of the Participating Sponsors is necessary and in the best interests of both the Debtors’ estates and the Participating Sponsors.

K. CBIZ neither represents nor holds any interest adverse to the Debtors or their estates, and its retention by and at the expense of the Participating Sponsors is necessary and in the best interests of both the Debtors’ estates and the Participating Sponsors.

L. PPG neither represents nor holds any interest adverse to the Debtors or their estates, and its retention by and at the expense of the Participating Sponsors is necessary and in the best interests of both the Debtors’ estates and the Participating Sponsors.

M. Epiq neither represents nor holds any interest adverse to the Debtors or their estates, and its retention by and at the expense of the Participating Sponsors is necessary and in the best interests of both the Debtors’ estates and the Participating Sponsors.

**Settlements with Storage Facilities**

N. The terms of the agreements that the Sponsor Committee has negotiated with Access Information Management and Iron Mountain Information Management, LLC (together, the “**Storage Facilities**”) to resolve all of their claims against the Debtors and their estates are reasonable and in the best interests of the Debtors’ estates and the Sponsors.

**Releases and Exculpation**

O. In light of the extraordinary circumstances of these cases and the meaningful, significant and critical contributions of the Participating Sponsors and others, in

connection with the Global Protocol, the releases in favor of the Participating Sponsors and others included in the Global Release and the exculpation of the Participating Sponsors and others articulated in the Retrieval Protocol and provided in this Order are appropriate and reasonable.

P. In light of the extraordinary circumstances of these cases and the meaningful, significant and critical contributions of the Service Providers and the Storage Facilities in connection with the Global Protocol, the releases in favor of the Service Providers and the Storage Facilities included in the Global Release and the exculpation of the Service Providers and the Storage Facilities articulated in the Retrieval Protocol and provided in this Order are appropriate and reasonable and necessary to effectuate the relief sought pursuant to the Motion.

Q. In light of the extraordinary circumstances of these cases and his meaningful, significant and critical contributions in connection with the Global Protocol, the release in favor of the Trustee and his professionals included in the Global Release and the exculpation of the Trustee and his professionals articulated in the Retrieval Protocol and provided in this Order are appropriate and reasonable.

**Administrative Expense Claim**

R. Subject only to the limitation set forth in Finding T, the actions of the Sponsors and particularly the Sponsor Committee in these cases have been unusual and extraordinary and have conferred significant benefits on the bankruptcy estates of the Debtors and their creditors, the Sponsors and other parties-in-interest. The actions of the Participating Sponsors and particularly the Sponsor Committee, including the incurrence by its members of substantial attorneys' fees and costs in creating and implementing the Global Protocol, will

confer significant benefits on the bankruptcy estates of the Debtors and their creditors, the Sponsors and other parties-in-interest.

S. Subject only to the limitation set forth in Finding T, the Trustee acknowledges that the bankruptcy estates of the Debtors have benefitted and will continue to benefit from the actions of the Participating Sponsors, most clearly in connection with the payment of the Trustee Advance pursuant to the Global Protocol. Hence, the provisions of the Retrieval Protocol relating to the allowance and priority of an administrative expense claim in favor of the Participating Sponsors in an amount equal to the Trustee Advance are appropriate and reasonable.

T. The Trustee and the Sponsor Committee have agreed to defer all other issues relating to the compensation and expenses of the Trustee and his professionals or to additional administrative expense requests and claims of the Participating Sponsors and reserve all of their rights with respect thereto. Nothing contained in this Order shall constitute a finding or determination with respect to any request by the Participating Sponsors for allowance and payment of an administrative expense claim in an amount in excess of the Trustee Advance.

**Other Documents**

U. The remaining documents that constitute the Global Protocol—the Budget annexed to this Order as Exhibit 7, the form of Non-Binding Election Form annexed to this Order as Exhibit 8, the form of Commitment Letter annexed to this Order as Exhibit 9 and the Universal Contract Terms annexed to this Order as Exhibit 10—are all reasonable and necessary to implement the Global Protocol and this Order.

**Adequacy of Notice**

V. Notice of the Motion and the Global Protocol, as described in the Motion and as stated in open court at the Hearing, was duly and properly given in accordance with this Court's *Order Establishing Notice and Service Procedures, Approving Form and Manner of Notice, Fixing the Date for Filing Objections and Responses Thereto, and Scheduling a Final Hearing on Motion to Approve Global Protocol for Retrieval, Review and Return of Study Records* entered May 15, 2014 [ECF No. 802] (the "**Procedures Order**"). Certificates and affidavits reflecting service of notices in compliance with the Procedures Order were filed and are part of the docket and record of these cases [ECF Nos. 803, 813, 818, 819, 820, 821, 822, 823, 826, 827, 828, 829, 830, 831, and 832]. Accordingly, notice of the Motion and the Hearing was proper, adequate and sufficient pursuant to, and in full compliance with, Section 102 of the Bankruptcy Code, Rules 2002, 9007 and 9019 of the Federal Rules of Bankruptcy Procedure and all other rules and orders of this Court.

W. All Sponsors, whether known or unknown, have been afforded a full and fair opportunity to be heard in connection with the Court's consideration of the Motion and the Global Protocol. No objection to the approval of the granting of the Motion, the approval of the Global Protocol, or to any of the relief requested in the Motion has been filed with the Court, announced in open court, or otherwise interposed.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. ***Granting of Motion.*** The Motion is granted in all respects.
2. ***No Objections.*** No objections having been filed, announced, or otherwise interposed, the Court determines that the Motion is unopposed. Any objection is overruled with prejudice.



3. ***Abandonment of Property.*** The Trustee is authorized to abandon the Common Materials and the CCD Materials at the times and under the conditions provided in the Retrieval Protocol.

4. ***Approval of Global Protocol.*** The Global Protocol is approved in all respects. Every provision of the Global Protocol is hereby approved and so ordered and incorporated into this Order as if fully set forth in this paragraph.

5. ***Global Protocol Binding on all Persons.*** Notwithstanding any objection or reservation of rights filed or position taken (or not filed or taken) with respect to the Motion, no Sponsor or any other person whosoever or whatsoever shall be permitted to retrieve or otherwise acquire possession or control of any Materials other than pursuant to the terms of, and in compliance with, the Global Protocol absent a further order of this Court, which order shall be issued only after notice to all Participating Sponsors and interested parties given by the person seeking such an order and an opportunity for all Participating Sponsors to be heard and upon a showing of extraordinary circumstances justifying deviation from the Global Protocol. Any Sponsor desiring to become an Additional Participating Sponsor (as defined in the Retrieval Protocol) seeking relief from the deposit of an additional \$10,000 required by the Retrieval Protocol shall bear the burden of proof to demonstrate by a preponderance of the evidence that (i) it did not receive actual or constructive notice of the opportunity to become an Original Funding Sponsor and (ii) payment of such additional amount would constitute a severe financial hardship. The Original Funding Sponsors and the Trustee will have standing to oppose any request for relief made pursuant to this paragraph.

6. ***Establishment and Status of Escrow Accounts.*** The three escrow accounts to be opened and maintained by CBIZ pursuant to the Retrieval Protocol (the “**Escrow**”

**Accounts**”), with CBIZ, acting as escrow agent, are hereby approved. The funds on deposit in the Escrow Accounts shall at all times remain the property of the Participating Sponsors and neither are nor at any time shall be property of the Debtors, their bankruptcy estates or the Trustee. If any of the Escrow Accounts is not fully funded for any reason, thereby causing the Global Protocol not to be implemented—or if all of the Escrow Accounts are not funded for any reason, thereby causing no part of the Global Protocol to be implemented—then no person shall have any claim to any amount that would have been payable to it if the Global Protocol had been completely implemented, but is not paid because the Global Protocol is not being completely implemented, or any recourse therefor against any member of the Sponsor Committee, the Debtors or their estates, the Trustee or any Escrow Account that has been funded.

7. **Retention of Abraxas.** The retention of Abraxas (for the roles of both “IM Consultant” and “AIM Consultant” under the Retrieval Protocol) by and at the expense of the Participating Sponsors on the terms and conditions contained in this Order and the Global Protocol is authorized and approved, and such retention shall be binding and effective upon such terms and conditions without the execution of the Abraxas Retention Agreement by all or any of the Participating Sponsors. Abraxas shall not be required to file fee applications with this Court or the Trustee. Compensation to Abraxas shall be payable solely as provided, and be subject to the limitations (including the limitation of recourse therefor solely to the Escrow Accounts) contained, in the Global Protocol.

8. **Retention of CBIZ.** The retention of CBIZ, by and at the expense of the Participating Sponsors on the terms and conditions contained in this Order and the Global Protocol is authorized and approved, and such retention shall be binding and effective upon such terms and conditions without the execution of the CBIZ Retention Agreement by all or any of the

Participating Sponsors. CBIZ shall not be required to file fee applications with this Court or the Trustee. Compensation to CBIZ shall be payable solely as provided, and be subject to the limitations (including the limitation of recourse therefor solely to the Escrow Accounts) contained, in the Global Protocol.

9. ***Retention of PPG.*** The retention of PPG by and at the expense of the Participating Sponsors, on the terms and conditions contained in this Order and the Global Protocol, is authorized and approved, and such retention shall be binding and effective upon such terms and conditions without the execution of the Ruckle Retention Agreement by all or any of the Participating Sponsors. PPG shall not be required to file any fee applications with this Court or the Trustee. Compensation to PPG shall be payable solely as provided, and be subject to the limitations (including the limitation of recourse therefor solely to the Escrow Accounts) contained, in the Global Protocol.

10. ***Retention of Epiq.*** The retention of Epiq by and at the expense of the Participating Sponsors on the terms and conditions contained in this Order and the Global Protocol is authorized and approved, and such retention shall be binding and effective upon such terms and conditions without the execution of the Epiq Retention Agreement by all or any of the Participating Sponsors. Epiq shall not be required to file any fee applications with this Court or the Trustee. Compensation to Epiq shall be payable solely as provided, and be subject to the limitations (including the limitation of recourse therefor solely to the Escrow Accounts) contained, in the Global Protocol.

11. ***Approval of Global Release.*** The Global Release is approved in all respects, and the Trustee, the Participating Sponsors, the Service Providers and the Storage Facilities are ordered to execute and deliver executed versions of the Global Release to CBIZ.

Every provision of the Global Release is hereby so ordered and incorporated into this Order as if fully set forth in this paragraph.

12. ***Approval of Settlements with Storage Facilities.*** The terms of the agreements that the Sponsor Committee negotiated with the Storage Facilities to resolve all of their claims against the Debtors are authorized and approved. All amounts to be paid to the Storage Facilities are set forth in the Budget and shall be payable solely as provided, and be subject to the limitations (including the limitation of recourse therefor solely to the Escrow Accounts) contained, in the Global Protocol.

13. ***Storage Facilities Authorized and Directed to Comply.*** Subject only to receiving the payments designated for them in the Budget, the Storage Facilities are hereby authorized and directed to comply with the terms of the Global Protocol that are applicable to them. The Storage Facilities shall provide to Abraxas or the Administrator such documentation concerning the storage, release, preparation for shipment and shipment of Materials as is required by the Global Protocol.

14. ***Payments to the Estate.*** The Trustee Advance shall be payable solely as provided, and be subject to the limitations (including the limitation of recourse therefor solely to the Escrow Accounts) contained, in the Global Protocol. Nothing in this Order shall constitute the allowance of any compensation or reimbursement of expenses of the Trustee or his professionals, which remains subject in all respects to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules and orders of this Court and with respect to which all parties' rights are wholly preserved.

15. ***Exculpation.*** Except as otherwise provided in this paragraph, there shall be complete exculpation of and for the Trustee, each member of the Sponsor Committee in its

capacity as such, each Participating Sponsor, the Sponsor-Related Persons (as defined in the Global Release), the Service Providers, the Storage Facilities and each of their respective employees, officers, directors, agents, other representatives, successors, assigns and professionals (collectively, the “**Exculpated Persons**”) for and in connection with any and all acts or omissions relating directly or indirectly to the release, transportation, review, disposition, storage or destruction of any Materials, including, without limitation, the Sponsor Materials, the Common Materials, the CCD Materials and the Orphan Materials (as defined in the Retrieval Protocol), and related financial and other administrative functions of the Administrator and the other Service Providers, pursuant to the Global Protocol (collectively, the “**Exculpated Matters**”), and no Exculpated Person shall have any liability to any other person whatsoever arising out of or in connection with any Exculpated Matter. Notwithstanding the immediately preceding sentence, no Exculpated Person shall be exculpated from liability for (a) compensatory damages for the material breach of the Global Protocol or any order of this Court entered in these Cases or (b) the gross negligence, recklessness, willful misconduct or illegal conduct that is criminal, fraudulent or found by this Court to be otherwise illegal if perpetuated by the Exculpated Person or another person for which the Exculpated Person is vicariously liable as a matter of law or contract. Nothing contained in this paragraph shall affect in any respect any claims asserted in a proof of claim duly filed in the Cases or the administrative expense claim of the Participating Sponsors allowed under paragraph 16 of this Order. This Court shall retain exclusive jurisdiction over any claim or demand against any Exculpated Person for any Exculpated Matter, and no person shall bring any claim or demand against any Exculpated Person for any Exculpated Matter in any court or other tribunal other than this Court. Any person that brings a claim or demand against an Exculpated Person in violation of the preceding

sentence shall bear the reasonable attorneys' fees and costs of the Exculpated Person and all other damages and expenses incurred as a result of such violation. Further, any person asserting against any Exculpated Person in any court or other tribunal, including this Court, any claim or demand, for which the Exculpated Person is exculpated by this Order, shall bear the reasonable attorneys' fees and costs of the Exculpated Person and all other damages and expenses incurred in defending against such claim or demand.

16. *Allowance of Administrative Claim—Participating Sponsors.* The Participating Sponsors, through the Administrator, shall have an allowed administrative expense claim pursuant to Section 503(b) of the Bankruptcy Code, for the amount of the Trustee Advance paid by them out of the Escrow Account (the “**Sponsor Administrative Claim**”) with priority over all other administrative expense claims in these Chapter 7 cases other than allowed fees and expenses of the Trustee and his professionals. Neither the Participating Sponsors separately nor the Administrator on their behalf shall be required to file a request for payment of the Sponsor Administrative Claim.

17. *Universal Contract Terms.* The Universal Contract Terms annexed hereto as Exhibit 10 is hereby approved in all respects and is hereby incorporated into every “Contract” as that term is defined in the Universal Contract Terms with the effect described therein.

18. *Other Documents Constituting the Global Protocol.* The remaining documents that constitute the Global Protocol—the Budget annexed hereto as Exhibit 7, the form of Non-Binding Election Form annexed hereto as Exhibit 8 and the form of Commitment Letter annexed hereto as Exhibit 9—are hereby approved. Upon its execution by a Sponsor, the Commitment Letter shall be binding and enforceable in accordance with its terms.

19. ***Implementation of Global Protocol.*** CBIZ shall administer the Global Protocol on a day-to-day basis subject to the ongoing guidance and supervision of the Sponsor Committee. CBIZ and the Sponsor Committee are authorized to take such other steps, execute such other documents and do such other things as are not inconsistent with this Order and are necessary and appropriate to implement the Global Protocol. The Sponsor Committee may, but shall not be required to, seek a further order of this Court in the event that unforeseen circumstances arise that are not contemplated by the terms of the Global Protocol.

20. ***Retention of Jurisdiction.*** The Court shall retain and have exclusive jurisdiction to hear and determine any disputes arising out of this Order including, without limitation, disputes related to the interpretation and implementation of the Global Protocol and requests from the Sponsor Committee to consider and act upon unforeseen circumstances not contemplated by the terms of the Global Protocol.

21. ***Final Order Effective Immediately; Inapplicability of Rule 6004(h).*** This Order is a final order and shall become effective immediately upon being entered by the Court. The stay provided by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure shall not be applicable to this Order. The period during which an appeal from this Order, if any is to be taken, must be filed shall commence upon the entry of this Order.

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**Submitted by:**

Russell M. Blain, Esquire

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**Copy furnished to:**

Russell M. Blain, Esquire

*(Attorney Blain is directed to serve a copy of this Order upon all parties receiving notice via the Court's CM/ECF system.)*



**Comprehensive Clinical Development, Inc.**

Record Retrieval Protocol

June \_\_, 2014

This Retrieval Protocol sets forth the terms and conditions upon which Sponsors may retrieve certain Sponsor Materials and gain access to certain Common Materials that are in the possession of the Storage Facilities.

**I. Overview**

A. Administrator

1. CBIZ MHM, LLC (including any successor, "Administrator") will be retained to act as escrow agent, administer the tasks assigned to it herein, collect payments from Sponsors, disburse payments required hereunder and administer the refund process. The Administrator will make monthly reports to the Sponsors regarding the record retrieval process governed by this Global Protocol and the status and activity of the escrow accounts described below.

B. Escrow Accounts

1. Sponsors shall fund three escrow accounts:

a. ***Administrative Expense Account.*** The purpose of this account is to fund certain fees and expenses of the Trustee and his professionals related to the retrieval of and access to the Materials, to pay the fees and expenses of the Administrator, to fund shortfalls in the AIM-Related Account and the IM-Related Account, to receive payments from the CCD bankruptcy estate, if any, and to make refund payments, if any, to Sponsors.

b. ***AIM-Related Account.*** The purpose of this account is to fund (i) the applicable charges of AIM, (ii) the costs of shipping the AIM Materials, other than the AIM Florida CDs, from AIM to the AIM Consultant, (iii) the costs of shipping the AIM Florida CDs to the AIM Consultant and the related charges of IM and (iv) the fees and other applicable charges of the AIM Consultant to effect the retrieval, review, disposition and destruction of AIM Materials and access to the AIM CDs.

c. ***IM-Related Account.*** The purpose of this account is to fund (i) the applicable charges of Iron Mountain (excluding charges relating to the AIM Florida CDs), (ii) the costs of shipping the IM Materials to the IM Consultant and (iii) the fees and other applicable charges of the IM Consultant to effect the retrieval, review, disposition and destruction of IM Materials and access to the IM CDs.

2. All escrow accounts shall be held by the Administrator as escrow agent.

## **II. Funding Commitments and Timing of Payments**

### **A. Non-Binding Election Forms**

1. Within three business days after entry of the Approval Order, the Administrator shall deliver the Non-Binding Election Form to each known Sponsor by e-mail.

2. The Non-Binding Election Form provides for each Sponsor to identify itself as either an IM Sponsor, an AIM Sponsor or both and to state its non-binding intent to participate in this Retrieval Protocol. Sponsors having no Sponsor Materials stored at AIM or Iron Mountain that desire to obtain access to only Common Materials stored at such Storage Facility will so indicate on the Non-Binding Election Form.

3. The Non-Binding Election Form shall be completed and returned to the Administrator by e-mail no later than 10 business days after entry of the Approval Order. Sponsors that do not timely return the Non-Binding Election Form shall not be permitted to become Original Funding Sponsors but may become Additional Participating Sponsors in accordance with the terms hereof. A Sponsor that identifies itself as an AIM Sponsor on the Non-Binding Election Form and thereafter becomes an Original AIM Funding Sponsor (as well necessarily as an Original Administrative Funding Sponsor) but is later determined to have Sponsor Materials stored at Iron Mountain (or vice versa), shall be permitted to become an Additional IM Participating Sponsor (or vice versa) in accordance with the terms hereof.

4. The Non-Binding Election Form will be used by the Administrator for calculating the Minimum Funding Commitment. Completing and returning the Non-Binding Election Form shall not obligate a Sponsor to pay any amount or to participate in this Retrieval Protocol.

### **B. Minimum Funding Commitment**

1. After receiving the completed Non-Binding Election Forms, the Administrator will calculate the amount due from each Sponsor that returned such form as provided herein and thereby establish a Minimum Funding Commitment for that Sponsor. The Administrator shall notify each Sponsor that returned a Non-Binding Election Form in writing of its Minimum Funding Commitment within 10 business days after the deadline for return of the Non-Binding Election Forms.

2. The Minimum Funding Commitment shall represent a Sponsor's aggregate obligation to make deposits into one, two or three of the escrow accounts. The Minimum Funding Commitment shall be severable if, as contemplated by paragraph II.C.6, the Administrator determines that the Administrative Expense Account and one (but not both) of the IM-Related Account and the AIM-Related Account are fully funded.

3. Upon receipt of notice from the Administrator, each Sponsor that returned a Non-Binding Election Form shall within five business days sign and return to the Administrator the Global Release and the Commitment Letter.

4. Within two business days after the deadline for submission of the Global Release and the Commitment Letter, the Administrator shall notify all Sponsors that returned

Commitment Letters whether funding commitments have been received in an amount sufficient to fund the escrow accounts.

5. If the Administrator receives Commitment Letters sufficient to fund the Administrative Expense Account and either or both of the AIM-Related Account and the IM-Related Account, the Sponsors making the commitments resulting in two or three fully-funded escrow accounts shall be referred to as “Original Funding Sponsors” with respect to such fully-funded escrow accounts. The Original Funding Sponsors that fund the AIM-Related Account are referred to as “Original AIM Funding Sponsors,” the Original Funding Sponsors that fund the IM-Related Account are referred to as “Original IM Funding Sponsors,” and the Original Funding Sponsors that fund the Administrative Expense Account are referred to as “Original Administrative Funding Sponsors.”

6. If the Administrator receives signed Commitment Letters sufficient to fund all three escrow accounts, the Administrator shall deliver a notice to the Original Funding Sponsors setting forth the deadline for payment of each Sponsor’s Minimum Funding Commitment, which shall be 25 business days after the date of such notice.

#### C. Adjustments to Minimum Funding Commitment

1. If the Administrator does not receive Commitment Letters sufficient to fund any one or more of the escrow accounts, the Administrator shall promptly schedule a conference call with all Sponsors that have returned a Commitment Letter.

2. The Administrator shall chair the conference call and have the discretion to adjourn the conference call from time to time.

3. For each under-funded escrow account, the Administrator shall calculate and announce the amount that will be required to fund that escrow account as provided herein if all Sponsors participating on the conference call agree to fund such amount. The Administrator will then poll each Sponsor on the call and ask if it is willing to pay such amount. If each Sponsor agrees, then each such Sponsor shall be an Original Funding Sponsor with respect to the escrow account in question. The process will be repeated for any remaining under-funded escrow accounts.

4. If any one of the escrow accounts remains under-funded after the poll taken by the Administrator, then the Administrator will recalculate the amount required for the still-committed Sponsors and re-solicit acceptances of the new amount. This process will continue until all remaining Sponsors have committed to fund the amount calculated by the Administrator for that escrow account. The Sponsors that ultimately make commitments sufficient to fund that escrow account shall be Original Funding Sponsors with respect to that escrow account.

5. Updated Commitment Letters for the increased Minimum Funding Commitment established on the conference call shall be delivered to the Administrator by the close of business on the next business day after the conference call. Payment of the increased Minimum Funding Commitment shall be due no later than 25 business days after the date of the conference call.

6. If, at the conclusion of the conference call, there are no Original Funding Sponsors or in the event of a funding shortfall as set forth in paragraph IX.F.3, the Trustee shall be entitled to dispose of the Materials in any reasonable and appropriate manner to be authorized by the Bankruptcy Court; provided, however, that if the Administrative Expense Account and one of the AIM-Related Account or the IM-Related Account are funded, then the process described herein shall continue with respect to retrieval of Materials from the Storage Facility with respect to which the escrow account has been funded. Sponsors shall retain their rights in Materials located at the Storage Facility with respect to which the escrow account is unfunded.

D. The Administrator shall return or destroy signed counterparts of the Global Release and Commitment Letter to all Sponsors that signed and returned them who, pursuant any provisions of this Retrieval Protocol, do not become Original Funding Sponsors.

### **III. Administrative Expense Account**

A. The amount required to fund the Administrative Expense Account as shown by the Administrative Expense Budget is referred to herein as the “Administrative Amount.”

B. The Minimum Funding Commitment for the Administrative Expense Account for each Original Funding Sponsor shall be equal to the Administrative Amount divided by the number of Sponsors electing to retrieve any Materials or to become entitled to access to any Common Materials in accordance with the Global Protocol.

C. Any Sponsor electing to retrieve Sponsor Materials or to become entitled to access to AIM CDs or IM CDs and become an Original AIM Funding Sponsor or an Original IM Funding Sponsor must also become an Original Administrative Funding Sponsor.

D. The Trustee Advance shall be payable to the Trustee by the Administrator promptly after receipt by the Administrator of the Administrative Amount. The Trustee may use the Trustee Advance to pay any fees and expenses, including fees and expenses of his professionals, allowed by the Bankruptcy Court.

### **IV. AIM-Related Account and Process**

A. The AIM Consultant will be engaged to review the AIM Materials and manage the related retrieval process.

#### **B. Funding**

1. The amount required to fund the AIM-Related Account as shown by the AIM Budget is referred to herein as the “AIM Amount.”

2. The Administrator will determine each Original AIM Funding Sponsor’s Minimum Funding Commitment as follows:

a. PPG will initially compile a list of known AIM Sponsors and estimated number of boxes containing the AIM Materials of each such Sponsor.

b. PPG will provide these estimates to the Administrator, who will calculate the per-box Minimum Funding Commitment with respect to the AIM-Related Account by dividing the AIM Amount by the total number of boxes estimated to belong to the known AIM Sponsors. PPG's duties and the terms of its engagement to perform the services mentioned in subparagraphs a. and b. will be approved by the Bankruptcy Court as part of the Global Protocol, and its compensation shall be included in the AIM Budget.

c. For purposes of calculating the Minimum Funding Commitment and the Adjusted AIM Funding Amount, each AIM Sponsor shall be deemed to have at least 10 boxes, notwithstanding that such AIM Sponsor has less than 10 (or no) boxes.

3. If an Original AIM Funding Sponsor (and therefore necessarily also an Original Administrative Funding Sponsor) learns prior to the IM Termination Date that it was mistaken in believing that it was an AIM Sponsor (or that it was only an AIM Sponsor) and that it in fact is an IM Sponsor (or also an IM Sponsor) and it promptly so notifies the Administrator and the Sponsor Committee, it shall be permitted to change its status to Original IM Funding Sponsor (or add the status of Additional IM Funding Sponsor) upon making such additional payment to the IM-Related Account as the Administrator determines in consultation with the Sponsor Committee to be required by the Global Protocol and to be reasonable and fair. The Administrator shall have discretion to transfer funds between the AIM-Related Account and the IM-Related Account and to make other adjustments to reflect such changes or additions of status and additional payments.

### C. AIM Record Retrieval

1. After the Original AIM Funding Sponsors have been identified and they have paid all amounts due and the Administrator has confirmed that the AIM-Related Account is fully funded, the AIM Consultant will implement the retrieval and review of all AIM Materials.

2. For any Participating AIM Sponsor that has paid all amounts due hereunder to the Administrator, the AIM Consultant shall certify that no other Sponsor's AIM Materials are contained in such Participating AIM Sponsor's boxes and follow the Participating AIM Sponsor's instructions regarding its boxes of Sponsor-owned AIM Materials (*i.e.* retaining the Materials at the AIM Consultant under a new account, ship to AIM or another location, destroy certain Materials, etc.). The costs associated with the AIM Consultant's compliance with the instructions of such Participating AIM Sponsor shall be borne solely by such Sponsor. If such instructions are not given within 30 days, the cost of ongoing storage of the Sponsor's Materials shall be borne solely by that Sponsor.

3. During the retrieval and review process, the AIM Consultant will identify the precise number of boxes containing AIM Materials owned by each Participating AIM Sponsor, including boxes which contain both AIM Materials owned by that Participating AIM Sponsor and other AIM Materials. Thereafter, the Administrator will divide the AIM Amount by the total number of boxes owned by the Participating AIM Sponsors to determine the per-box allocation of the AIM Amount ("AIM Per-Box Charge").

4. If the product obtained by multiplying the AIM Per-Box Charge by the number of boxes containing AIM Materials owned by a Participating AIM Sponsor, subject to paragraph IV.B.4.c (“Adjusted AIM Funding Amount”) is *greater* than such Participating AIM Sponsor’s Minimum Funding Commitment, the Administrator will notify such Participating AIM Sponsor thereof, and such Participating AIM Sponsor shall, within 10 business days, pay the difference to the Administrator. Until an AIM Sponsor has made all payments due to the Administrator hereunder, it shall have no access or rights to its AIM Materials or to any AIM CDs, except in a Sponsor Emergency.

5. As liquidity permits and at times in the discretion of the Administrator, the Administrator shall pay to any Participating AIM Sponsor whose Minimum Funding Commitment exceeds its Adjusted AIM Funding Amount the amount of such excess *pro rata*.

6. The AIM Consultant shall have discretion to retrieve boxes of AIM Materials in the order it deems most efficient and economical. To the extent it will not unreasonably delay or increase the cost of its work, the AIM Consultant shall retrieve boxes containing AIM Materials owned by Original AIM Funding Sponsors first and, next, the boxes containing AIM Materials owned by Additional Participating AIM Sponsors.

#### 7. Conclusion of AIM Record Retrieval

a. The record retrieval process for AIM shall terminate on the AIM Termination Date.

b. On or as soon as practicable after the AIM Termination Date, all AIM Materials (from such time being referred to as “AIM Orphan Materials”) other than Sponsor Materials belonging to Participating AIM Sponsors (which shall be dealt with in accordance with paragraph IV.C.2), the AIM CDs (which shall be retained in accordance with paragraph VI.A) and CCD Materials (which shall be treated in accordance with paragraph VI.C.1), will be deemed abandoned by every Person having any claim thereto and shall be destroyed by the AIM Consultant. The cost of such destruction shall be included in the AIM Budget.

c. Upon the destruction of the AIM Orphan Materials, the AIM Consultant shall be discharged from any further duties or responsibilities with respect to the AIM Materials under the Global Protocol, but all duties and responsibilities of the AIM Consultant with respect to the AIM CDs shall continue as set forth herein. Nothing in this paragraph shall affect the terms of agreements between individual Participating Sponsors and Abraxas.

### **V. IM-Related Account and Process**

A. The IM Consultant will be engaged as a consultant to review the IM Materials and manage the retrieval process.

#### **B. Funding**

1. The amount required to fund the IM-Related Account as shown by the IM Budget is referred to herein as the “IM Amount.”

2. The Administrator will determine each Original IM Funding Sponsor's initial obligation to fund the IM-Related Account as follows:

3. Each Larger Company that elects to retrieve Sponsor-owned IM Materials or to become entitled to access to IM CDs shall be counted as having two shares, and each Sponsor that elects to retrieve Sponsor-owned IM Materials or to become entitled to access to IM CDs and that is not a Larger Company shall be counted as having one share. The Administrator shall determine each Sponsor's Minimum Funding Commitment for the IM-Related Account by dividing the IM Amount by the total number of shares of the Original IM Funding Sponsors. Each Original IM Funding Sponsor that is a Larger Company shall be responsible for paying two shares, and each Original IM Funding Sponsor that is not a Larger Company shall be responsible for paying one share.

4. If an Original IM Funding Sponsor (and therefore necessarily also an Original Administrative Funding Sponsor) learns prior to the AIM Termination Date that it was mistaken in believing that it was an IM Sponsor (or that it was only an IM Sponsor) and that it in fact is an AIM Sponsor (or also an AIM Sponsor) and it promptly so notifies the Administrator and the Sponsor Committee, it shall be permitted to change its status to Original AIM Funding Sponsor (or add the status of Additional AIM Funding Sponsor) upon making such additional payment to the AIM-Related Account as the Administrator determines in consultation with the Sponsor Committee to be required by the Global Protocol and to be reasonable and fair. The Administrator shall have discretion to transfer funds between the IM-Related Account and the AIM-Related Account and to make other adjustments to reflect such changes or additions of status and additional payments.

### C. IM Record Retrieval

1. After the Original IM Funding Sponsors have been identified and they have paid all amounts then due and the Administrator has confirmed that the IM-Related Account is fully funded, the IM Consultant will implement the retrieval and review of all IM Materials.

2. For any Participating IM Sponsor that has paid all amounts due hereunder to the Administrator, the IM Consultant shall certify that no other Sponsor's IM Materials are contained in such Participating IM Sponsor's boxes and follow the Participating IM Sponsor's instructions regarding its boxes (*i.e.* retaining the records at the IM Consultant under a new account, returning the Materials to Iron Mountain, ship to another location, destroy certain Materials, etc.). The costs associated with the IM Consultant's compliance with the instructions of such Participating IM Sponsor shall be borne solely by such Participating IM Sponsor. If such instructions are not given within 30 days, the cost of ongoing storage of the Sponsor's Materials shall be borne solely by that Sponsor.

3. During the retrieval and review process, the IM Consultant will identify the precise number of boxes containing IM Materials owned by each Participating IM Sponsor, including boxes which contain both IM Materials owned by that Participating IM Sponsor and other IM Materials and identify such Participating IM Sponsor as a Level 1 IM Sponsor, a Level 2 IM Sponsor, a Level 3 IM Sponsor or a Level 4 IM Sponsor.

a. Level 1 IM Sponsors are Participating IM Sponsors owning more than 199 boxes of IM Materials, including, if any, boxes in which its IM Materials had been commingled with other IM Materials. Each Level 1 IM Sponsor shall bear three shares for the purpose of paragraph V.C.4.

b. Level 2 IM Sponsors are Participating Sponsors owning less than 200 and more than 49 boxes of IM Materials, including, if any, boxes in which its IM Materials had been commingled with other IM Materials. Each Level 2 IM Sponsor shall bear two shares for the purpose of paragraph V.C.4.

c. Level 3 IM Sponsors are Participating IM Sponsors owning less than 50 and more than 19 boxes of IM Materials, including, if any, boxes in which its IM Materials had been commingled with other IM Materials. Each Level 3 IM Sponsor shall bear 1.5 shares for the purpose of paragraph V.C.4.

d. Level 4 IM Sponsors are Participating IM Sponsors owning less than 20 (or no) boxes of IM Materials, including, if any, boxes in which its IM Materials had been commingled with other IM Materials. Each Level 4 IM Sponsor shall bear one share for the purpose of paragraph V.C.4.

4. After every Participating IM Sponsor has been identified as a Level 1 IM Sponsor, a Level 2 IM Sponsor, a Level 3 IM Sponsor or a Level 4 IM Sponsor, the Administrator shall allocate the IM Amount by, first, dividing it by the total number of shares to determine a per-share allocable amount and, second, multiplying the result by the applicable number of shares for each Participating IM Sponsor (such amount is the “Adjusted IM Funding Amount” for each Participating IM Sponsor).

5. After the Administrator has determined the Adjusted IM Funding Amount in accordance with paragraph V.C.4, the Administrator will notify each Participating IM Sponsor whose Adjusted IM Funding Amount exceeds its Minimum Funding Commitment of the excess, and such Participating IM Sponsor shall, within 10 business days, pay the difference to the Administrator. Until a Participating IM Sponsor liable to make a payment to the Administrator under the immediately preceding sentence has done so in full, it shall have no access or rights to its IM Materials or to any IM CDs, except in a Sponsor Emergency.

6. As liquidity permits and at times in the discretion of the Administrator, the Administrator shall pay to any Participating IM Sponsor whose Minimum Funding Commitment exceeds its Adjusted IM Funding Amount the amount of such excess *pro rata*.

7. The IM Consultant shall have discretion to retrieve the boxes of IM Materials in the order it deems most efficient and economical. To the extent it will not unreasonably delay or increase the cost of its work, the IM Consultant shall retrieve boxes containing IM Materials of Original IM Funding Sponsors first and, next, the boxes containing IM Materials of Additional Participating IM Sponsors.



8. Conclusion of IM Record Retrieval

a. The record retrieval process for IM shall terminate on the IM Termination Date.

b. On or as soon as practicable after the IM Termination Date, all IM Materials (from such time being referred to as “IM Orphan Materials” and, together with the AIM Orphan Materials, “Orphan Materials”) other than Sponsor Materials belonging to Participating IM Sponsors (which shall be dealt with in accordance with paragraph V.C.2), the IM CDs (which shall be retained in accordance with paragraph VI.B) and CCD Materials (which shall be treated in accordance with paragraph VI.C.2), will be deemed abandoned by every Person having any claim thereto and shall be destroyed by the IM Consultant. The cost of such destruction shall be included in the IM Budget.

c. Upon the destruction of the IM Orphan Materials, the IM Consultant shall be discharged from any further duties or responsibilities with respect to the IM Materials under the Global Protocol, but all duties and responsibilities of the IM Consultant with respect to the IM CDs shall continue as provided herein. Nothing in this paragraph shall affect the terms of agreements between individual Participating Sponsors and Abraxas.

**VI. Common Materials and CCD Materials**

A. AIM Common Materials

1. The AIM Florida CDs shall be shipped to the AIM Consultant. The cost of such shipping, to the extent Materials can be readily identified as AIM Florida CDs, shall be included in the AIM Budget.

2. Immediately upon the receipt by the AIM Consultant of any AIM CDs, such AIM CDs shall be deemed abandoned by the Trustee and ownership of such AIM CDs shall vest jointly in the Participating AIM Sponsors.

3. The AIM CDs shall be stored by the AIM Consultant for a period of not less than five years. Any one or more Participating AIM Sponsors may agree with the AIM Consultant to extend the five-year storage period for the AIM CDs (the costs associated with such an extension are not covered by the AIM Budget and shall be the sole responsibility of the Participating AIM Sponsors seeking it), but in the absence of such an agreement all of the AIM CDs shall be destroyed by the AIM Consultant.

a. Any AIM Sponsor requiring access to the AIM CDs before the end of the five-year period shall (a) be either (i) an Original AIM Funding Sponsor or (ii) become an Additional Participating AIM Sponsor in accordance with the terms hereof and (b) pay to the Administrator all costs associated with copying or retrieving the AIM CDs, which amount shall be determined in consultation with the AIM Consultant.

b. No Persons shall have any rights in or to the AIM CDs after such five-year period other than Participating AIM Sponsors which agree with the AIM Consultant to extend the five-year period and bear an allocable share of the costs associated with such an exten-

sion, and they shall have the right to control access to and the disposition of the AIM CDs without the approval or consent of the Bankruptcy Court, the Trustee, the Sponsor Committee or any other Person.

4. All costs associated with the AIM CDs not covered by the AIM Budget shall be the sole responsibility of the AIM Sponsors severally. AIM and the AIM Consultant shall have no obligations to incur any unbudgeted costs associated with the AIM CDs.

**B. IM Common Materials**

1. Immediately upon the receipt by the IM Consultant of any IM CDs, such IM CDs shall be deemed abandoned by the Trustee and ownership of such IM CDs shall vest jointly in the Participating IM Sponsors.

2. The IM CDs shall be stored by the IM Consultant for a period of five years. Any one or more Participating IM Sponsors may agree with IM Consultant to extend the five-year storage period for the IM CDs (the costs associated with such an extension are not covered by the IM Budget and shall be the sole responsibility of the Participating IM Sponsors seeking it), but in the absence of such an agreement all of the IM CDs shall be destroyed by IM Consultant.

a. Any IM Sponsor requiring access to the IM CDs shall (a) be either (i) an Original IM Funding Sponsor or (ii) become an Additional Participating IM Sponsor in accordance with the terms hereof, and (b) pay to the Administrator any costs associated with copying or retrieving the IM CDs when requested, which amount shall be determined in consultation with IM Consultant.

b. No Persons shall have any rights in or to the IM CDs after such five-year period other than Participating IM Sponsors which agree with IM Consultant to extend the five-year period and bear an allocable share of the costs associated with such an extension, and they shall have the right to control access to and the disposition of the IM CDs without the approval or consent of the Bankruptcy Court, the Trustee, the Sponsor Committee or any other Person.

3. All costs associated with the IM CDs not covered by the IM Budget shall be the sole responsibility of the IM Sponsors severally. IM Consultant shall have no obligations to incur any unbudgeted costs associated with the IM CDs.

**C. CCD Materials**

1. Immediately upon the receipt by the AIM Consultant of any AIM CCD Materials, such AIM CCD Materials shall be deemed abandoned by the Trustee. When the AIM Consultant has identified any Materials that it has received as AIM CCD Materials, such AIM CCD Materials (and, in any event on or as soon as practicable after the AIM Termination Date, all AIM CCD Materials remaining in the possession of the AIM Consultant) shall be destroyed by the AIM Consultant. The cost of such destruction shall be included in the AIM Budget.

2. Immediately upon the receipt by the IM Consultant of any IM CCD Materials, such IM CCD Materials shall be deemed abandoned by the Trustee. When the IM Consultant has identified any Materials that it has received as IM CCD Materials, such IM CCD Materials (and, in any event on or as soon as practicable after the IM Termination Date, all IM CCD Materials remaining in the possession of the IM Consultant) shall be destroyed by the IM Consultant. The cost of such destruction shall be included in the IM Budget.

## **VII. Participation By Sponsors that are Not Original Funding Sponsors**

A. Additional Administrative Funding Sponsor. At any time before the AIM Participating Sponsor Deadline or the IM Participating Sponsor Deadline (each as defined below), a Sponsor that is not an Original Funding Sponsor may become an “Additional Administrative Funding Sponsor” by (i) signing the Global Release and (ii) making a deposit in an amount determined by the Administrator equal to the sum of the amount required to be paid by each Original Administrative Funding Sponsor as part of its Minimum Funding Commitment pursuant to paragraph III.B plus \$10,000.

### B. Additional Participating AIM Sponsor

1. At any time before the AIM Participating Sponsor Deadline, an AIM Sponsor that is not an Original AIM Funding Sponsor may elect to retrieve its AIM Materials or secure access to the AIM CDs by (i) making a deposit, in an amount determined by the Administrator (generally on a monthly basis), equal to (x) the Adjusted AIM Funding Amount for such Sponsor or (y) solely if the Adjusted AIM Funding Amount for such Sponsor is unknown, the Minimum Funding Commitment that would have been required of such Sponsor had it been an Original AIM Funding Sponsor and (ii) becoming an Additional Administrative Funding Sponsor in accordance with paragraph VII.A.

2. A Sponsor that satisfies the two immediately preceding conditions is referred to as an “Additional Participating AIM Sponsor.”

### C. Additional Participating IM Sponsor

1. At any time before the IM Participating Sponsor Deadline, an IM Sponsor that is not an Original IM Funding Sponsor may elect to retrieve IM Materials or secure access to the IM CDs by (i) making a deposit, in an amount determined by the Administrator (generally on a monthly basis), equal to (x) the Adjusted IM Funding Amount for such Sponsor or (y) solely if the Adjusted IM Funding Amount for such Sponsor is unknown, the Minimum Funding Commitment that would have been required of such Sponsor had it been an Original IM Funding Sponsor and (ii) becoming an Additional Administrative Funding Sponsor in accordance with paragraph VII.A.

2. A Sponsor that satisfies the two immediately preceding conditions is referred to as an “Additional Participating IM Sponsor.”

D. Extension of Participating Sponsor Deadline.

1. The Administrator may – but shall not be required to – extend the AIM Participating Sponsor Deadline if the Administrator reasonably concludes after consultation with the AIM Consultant and the Sponsor Committee that such extension is not likely to delay the occurrence of the AIM Termination Date. The Administrator may place such conditions on an extension, including the payment of additional funds by the party seeking such extension, that the Administrator deems reasonable and prudent.

2. The Administrator may – but shall not be required to – extend the IM Participating Sponsor Deadline if the Administrator reasonably concludes after consultation with the IM Consultant and the Sponsor Committee that such extension is not likely to delay the occurrence of the IM Termination Date. The Administrator may place such conditions on an extension, including the payment of additional funds by the party seeking the benefit of such extension, that the Administrator deems reasonable and prudent.

E. Materials of Sponsors that are Not Participating Sponsors

1. As it is implementing the retrieval and review of all IM Materials, the IM Consultant shall notify the Administrator if the IM Consultant finds and identifies Sponsor Materials belonging to a Sponsor that is not a Participating IM Sponsor (whether or not it is a Participating AIM Sponsor). Unless the Administrator reasonably believes that such Sponsor has had previous notice of the existence of Sponsor Materials that may belong to it among the IM Materials, it shall use reasonable efforts to notify such Sponsor of the opportunity to become an Additional Participating IM Sponsor.

2. As it is implementing the retrieval and review of all AIM Materials, the AIM Consultant shall notify the Administrator if the AIM Consultant finds and identifies Sponsor Materials belonging to a Sponsor that is not a Participating AIM Sponsor (whether or not it is a Participating IM Sponsor). Unless the Administrator reasonably believes that such Sponsor has had previous notice of the existence of Sponsor Materials that may belong to it among the AIM Materials, it shall use reasonable efforts to notify such Sponsor of the opportunity to become an Additional Participating AIM Sponsor.

**VIII. Refunds of Overpayments**

A. AIM-Related Account

1. If, after the AIM Materials of all Participating AIM Sponsors have been retrieved and returned to the Participating AIM Sponsors, all payments due under paragraph IV.C.5 have been made and all AIM CDs have been located, verified and stored by the AIM Consultant, there is a balance remaining in the AIM-Related Account in excess of \$10,000, the Administrator shall refund such excess amount as follows:

a. First, to any Participating Sponsors that contributed funds to the AIM-Related Account in response to a funding shortfall, as described in paragraph IX.F.2.

b. Second, to the Original AIM Funding Sponsors, pro rata in accordance with the amount of their Adjusted AIM Funding Amount.

c. Third, to the Additional Participating AIM Sponsors pro rata in accordance with the amounts paid by each of them to the AIM-Related Account.

2. If the balance is less than \$10,000, the Administrator shall deposit it in the Administrative Expense Account.

#### B. IM-Related Account

1. If, after the IM Materials of all Participating IM Sponsors have been retrieved and returned to the Participating IM Sponsors, all payments due under paragraph V.C.6 have been made and all IM CDs have been located, verified and stored by the IM Consultant, there is a balance remaining in the IM-Related Account in excess of \$10,000, the Administrator shall refund such excess amount as follows:

a. First, to any Participating Sponsors that contributed funds to the IM-Related Account in response to a funding shortfall, as described in paragraph IX.F.2.

b. Second, to the Original IM Funding Sponsors, pro rata in accordance with the amount of their Adjusted IM Funding Amount.

c. Third, to the Additional Participating IM Sponsors pro rata in accordance with the amounts paid by each of them to the IM-Related Account.

2. If the balance is less than \$10,000, the Administrator shall deposit it in the Administrative Expense Account.

C. Administrative Expense Account. If there are funds in the Administrative Expense Account on the later of the AIM Termination Date and the IM Termination Date, then the Administrator shall refund that amount to the Participating Sponsors that have deposited funds into the account on a pro rata basis in accordance with each of their total contributions to the account; ***provided, however***, that if compliance with the foregoing requirement would result in payments to Participating Sponsors in an amount less than \$100 per Participating Sponsor, then the Administrator shall not refund any amounts to the Participating Sponsors and instead shall pay the excess funds to a charitable organization of its choosing.

### **IX. Miscellaneous Provisions**

#### A. Claim of Participating Sponsors Against CCD Bankruptcy Estate

1. The Participating Sponsors, through the Administrator, shall have an allowed administrative expense claim pursuant to Section 503(b) of the Bankruptcy Code, for the amount of the Trustee Advance paid by them out of the Administrative Expense Account (“Sponsor Allowed Administrative Claim”) with priority over all other administrative expense claims in CCD’s Chapter 7 case other than the allowed fees and expenses of the Trustee and his profes-

sionals. The Trustee consents to the allowance and priority of the Sponsor Allowed Administrative Claim.

2. Nothing contained herein, the Approval Order or any other document shall preclude the Participating Sponsors from filing and seeking payment of any other administrative expenses and claims to which they believe they are entitled or preclude the Trustee from objecting to their entitlement thereto or the amount or priority thereof. Except as provided in paragraph IX.A.1, all issues relating to the fees and expenses of the Trustee and his professionals or to administrative expense requests and claims of the Participating Sponsors are deferred and the rights of the Trustee and the Participating Sponsors with respect thereto are preserved.

#### B. Global Release

1. Notwithstanding anything herein to the contrary, no Sponsor may receive any Materials, receive any refund, or enjoy any other benefit hereunder until it has executed and returned the Global Release.

#### C. Eagle Exception

To the extent Eagle elects to become an Original Funding Sponsor, its Minimum Funding Commitment shall be reduced by the Eagle Amount. For all calculations relating to Eagle's status as an Original Participating AIM Sponsor and an Original Administrative Funding Sponsor and the holder of a Sponsor Administrative Claim, Eagle shall be considered to have made deposits into the escrow accounts equal to the Eagle Amount. If the Eagle Amount exceeds Eagle's Minimum Funding Commitment for the AIM-Related Account as determined by the Administrator, the Administrator shall transfer the excess from the AIM-Related Account to the Administrative Expense Account, and the transferred amount shall be credited to Eagle's Minimum Funding Commitment for the Administrative Expense Account. The provisions of this paragraph shall be reflected in all of the budgets mentioned herein. If Eagle does not become an Original Funding Sponsor, it will forfeit any claim or right to recover the Eagle Amount.

#### D. Sponsor Emergency

1. A "Sponsor Emergency" shall exist if a Participating Sponsor shall deliver to the Administrator (i) an affidavit of a senior official of the Participating Sponsor stating that the Participating Sponsor needs urgent access to its Sponsor Materials or the Common Materials to respond to an order or a request of a regulatory agency and (ii) an additional deposit in the amount (if any) that the Administrator estimates in his discretion is necessary to assure him that all amounts that are due or might become due from such Participating Sponsor hereunder have been paid.

2. A Participating Sponsor asserting that a Sponsor Emergency exists shall be responsible for all extra costs attributable to the Sponsor Emergency as determined by the Administrator. To the extent a Participating Sponsor makes a payment to the Administrator on account of a Sponsor Emergency that exceeds the amount that would have been due from such Participat-

ing Sponsor but for the Sponsor Emergency, the Administrator will refund such amount less such extra costs attributable to the Sponsor Emergency.

3. Nothing contained in the Global Protocol shall obligate the Administrator, the Trustee or any other party to respond to a Sponsor Emergency. If, in the reasonable discretion of the Administrator after consultation with the appropriate consultant it is determined that a Participating Sponsor cannot be provided immediate access to its Sponsor Materials or Common Materials, either because the location of such Sponsor Materials or Common Materials is simply unknown or because it would require more than reasonable efforts to locate and retrieve them, then such Participating Sponsor shall have all the rights provided for hereunder for the eventual return of its Sponsor Materials or Common Materials. Further, such Participating Sponsor retains its rights to seek relief in the form of filing an emergency motion with the Bankruptcy Court.

#### E. Funding Shortfalls

1. If, after all of the Original Funding Sponsors have been identified, the Administrator shall determine that (i) one or more escrow accounts is underfunded, either due to unforeseen additional costs, non-payment by Participating Sponsors or otherwise, (ii) there are insufficient funds in the Administrative Expense Account to cover such shortfall, and (iii) that such underfunding is likely to materially and negatively impact the retrieval process, the Administrator shall give notice of such underfunding to the Participating Sponsors that have deposited funds into such escrow account (*i.e.*, the Original Funding Sponsors for such account and Additional Participating Sponsors for such account, if any).

2. The Administrator shall confer promptly with the relevant Participating Sponsors following the delivery of the notice described in the immediately preceding paragraph. By majority vote of the Participating Sponsors that have deposited funds into an escrow account (with the votes weighted in accordance with their deposits), each depositing Participating Sponsor may be required to make an additional deposit to fund shortfalls in that account. The amount of any such additional deposits shall be calculated by the Administrator in accordance with the applicable funding methodology set forth above for each such underfunded account.

3. If one or more depositing Participating Sponsor(s) required to make an additional deposit under paragraph IX.F.2 fail to do so, the other depositing Participating Sponsors required to make an additional deposit shall confer with the Administrator to attempt to devise a solution to prevent an unremedied funding shortfall. The depositing Participating Sponsor(s) failing to make the required deposit shall lose all rights and benefits of having been a Participating Sponsor thereafter, including the benefit of the releases and exculpation in the Approval Order and the Global Release, the right to receive refunds and other payments hereunder, the Sponsor Administrative Claim and all other claims against CCD and its bankruptcy estate and access to Common Materials but excluding its rights in and with respect to Sponsor Materials.

4. If the Sponsors do not remedy the funding shortfall within 30 days, (i) the Administrator shall be entitled to use the funds remaining in the underfunded account to pay any accrued and unpaid expenses properly payable out of the account and close the account, (ii) the Administrator shall be discharged of any further duties with respect to such escrow account, and

(iii) the Trustee shall be entitled to abandon the Materials related to the under-funded account (*i.e.*, AIM or IM) as set forth in paragraph II.C.6.

F. Replacement, Discharge of the Administrator

1. The Administrator may resign at any time by giving 45 days' prior written notice of such resignation to the Participating Sponsors, the Trustee and the Bankruptcy Court. In the event of the resignation of the Administrator, a successor Administrator shall be appointed upon the majority vote of the voting Participating Sponsors. In the event no successor has been appointed within 45 days of the notice from the resigning Administrator, any party may petition the Bankruptcy Court to appoint a successor Administrator.

2. The Administrator and/or Abraxas (either in its capacity as IM Consultant or AIM Consultant, or both) may be terminated with two (2) business days' notice upon the majority vote of the Participating Sponsors.

3. The Administrator shall be discharged from all further duties upon the last to occur of (a) the AIM Termination Date, (b) the IM Termination Date and (c) the payment of all refunds in accordance with Section VIII. If any funds are remitted to the Administrator under paragraph VI.A or VI.B after it is discharged, the Administrator shall administer such funds in accordance herewith and shall deduct and retain a reasonable portion thereof as its compensation.

G. Storage and Transportation Documentation.

1. AIM shall--

a. provide to the AIM Consultant or the Administrator--

(i) promptly after entry of the Approval Order, a list of all AIM Materials from AIM's inventory control system showing originating site and barcodes ("AIM Master List"),

(ii) simultaneously with each shipment of AIM Materials to the AIM Consultant, a manifest listing total number of pallets and total boxes per pallet with corresponding barcodes that can be easily cross-referenced with the AIM Master List, and

(iii) such other documentation concerning the storage, release, preparation for shipment and shipment of AIM Materials as the AIM Consultant or the Administrator requests as (x) relates to the chain of custody of the AIM Materials or (y) is usual and customary, and

b. respond promptly, accurately and fully to inventory/manifest deviation reports from the AIM Consultant.

2. Iron Mountain shall--

a. provide to the IM Consultant or the Administrator--



(i) promptly after entry of the Approval Order, a list of all IM Materials from Iron Mountain's "IM Connect" system showing originating site and barcodes ("IM Master List"),

(ii) simultaneously with each shipment of IM Materials to the IM Consultant, a manifest listing total number of pallets and total boxes per pallet with corresponding barcodes that can be easily cross-referenced with the IM Master List, and

(iii) such other documentation concerning the storage, release, preparation for shipment and shipment of IM Materials as the IM Consultant or the Administrator requests as (x) relates to the chain of custody of the IM Materials or (y) is usual and customary, and

b. respond promptly, accurately and fully to the IM Consultant inventory/manifest deviation reports.

## **X. Definitions**

A. The following terms used herein have the following definitions:

1. "Abraxas" means Team Support Services, LLC d/b/a Abraxas Worldwide.
2. "Additional Administrative Funding Sponsor" has the meaning set forth in paragraph VII.A.
3. "Additional Participating AIM Sponsor" has the meaning set forth in paragraph VII.B.2.
4. "Additional Participating IM Sponsor" has the meaning set forth in paragraph VII.C.2.
5. "Additional Participating Sponsors" means the Additional Participating AIM Sponsors and the Additional Participating IM Sponsors.
6. "Adjusted AIM Funding Amount" has the meaning set forth in paragraph IV.C.4.
7. "Adjusted IM Funding Amount" has the meaning set forth in paragraph V.C.4.
8. "Administrative Amount" has the meaning set forth in paragraph III.A.
9. "Administrative Expense Budget" means a budget for the Administrative Expense Account in the form attached to the Approval Order.
10. "Administrator" has the meaning set forth in paragraph I.A.1.
11. An "Affiliate" of a Person means any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person. For purposes of this definition, a Person shall be deemed to be controlled by another Person if such other Person pos-

sesses, directly or indirectly, power to direct or cause the direction of its management and policies by ownership, contract or otherwise.

12. “AIM” means Access Information Management in Fife, Washington.
13. “AIM Amount” has the meaning set forth in paragraph IV.B.1.
14. “AIM Budget” means a budget for the AIM-Related Account in the form attached to the Approval Order.
15. “AIM CCD Materials” means CCD Materials that on the date of the Approval Order are in storage at AIM.
16. “AIM CDs” means Common Materials which relate to studies performed by CCD at its Tacoma location, including the AIM Florida CDs
17. “AIM Consultant” means Abraxas in its capacity as consultant with respect to AIM Materials and including any successor in such capacity.
18. “AIM Florida CDs” means Common Materials which relate to studies performed by CCD at its Tacoma location but on the date of the Approval Order are in storage at an Iron Mountain facility in Florida (to the extent such Materials can be identified as such).
19. “AIM Master List” has the meaning set forth in paragraph IX.G.1.a.(i).
20. “AIM Materials” means (a) Materials that on the date of the Approval Order are in storage at AIM and (b) the AIM Florida CDs
21. “AIM Orphan Materials” has the meaning set forth in paragraph IV.C.7.b.
22. “AIM Participating Sponsor Deadline” means the date that is four months after the Approval Order becomes final as such date is determined by the Administrator.
23. “AIM Per-Box Charge” has the meaning set forth in paragraph IV.C.3.
24. “AIM Sponsors” means Sponsors with Sponsor Materials stored at AIM or an interest in AIM CDs.
25. “AIM Termination Date” means the date that is the later of eight months after the Approval Order becomes final and the date on which the AIM Consultant has completed the record retrieval process for AIM Materials of all Participating AIM Sponsors as such dates are determined by the Administrator.
26. “Approval Order” means an order of the Bankruptcy Court granting the Motion and approving the Global Protocol (including this Retrieval Protocol and the Global Release) that is not stayed or subject to appeal.

27. “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Florida.

28. “Box” means a document storage carton that has a volume that does not exceed 1.5 cubic feet. A document storage carton with a volume that exceeds 1.5 cubic feet but does not exceed 2.7 cubic feet shall be considered to be two boxes, a document storage carton with a volume that exceeds 2.7 cubic feet but does not exceed 4.0 cubic feet shall be considered to be three boxes, and a document storage carton with a volume that exceeds 4.0 cubic feet shall be considered to be four boxes.

29. “Budget” means, collectively, the Administrative Expense Budget, the AIM Budget and the IM Budget.

30. “CCD Materials” means all documents placed in storage with AIM or Iron Mountain by CCD and currently located in one of their storage facilities that are not Sponsor Materials or Common Materials.

31. “CCD” means Comprehensive Clinical Development, Inc. and Comprehensive Clinical Development NW, Inc.

32. “Commitment Letter” means a binding commitment letter, in the form attached to the Approval Order, obligating a Sponsor to pay its Minimum Funding Commitment to the Administrator

33. “Common Materials” means certain common records of CCD, copies of which are required by multiple Sponsors.

34. “Eagle Amount” means \$8,338.85.

35. “Eagle” means Eagle Pharmaceuticals (US)

36. “Global Protocol” means this Retrieval Protocol, the Global Release and the other documents attached to the Approval Order.

37. “Global Release” means the contractual release in the form attached to the Approval Order.

38. “Governmental Entity” means any supranational, national, state, municipal, local or foreign government; any state, commonwealth, province, district or territory thereof; any subdivision, court, department, commission, agency, authority or other instrumentality thereof including the U.S. Food and Drug Administration and the similar agencies of other nations; any central bank; any intergovernmental organization; and any other individual or group of individuals, entity or body (whether public, quasi-governmental or private) exercising any executive, legislative, judicial, arbitral, law enforcement, taxing, regulatory or administrative governmental or quasi-governmental function, including a self-regulatory organization and any entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

39. “IM Amount” has the meaning set forth in paragraph V.B.1.

40. “IM Budget” means a budget for the IM-Related Account in the form attached to the Approval Order.

41. “IM CCD Materials” means CCD Materials that on the date of the Approval Order are in storage at Iron Mountain facilities.

42. “IM CDs” means the Common Materials which relate to studies performed by CCD at locations other than Tacoma and on the date of the Approval Order are in storage at Iron Mountain facilities.

43. “IM Consultant” means Abraxas in its capacity as consultant with respect to IM Materials and including any successor in such capacity.

44. “IM Master List” has the meaning set forth in paragraph IX.G.2.a.(i).

45. “IM Materials” means Materials that on the date of the Approval Order are in storage at Iron Mountain facilities excluding the AIM Florida CD’s

46. “IM Orphan Materials” has the meaning set forth in paragraph V.C.9.

47. “IM Participating Sponsor Deadline” means the date that is four months after the Approval Order becomes final as such date is determined by the Administrator.

48. “IM Sponsors” means Sponsors with Sponsor Materials stored at Iron Mountain or an interest in IM CDs.

49. “IM Termination Date” means the date that is the later of eight months after the Approval Order becomes final and the date on which the IM Consultant has completed the record retrieval process for IM Materials of all Participating IM Sponsors as such dates are determined by the Administrator.

50. “Iron Mountain” means Iron Mountain Information Management, Inc.

51. “Larger Company” means a Sponsor that, together with its affiliates, had sales in its most recent completed fiscal year of \$5 billion or more.

52. “Materials” means the CCD Materials, the Common Materials and the Sponsor Materials.

53. “Minimum Funding Commitment” has the meaning set forth in paragraph II.B.1.

54. “Motion” means the Motion of Marc P. Barmat, Trustee, and Certain Pharmaceutical Sponsors That Were Customers of the Debtors Seeking (1) Approval of a Global Protocol for the Coordinated Retrieval, Review and Return of Certain Sponsor Records, the Retention of Certain Service Providers in Connection Therewith and a Release and Exculpation of the Trustee, the Participating Sponsors and Other Parties and (2) Related Relief, which was filed with the Bankruptcy Court on May 16, 2014 (Dkt. No. [ ]).

55. “Non-Binding Election Form” means the non-binding election form in the form attached to the Approval Order.

56. “Original Administrative Funding Sponsors” has the meaning set forth in paragraph II.B.5.

57. “Original AIM Funding Sponsors” has the meaning set forth in paragraph II.B.5.

58. “Original Funding Sponsors” has the meaning set forth in paragraph II.B.5.

59. “Original IM Funding Sponsors” has the meaning set forth in paragraph II.B.5.

60. “Orphan Materials” has the meaning set forth in paragraph V.C.9.

61. “Participating AIM Sponsors” means the Original AIM Funding Sponsors and the Additional Participating AIM Sponsors.

62. “Participating IM Sponsors” means the Original IM Funding Sponsors and the Additional Participating IM Sponsors.

63. “Participating Sponsors” means the Original Funding Sponsors and the Additional Participating Sponsors.

64. “Person” includes individual, corporation, partnership (general or limited), joint venture, association, limited liability or joint stock company, bank, trust company, trust (whether a land trust, a business trust or otherwise), estate, unincorporated organization, Governmental Entity, and every other kind of legal, juridical, commercial and political person, entity, organization, department, bureau or agency whatsoever. A reference herein to a Person shall be construed to include such Person’s successors and assigns.

65. “Petition Date” means March 29, 2013.

66. “PPG” means Pacific Pharma Group, LLC.

67. “Retrieval Protocol” means this protocol governing review, retrieval and return of Sponsor Materials, retrieval, indexing and access to the Common Materials and retrieval and disposition of the CCD Materials.

68. “Sponsor Emergency” has the meaning set forth in paragraph IX.D.1.

69. “Sponsor Materials” means certain records specific to a particular Sponsor.

70. “Sponsors” means former customers of CCD that have or may have an interest in the Materials. For all purposes under this Retrieval Protocol, all former customers of CCD having an interest in any Materials that were on the Petition Date, and continue to be, Affiliates of each other and are identified as such in writing on the Non-Binding Commitment Form, the

Commitment Letter or other prompt notice to the Administrator shall be considered as one Sponsor.

71. "Storage Facilities" means AIM and Iron Mountain.

72. "Trustee" means Marc P. Barmat in his capacity as Chapter 7 trustee of CCD.

73. "Trustee Advance" means the aggregate amount included in the Administrative Expense Budget on account of the fees and expenses of the Trustee and his professionals.

**GLOBAL RELEASE**

**THIS RELEASE**, dated \_\_\_\_, 2014, given, made and delivered by the Persons which have executed a counterpart hereof (collectively, the “Parties”) including the Participating Sponsors, the Service Providers, the Storage Facilities and the Trustee,

**WITNESSETH:**

**THAT**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree and do as follows:

**Article 1. BACKGROUND.**

**1.1.** The Parties refer to the background recited in the Approval Motion.

**1.2.** Paragraph \_\_\_ of the Approval Order requires the Parties to execute and deliver this Release.

**Article 2. DEFINITIONS AND ADDITIONAL PROVISIONS.**

**2.1.** As used herein, the following words and phrases shall have the meanings herein specified (to be equally applicable to both the singular and plural forms thereof) unless the context requires otherwise:

(a) “Approval Motion” means the Motion of Marc P. Barmat, Trustee, and Certain Pharmaceutical Sponsors that were Customers of the Debtors Seeking (1) Approval of a Global Protocol for the Coordinated Retrieval, Review and Return of Certain Sponsor Records, the Retention of Certain Service Providers in Connection Therewith and a Release and Exculpation of the Trustee, the Participating Sponsors and Other Parties and (2) Related Relief, filed in the Cases on May 16, 2014.

(b) “Approval Order” means the Court’s Order granting the Approval Motion entered in the Cases on \_\_\_\_, 2014, including all exhibits thereto.

(c) “Bankruptcy Estates” means the estates in bankruptcy of the CCD Debtors.

(d) “Cases” means In re Comprehensive Clinical Development, Inc. et al., Debtors, Chapter 7, Nos. 13-17273-JKO and 13-17282-JKO, pending in the Court.

(e) “CCD Debtors” means Comprehensive Clinical Development, Inc. and Comprehensive Clinical Development NW, Inc.

(f) “CCD Entities” means the CCD Debtors and their present, former and future parents, subsidiaries, other affiliates, divisions, predecessors, shareholders, partners, owners, officers, directors, agents, representatives, employees, servants, attorneys, legal representatives, subrogees and Successors. Notwithstanding the foregoing, the Trustee is not a CCD Entity.

(g) “Claims,” with an initial capital letter, means any and all expenses, claims, liabilities, obligations, demands, actions or causes of action of whatever kind or nature (whether known or unknown, liquidated or unliquidated, direct or indirect, fixed or contingent, asserted or unasserted, disclosed or undisclosed, matured or unmatured, existing or hereafter arising, in law, equity and otherwise, and notwithstanding the manner in which the same shall have arisen) based on facts arising or occurring at any time through and including the Effective Date that relate, directly or indirectly, to the CCD Entities, the Cases or the Materials (including the Sponsor Materials, the Common Materials, the CCD Materials and the Orphan Materials) or to the release, transportation, review, disposition, storage and destruction of any thereof. When “claim” appears without an initial capital letter, it has the meaning provided in the Code.

(h) “Code” means the U.S. Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*

(i) “Court” means the United States Bankruptcy Court for the Southern District of Florida, Fort Lauderdale Division.

(j) “Effective Date” means \_\_\_\_, 2014.

(k) “Service Providers” means Team Support Services, LLC d/b/a Abraxas Worldwide (in the capacities of both IM Consultant and AIM Consultant under the Retrieval Protocol), CBIZ MHM, LLC (in the capacity of Administrator under the Retrieval Protocol) and Pacific Pharma Group, LLC.

(l) “Sponsor-Related Persons” means the following Persons with respect to each Participating Sponsor and each member of the Sponsor Committee: its respective present, former and future parents, subsidiaries, other affiliates (but only such affiliates whose Materials were on the Petition Date in the possession, custody or control of a CCD Debtor or a storage facility in privity with a CCD Debtor), divisions, predecessors, shareholders, partners, owners, officers, directors, agents, other representatives, employees, servants, attorneys, legal representatives, subrogees and Successors (all, except affiliates, solely in their capacities as such).

(m) “Storage Facilities” means Access Information Management and Iron Mountain Information Management, LLC.

(n) “Trustee” means Marc P. Barmat as Chapter 7 trustee in the Cases.

(o) “Common Materials,” “Global Protocol,” “Materials,” “Petition Date,” “Retrieval Protocol,” “Sponsors,” and “Sponsor Committee” have the meanings given to them or incorporated in the Approval Order or, if not defined therein, in the Approval Motion. “AIM Consultant,” “CCD Materials,” “IM Consultant,” “Orphan Materials,” “Participating Sponsors” and “Sponsor Materials” have the meanings given to them in the Retrieval Protocol.

**2.2.** The Additional Definitions and Principles of Construction annexed hereto as Exhibit A and the Additional Terms and Conditions annexed hereto as Exhibit B are



incorporated herein in their entirety. All other terms used but not defined herein shall have the meanings assigned to them in the Code.

**Article 3. AGREEMENT TO BE BOUND.**

**3.1.** Each Party agrees to be bound by the Approval Order and the Global Protocol in their entirety without regard to the presence or absence of any other writing or the execution thereof by such Party, the position, if any, taken by it in the Court with regard to the Motion or any reservation of rights filed in connection therewith.

**Article 4. RELEASES AND RELATED WAIVERS.**

**4.1.** Except as otherwise provided herein, each Participating Sponsor, acting for itself and its Sponsor-Related Persons, releases the Trustee and the Trustee's attorneys, agents and representatives, each member of the Sponsor Committee in its capacity as such and its Sponsor-Related Persons, each other Participating Sponsor and its Sponsor-Related Persons, and each of the Service Providers and the Service Facilities and its attorneys, agents and representatives from all Claims.

**4.2.** Except as otherwise provided herein, the Trustee acting on behalf of himself as such and the CCD Entities, the Bankruptcy Estates and his attorneys, agents and other representatives, releases each member of the Sponsor Committee in its capacity as such and its Sponsor-Related Persons, each Participating Sponsor and its Sponsor-Related Persons, each of the Service Providers and the Storage Facilities and its attorneys, agents and representatives from all Claims.

**4.3.** Except as otherwise provided herein, each of the Service Providers and the Storage Facilities, acting for itself and its Successors, releases the Trustee and his attorneys, agents and other representatives, each member of the Sponsor Committee in its capacity as such and its Sponsor-Related Persons, each Participating Sponsor and its Sponsor-Related Persons, and each of the other Service Providers and the Storage Facilities and its attorneys, agents and representatives from all Claims.

**4.4.** Each Person granting a release under this Article, acting for itself and each other Person for which it is acting herein including its Successors, waives and relinquishes any and all rights it may have under any federal, state or local statute, rule, regulation or principle of common law or equity which may in any way limit the effect of this Release with respect to Claims which such Persons did not know or suspect to exist at the time this Release was executed by it or on its behalf or with respect to Claims that are undisclosed, unmatured or contingent.

**4.5.** The absence of the manifestation of harm or damage on the Effective Date shall not limit the effect of this Release if the facts upon which liability for a Claim (other than harm or damage) are based have arisen or occurred as of the Effective Date.

**Article 5. EXCEPTIONS AND LIMITATIONS UPON ALL RELEASES.**

**5.1.** Nothing contained in this Release shall be construed to release any Person, and no Person shall be released by this Release, from--

(a) any obligation arising under or pursuant to, or liability for compensatory damages for the material breach of, the Global Protocol or any order of the Court entered in the Cases; or

(b) any Claim (whether against itself or another Person for which it is vicariously liable as a matter of law or contract) for gross negligence, recklessness, willful misconduct or illegal conduct that is criminal, fraudulent or found by the Bankruptcy Court to be otherwise illegal.

**5.2.** Nothing contained in this Release shall affect in any respect any claims asserted in a proof of claim duly filed by a Party in the Cases or the administrative expense claims of the members of the Sponsor Committee and the Participating Sponsors allowed by the Approval Order or otherwise allowed by the Court.

**5.3.** Nothing contained in this Release shall release any natural Person who serves or has served as an officer, director, manager or member of a CCD Debtor regardless of his or her service in any other capacity.

**5.4.** In the event an insurer in connection with a claim or action asserted or filed on behalf of the Bankruptcy Estates (by the Trustee or otherwise) against director(s), officer(s) and/or managers of a CCD Debtor or such insurer (each, a “D&O Action”) seeks to cancel, disclaim or deny coverage under any directors and officers insurance policy held by a CCD Debtor or the Trustee (each, a “D&O Policy”) on account of any of the releases set forth in this Release, the releases set forth in this Release shall be deemed null and void solely to the extent necessary to permit the fullest possible coverage under such D&O Policy in connection with any such D&O Action.

**IN WITNESS WHEREOF**, the Parties have duly executed this Release on or as of the date first above written.

[insert signature blocks]

EXHIBIT A

**ADDITIONAL DEFINITIONS AND PRINCIPLES OF CONSTRUCTION**

The meanings of terms specified below (to be equally applicable to both the singular and plural forms of the terms defined) and the principles of construction set forth below shall apply to this Release unless the context requires otherwise:

1. “Governmental Entity” means any supranational, national, state, municipal, local or foreign government; any state, commonwealth, province, district or territory thereof; any subdivision, court, department, commission, agency, authority or other instrumentality thereof; any central bank; any intergovernmental organization; and any other individual or group of individuals, entity or body (whether public, quasi-governmental or private) exercising any executive, legislative, judicial, arbitral, law enforcement, taxing, regulatory or administrative governmental or quasi-governmental function, including a self-regulatory organization and any entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

2. “Person” includes individual, corporation, partnership (general or limited), joint venture, association, limited liability or joint stock company, bank, trust company, trust (whether a land trust, a business trust or otherwise), estate, unincorporated organization, Governmental Entity, and every other kind of legal, juridical, commercial and political person, entity, organization, department, bureau or agency whatsoever. Unless the context otherwise requires, every reference herein to a Person by name, title, description or category shall be construed to include such Person’s Successors solely in their capacity as such.

3. “Successors” means a Person’s heirs, executors, administrators, other successors and assigns.

4. For purposes of this Release, unless otherwise expressly provided or the context otherwise requires, (i) all references to “this Release” refer to this Release as it may be amended, and “herein,” “hereof” and words of similar import refer to this Release as a whole and not to any particular provision; (ii) a word defined anywhere in this Release has the same meaning throughout this Release; (iii) “shall” expresses an obligation (and “will” does not), “may” (not followed by “not”) is permissive, and “shall not” and “may not” both forbid the action specified; (iv) each reference to a “Section” or an “Article” refers to a section or an article of this Release; (v) whenever from the context it is appropriate, each word, whether stated in the singular or the plural, shall include both the singular and the plural; (vi) each word of any gender includes all genders; (vii) “or” is not exclusive (unless used in conjunction with “either”), “includes” and “including” are not limiting, but “means” is limiting; (viii) any reference to an agreement (including this Release), instrument or other document (1) includes any exhibits, annexes or other attachments thereto and (2) “as amended” means and is a reference to such agreement, instrument or other document as it has been or may be amended, re-enacted, amended and restated, supplemented, novated or otherwise modified from time to time (except to the extent, if any, that any such agreement, instrument or other document was amended, amended and restated, supplemented, novated or otherwise modified in breach of its own terms, this Agreement or applicable law); (ix) any reference to a statute (1) includes all regulations, rules, subordinate legislation

and other applicable law issued or promulgated thereunder and all consolidations, codifications, re-enactments, extensions and replacements thereof and (2) “as amended” means and is a reference to such statute as it has been or may be amended, re-enacted, amended and restated, supplemented or otherwise modified from time to time; (x) any reference to a document being in a particular form or containing particular terms and conditions means and is a reference to such document being substantially in such form or containing substantially such terms and conditions; (xi) a reference to a Person in a particular capacity excludes such Person in any other capacity and individually; and (xii) a reference to a month refers to a calendar month and a reference to a year refers to a calendar year.

[remainder of page intentionally blank]

**EXHIBIT B**

**ADDITIONAL TERMS AND CONDITIONS**

1. No amendment or waiver of any provision of this Release or consent to any departure therefrom shall be effective unless it is set forth in a manually signed writing that is signed by all Parties and specifies such amendment, waiver or consent with particularity, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given (and not effective with respect to any other or future matter even of the same kind or character). Under no circumstances shall any course of dealing or course of performance between any Parties effect any such amendment or waiver.

2. Each Party shall promptly furnish, execute and deliver such documents, instruments, certificates and other further assurances as another Party shall reasonably request as necessary or desirable to effect complete consummation of this Release, *provided, however*, that nothing contained in this paragraph shall be construed to require a Party to assume, any material obligation, pay any unforeseen or unreasonable out-of-pocket expenses that are material in amount, incur any other unforeseen or unreasonable material burden or commence or pursue any litigation, whether administrative, civil or otherwise.

3. This Release shall be binding upon the Parties and their respective Successors and inure to the benefit of and be enforceable by the Parties and their respective Successors (except to the extent, if any, that any such Successor became a Successor in contravention of applicable law).

4. If any provision of this Release or the application thereof to any Person or circumstance is held by a Governmental Entity of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Release, and the application of such provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Release shall be valid and enforceable to the fullest extent permitted by applicable law, but only so long as the legal substance of the matters sought to be effected by this Release is not affected in a manner that is materially adverse to a Party. Upon a determination of such invalidity or unenforceability, the Parties shall negotiate in good faith to modify this Release so as to effect the original intent of the Parties expressed in the Global Agreement as closely as possible in an acceptable and reasonable manner in order that the purposes of this Release be accomplished as originally contemplated to the fullest extent possible.

5. The captions in this Release are intended solely for convenience of reference and shall be given no effect in the construction or interpretation hereof. This Release shall be deemed to have been drafted by all Parties, and the Party which drafted any particular provision shall not be considered in construing it. No draft of this Release may be used in construing it.

6. This Release may be signed in multiple counterparts, but all such counterparts constitute one and the same agreement. Facsimile signatures and printable electronic images of original signatures shall be deemed to be originals for all purposes hereunder.

June \_\_, 2014

To the Participating Sponsors:

This Consultant Fee Agreement (this “Agreement”) is entered into as of June \_\_, 2014, and serves to confirm the Participating Sponsors’ retention of CBIZ MHM, LLC (“CBIZ”), and is made with reference to the following:

### **SCOPE OF SERVICES**

CBIZ will serve as the Administrator as defined, having the duties and responsibilities provided, in the Global Protocol for Coordinated Retrieval, Review and Return of Certain Sponsor Records (the “Global Protocol”) that is an exhibit to the Order Approving Motion of Marc P. Barmat, Trustee, and Certain Pharmaceutical Sponsors That Were Customers of the Debtors (i) Approving a Global Protocol for the Coordinated Retrieval, Review and Return of Certain Sponsor Records; (ii) Approving the Retention of Certain Service Providers in Connection Therewith; (iii) Approving a Release and Exculpation of the Trustee, the Participating Sponsors and Certain Other Parties; (iv) Approving the Form and Manner of Notice Thereof; and (v) Granting Related Relief dated June \_\_, 2014 (the “Approval Order”). This Agreement is subject to the Approval Order, including the Universal Contract Terms that is an exhibit thereto, in all respects and is a “Contract” as that term is used in the Universal Contract Terms.

### **FEES/TERMS OF PAYMENT**

CBIZ will deliver a statement for fees and expenses to the Sponsor Committee (as defined in the Global Protocol) on a monthly basis. Services and expenses not posted as of the monthly closing date will appear on a subsequent bill. The Participating Sponsors shall have 30 days after such delivery to raise an objection to the Statement. If no objection is raised within the 30-day period, CBIZ shall be entitled to pay itself from the Administrative Expense Account (as defined in the Global Protocol) up to an aggregate of \$95,000.

Should an instance arise where additional time or expenses will be incurred in excess of approximately \$95,000, we will notify the Sponsor Committee.

CBIZ understands that funds for the payment of its fees and expenses will be provided by the Administrative Expense Account.

### **E-MAIL COMMUNICATIONS**

In connection with this engagement, we may communicate with you or others via e-mail transmission. As e-mails can be intercepted and read, disclosed, or otherwise used or communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed and only to such parties, we cannot guarantee or warrant that e-mails from us will be properly delivered and read only by the addressee. Therefore, we specifically disclaim and waive any liability or responsibility whatsoever for interception or unintentional disclosure or communication of e-mail transmissions, or for the unauthorized use or failed delivery of e-mails transmitted by us in connection with the performance of this

engagement. In that regard, you agree that, provided we have exercised reasonable care, we shall have no liability for any loss or damage to any person or entity resulting from the use of e-mail transmissions including any consequential, incidental, direct, indirect, or special damages, or disclosure or communication of confidential or proprietary information.

## **EXCLUSIONS**

This engagement does not include any services that are not duties and responsibilities of the Administrator. Any additional services requested by you will be subject to a separate written understanding before the additional services are commenced and billed at our standard hourly rates.

CBIZ shall be entitled to the exculpation provided in the Approval Order. This provision shall survive the completion of this engagement.

This Agreement supersedes all prior agreements and all agreements made contemporaneously with the execution of this Agreement. Any prior agreement or oral contemporaneous agreements may not be used to contradict, supplement or explain this Agreement.

We appreciate this opportunity to be of service to you.

Very truly yours,

CBIZ MHM, LLC

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Charles M. Berk, Managing Director  
CBIZ MHM, LLC



## TERMS AND CONDITIONS

These Terms and Conditions and the Engagement Letter, and any subsequent amendments or addenda thereto (collectively, the "Agreement"), constitute the entire agreement between the Participating Sponsors of Comprehensive Clinical Development, Inc. ("Participating Sponsors") and CBIZ MHM, LLC ("CBIZ") regarding the services described in the Engagement Letter and are subject in all respects to the Global Protocol and the Approval Order. Capitalized terms not otherwise defined herein, shall have the meaning ascribed to them in the Engagement Letter or, if not defined therein, the Global Protocol.

A. *Services.* CBIZ will provide the Services described in the Engagement Letter and will use reasonable efforts to perform the Services in accordance with the timeframe set out. CBIZ has every expectation that this engagement will be conducted by the CBIZ professionals designated for this engagement. If for any reason any of those individuals are not able to complete this engagement, professionals with similar qualifications and experience will do so. Where any changes are necessary, CBIZ will give the Sponsor Committee reasonable notice of the changes.

B. *Changes to Services.* Either party may request changes to the Services as set out in the Engagement Letter. Changes must be requested in writing with sufficient detail to enable the other party to assess the impact of the requested change on the cost, timing or any other aspect of the Services. Both parties agree to consider and, if appropriate, agree to any changes. Any changes must be in writing and signed by both parties. Until a change is agreed in writing, the latest agreed terms will apply.

C. *Interest Charges on Outstanding Balances.* Payment is due within 30 days of receipt of our invoice. A finance charge will be computed at the rate of the lesser of one percent per month (12% per annum) or the highest legally allowed rate on unpaid balances over thirty days.

D. *Limitation of Distribution of Analysis, Conclusions and Report.* Our analysis, conclusions and any report, which are to be used only in their entirety, are for your use solely to assist you in the above-referenced matter. They are not to be used for any other purpose, or by any other party for any purpose, without our express written consent. Any summary of, or reference to the opinion, any oral presentation with respect thereto, or other references to CBIZ in connection with the matter, will be, in each instance, subject to CBIZ's prior review and written approval, except as may be required by a governmental agency or court. The opinion will not be included in, summarized or referred to in any manner in any materials distributed to the public without CBIZ's express prior written consent.

E. *Limited Warranties.* CBIZ warrants that the Services will be performed and supervised by qualified personnel. Notwithstanding anything to the contrary contained in this agreement, ALL SERVICES PROVIDED HEREUNDER BY CBIZ ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, CBIZ HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF EVERY KIND, WHETHER EXPRESS OR IMPLIED, OR WHETHER ARISING BY OPERATION OF LAW, COURSE OF PERFORMANCE OR DEALING, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (EVEN IF ADVISED OF SUCH PURPOSE). In the event that the Participating Sponsors identify any CBIZ employee that the Participating Sponsors believe to be not qualified to perform the Services, the Participating Sponsors may request that such employee be replaced on the engagement. Replacement of such employee(s) is the sole remedy available to the Participating Sponsors for breach of this warranty.

F. *Limitation of Liability and Indemnification.* In no event shall CBIZ be liable to the Participating Sponsors or any third party for any loss, damage, cost or expense attributable to any act, omission or misrepresentations by the Participating Sponsors, its directors, employees or agents. In no event shall CBIZ be liable to the Participating Sponsors, whether a claim be in tort, contract or otherwise for (a) any amount in excess of the total professional fees paid by the Participating Sponsors to CBIZ under the Engagement Letter or any addendum to which the claim relates or (b) any consequential, indirect, lost profit or similar damages relating to or arising from the Services provided under this Agreement, except to the extent finally determined to have resulted from the gross negligence, wilful misconduct or fraudulent acts of CBIZ relating to such ser-

vices. CBIZ shall have no liability to the Participating Sponsors arising from or relating to any third party hardware, software or materials ("Third Party Materials"), including, but not limited to, the selection thereof or failure of such Third Party Materials to perform in accordance with specifications or any defects therein.

G. *No Obligation to Provide Services after Completion.* CBIZ agrees to enter into the Engagement and provide services in connection therewith with the understanding that there shall be no obligation to furnish services after completion of the original assignment.

H. *Safe Environment.* As a material condition to CBIZ entering into this Agreement, the Participating Sponsors agree that in any circumstances under which a CBIZ employee is required to work at any premises or location operated or controlled by the Participating Sponsors, the Participating Sponsors will take all actions and precautions necessary to ensure that such work sites are free from all known or reasonably foreseeable safety hazards, and that such working environments are free from all forms of harassment and discrimination.

I. *General.*

1. *Force Majeure.* Neither party shall be liable to the other for any delay or failure to perform any of the Services or obligations set forth in this Agreement due to causes beyond its reasonable control.

2. *No Jury Trial.* In the unlikely event that differences arise between the parties related to or arising from this Agreement that are not resolved by mutual agreement, to facilitate a judicial resolution and save time and expense of both parties, the Participating Sponsors and CBIZ agree not to demand a trial by jury in any action, proceeding or counterclaim.

3. *Partial Invalidity.* If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.

4. *Headings.* The section headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

5. *Independent Contractor.* CBIZ, in furnishing services to the Participating Sponsors, is strictly an independent contractor. CBIZ does not undertake to perform any regulatory or contractual obligation of the Participating Sponsors or to assume any responsibility for the Participating Sponsors' business or operations.

6. *Waiver.* No waiver, delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver or discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

7. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of law principles. The parties hereby irrevocably submit to the jurisdiction of the Bankruptcy Court over any dispute or proceeding arising out of this Agreement and agree that all claims in respect of such dispute or proceeding shall be heard and determined in such court. The parties to this Agreement hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may have to the venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute.

## MASTER SERVICES AGREEMENT

This Master Services Agreement (“*Agreement*”), effective as of June \_\_, 2014 (“*Effective Date*”), is made by and between the **Participating IM Sponsors** (as defined in the Global Protocol for Coordinated Retrieval, Review and Return of Certain Sponsor Records (“*Global Protocol*”) that is an exhibit to the Order Approving Motion of Marc P. Barmat, Trustee, and Certain Pharmaceutical Sponsors That Were Customers of the Debtors (i) Approving a Global Protocol for the Coordinated Retrieval, Review and Return of Certain Sponsor Records; (ii) Approving the Retention of Certain Service Providers in Connection Therewith; (iii) Approving a Release and Exculpation of the Trustee, the Participating Sponsors and Certain Other Parties; (iv) Approving the Form and Manner of Notice Thereof; and (v) Granting Related Relief dated June \_\_, 2014 (“*Approval Order*”) of the U.S. Bankruptcy Court for the Southern District of Florida, and **Team Support Services, LLC d/b/a Abraxas Worldwide** (“*Vendor*”), a Michigan limited liability company with its principal place of business at 701 East Milham, Portage, Michigan 49002. The Participating IM Sponsors and Vendor are hereinafter sometimes each referred to as a “*Party*” and collectively as “*Parties*.”

In consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be bound, agree as follows:

**1. Engagement; Work Orders.** As a result of and effective through the Approval Order, the Participating IM Sponsors have engaged Vendor to provide the services set forth in the Global Protocol to be performed by “Abraxas” (as defined therein) under the terms and conditions of this Agreement, which is subject in all respects to the Approval Order, including the Universal Contract Terms that is an exhibit thereto, and Vendor hereby accepts such engagement.

**2. Performance.** Vendor shall perform the Services in a competent, diligent and workmanlike manner with reasonable skill and care in accordance with the terms of this Agreement, records and information management best industry standards of professional conduct and applicable law. Vendor shall provide all materials, facilities, supplies and sufficiently skilled and experienced personnel necessary to perform Services as set forth in each Order, and time shall be of the essence in performing the Services. Vendor shall report to the Sponsor Committee and the Administrator (as such terms are defined in the Global Protocol) as they may reasonably request from time to time.

**3. Invoicing and Payment.** Vendor shall submit to the Administrator written invoices for Services performed at least every 30 days during the period of performance of Services and shall provide supporting documentation as reasonably requested by the Administrator. Payment of each invoice shall be in full compensation for Services performed thereunder. All amounts shall be payable within 30 days of date of invoice. This Agreement relates to the provision of Services only, and Vendor shall not purchase equipment, goods, software or other tangible or intangible property for which it will seek reimbursement from the Administrator, the IM-Related Account (as defined in the Global Protocol) or the Participating IM Sponsors without express prior written authorization from the Administrator.

**4. Ownership of Work Product.** All right, title, and interest in and to the Sponsor Materials of the Participating IM Sponsors and the IM CDs (as such terms are defined in the Global Protocol) supplied to Vendor shall be and remain the exclusive property of the Participating IM Sponsors, shall be kept by Vendor strictly for performance of Services, and shall not be reallocated to any other work whatsoever, except that Vendor retains exclusive ownership of all of its confidential information. All right, title, and interest in and to all data, information, documents, copyrights, materials and sole or joint inventions of Participating IM Sponsors relating to or arising out of the Services ("**Work Product**") shall belong to and be the property of the Participating IM Sponsors except that Vendor shall retain all right, title and interest in and exclusive or joint ownership of any inventions, designs or proprietary processes invented or developed solely or jointly by Vendor during the performance of Services. Vendor does hereby assign to the Participating IM Sponsors and their Successors all right, title and interest in and to the Work Product to the extent effective in advance, and where not effective shall promptly do and ensure that its Representatives do all acts and sign all documents necessary to perfect the right, title and interest in and to such Work Product as shall be requested by the Participating IM Sponsors, at the expense of the requesting Person. All Work Product prepared by Vendor in the performance of Services shall be promptly surrendered by Vendor to the Participating IM Sponsors upon request of the Administrator or the Sponsor Committee, or on the earlier to occur of the termination or expiration of this Agreement.

**5. Term.** This Agreement shall become effective as of the Effective Date and shall continue in effect until the Services have been completed ("**Term**").

**6. Relationship of Parties.** With respect to the subject matter of this Agreement, the Parties are and remain independent contractors. This Agreement shall not be deemed to create an employer/employee relationship, joint venture, partnership, association or agency between the Parties. Neither Party is authorized to incur or create any obligation, express or implied, on behalf of the other Party or to bind the other Party in any manner whatsoever.

**7. Compliance with Laws.** Vendor shall comply with all laws, rules, regulations and FDA guidelines applicable to performing the Services. Vendor further agrees that it will comply with any stated policies and procedures of the Sponsor Committee including, without limitation, those governing the privacy and security of protected health information, safety, health, harassment and discrimination, in each case as provided to Vendor in writing in advance.

**8. Indemnification and Waiver.** Vendor shall hold harmless and indemnify the Participating IM Sponsors and their Representatives from and against all suits, demands, losses, damages, judgments, claims or other liability incurred by any of them (including without limitation, property damage and personal injury or death) and shall pay all costs, including reasonable attorneys' fees and costs (collectively "**Liability**"), to the extent that such Liability arises directly from, or is directly related to Vendor's material breach of the Global Protocol or this Agreement or an order of the Bankruptcy Court or the gross negligence, recklessness, willful misconduct or illegal conduct that is criminal, fraudulent or found by the Bankruptcy Court to be otherwise illegal of Vendor or any of its Representatives.

**9. Insurance.** Vendor shall maintain at its sole cost and expense insurance policies meeting the minimum insurance levels set forth below and shall provide certificates of such insurance evidencing the limits and expiration dates upon request:

- (a) Worker's Compensation—in accordance with applicable statutory requirements;
- (b) Commercial General Liability—not less than \$1,000,000 per occurrence; \$2,000,000 general aggregate; and \$3,000,000 products/completed operations aggregate.
- (c) Automobile Liability—not less than \$1,000,000 per occurrence; and
- (d) Applicable Professional Liability—not less than \$2,000,000 per occurrence.

**10. Representations and Warranties.** Vendor represents and warrants to the Participating IM Sponsors that:

(a) Vendor has facilities, supplies, staff and experience sufficient to perform the Services efficiently and expeditiously, and in accordance with the records and information management best industry standards, the terms of this Agreement and applicable law, including, if applicable, cGLP and cGCP;

(b) Neither Vendor nor any of its Representatives who will perform any portion of the Services has ever been debarred pursuant to the United States Food, Drug and Cosmetic Act nor excluded from any federal health care program (including Medicare or Medicaid), and Vendor will notify the Administrator and the Sponsor Committee immediately if any of the foregoing occurs;

(c) The execution, delivery and performance of this Agreement by Vendor does not and will not conflict with or result in breach any term, condition, obligation or restriction of any other agreement of Vendor with any third party;

(d) Vendor shall perform the Services without any unauthorized or unlawful use of any third party intellectual property, proprietary information or know-how; *provided, however*, that the foregoing shall not include off-the-shelf software licensed to Vendor under a shrink-wrap license agreement; and

(e) None of the Work Product provided by Vendor in connection with the performance of the Services will use any intellectual property, proprietary information, content, software or other materials of any third party unless such use is authorized by such third party or permitted by laws applicable to such use.

**11. Miscellaneous Provisions.**

(a) Governing Law. This Agreement and any Order shall be governed by the laws of the State of **Michigan** without reference to the conflicts of laws or choice of law provisions thereof. **The Parties expressly waive any right to a jury trial of any dispute arising out of or in any way related to this Agreement or any Order, or any breach thereof.**

(b) Non-Waiver; Remedies. No delay by or omission of either Party in exercising any right, power, privilege, or remedy shall impair such right, power, privilege, or remedy or be construed as a waiver thereof. The rights and remedies provided in this Agreement are cumulative and are not exclusive of other rights or remedies provided by law.

(c) Taxes. Vendor shall be fully responsible for payment of all income, social security, or other taxes or payments that may be due and owing by Vendor as the result of fees or amounts paid to it for the performance of the Services, and Vendor shall indemnify and hold harmless the Participating IM Sponsors and the Administrator from and against any such tax or payment.

(d) Notices. Notices shall be given by first class mail, express mail, facsimile (followed by confirmation) or overnight delivery, addressed to the applicable Party at the corresponding address given in the preamble of this Agreement, or to such other address as a Party may designate in writing.

(e) Use of Name. Neither Party shall use the name, tradename or trademark of the other Party in any press release, advertisement, publicity material or promotional activity without the prior written consent of such other Party.

(f) Headings. Headings and titles of parts and sections of this Agreement are for convenience only and have no interpretative significance.

(g) Survival. The provisions of Section 4 (Ownership of Work Product), Section 8 (Indemnification and Waiver) and Section 11 (Miscellaneous Provisions) and all provisions of the Universal Contract Terms shall survive the expiration or termination of this Agreement for any reason.

(h) Successors. This Agreement and the covenants hereof are binding on and inure to the benefit of Vendor and its Successors and the Participating IM Sponsors and their Successors solely to the extent provided in the Approval Order.

(i) Assignment. Except as otherwise provided in the succeeding sentence, this Agreement may not be assigned by Vendor without the prior, express written consent of the Administrator. After the IM Termination Date (as defined in the Global Protocol), Vendor may assign or transfer this Agreement without consent to any Affiliate or in connection with the merger, consolidation or transfer of all or substantially all of that portion of its assets to which this Agreement relates.

(j) ***“Representatives”*** means the members, principals, directors, officers and employees of a Party.

*[Signature page follows]*

IN WITNESS WHEREOF, this Agreement has been executed by Vendor through its duly authorized officer effective as of the date set forth in the preamble.

**Team Support Services, LLC d/b/a Abraxas  
Worldwide**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

CONFIDENTIAL



**[CCD Committee]**

**Draft Statement of Work**

**DATE**

This proposal is protected under the copyright laws of the United States and other countries as an unpublished work. This proposal contains information that is proprietary and confidential, which shall not be disclosed outside the recipient's company or duplicated, used or disclosed in whole or in part by the recipient for any purpose other than to evaluate this proposal. Any other use or disclosure in whole or in part of this information without the express written permission of



Abraxas is prohibited.



2.2 Key Personnel

1. Name	2. Title/ROLE	On-Site	
		Yes	No
ADD ABRAXAS KEY PERSONNEL	TITLE OF KEY PERSONNEL	X	
ADD ABRAXAS KEY PERSONNEL	TITLE OF KEY PERSONNEL	X	

2.3 Milestones and Deliverables

3. Milestone/deliverable	4. Date
INCLUDE MILESTONES OR KEY CLIENT DELIVERABLES	ADD DATE

2.4 Terms and Conditions

- i. Records will be logged and stored in Abraxas’ GxP compliant Facility in a manner that allows for retrieval and delivery by Abraxas within a commercially reasonable period of time. Upon authenticated and authorized written or electronic request by client, records shall be removed from storage and delivered only to client’s authorized representative(s). Client agrees to provide Abraxas with a list of authorized representatives which shall be updated by the client on a regular basis. Client represents that its authorized representative(s) shall have full authority to order (whether in person or in a writing transmitted via fax, e-

Labor		
Expense Type	Description	Cost

mail or U.S. Mail) the removal of stored records (or any other service being provided by Abraxas hereunder), and to deliver and receive same. Abraxas may rely on instructions from client’s authorized representative(s) and shall not be required to inquire into or examine such authority.

- ii. The client may, upon reasonable advance notice to Abraxas and during normal business hours (unless otherwise agreed to by Abraxas), and at client’s sole expense, conduct an annual quality assurance audit of Abraxas’ Facility to determine if Abraxas is complying with applicable policies and procedures, good records management practices and any applicable federal regulations. Abraxas shall provide the client and its agents with such escorted access to Abraxas’ Facility as is reasonably necessary to complete a commercially reasonable audit. Client may conduct additional audits of Abraxas’ Facility only after providing advance written notice to Abraxas and obtaining Abraxas’ prior written consent to any such audit.

INCLUDE SERVICE TYPE FROM PRICE SHEET	DESCRIBE SERVICING		\$
INCLUDE SERVICE TYPE FROM PRICE SHEET	DESCRIBE SERVICING		\$
INCLUDE SERVICE TYPE FROM PRICE SHEET	DESCRIBE SERVICING		\$
<b>Subtotal</b>			\$
<b>Materials</b>			
<b>Description</b>	<b>Unit Cost</b>	<b># of Units</b>	<b>Cost</b>
N/A	N/A	N/A	N/A
<b>Subtotal</b>			
<b>Year One Total</b>			\$

\* Please note that billing will only be against actual based on metric reporting.

**4 PAYMENT SCHEDULE AND PROCEDURES**

This SOW is based upon estimated volumes provided by the customer and workloads approximated by Abraxas. Abraxas will bill [CCD Committee] based on tracked metrics for work completed each month in accordance with the deliverables and pricing outlined in sections 2.3 and 3.0. In the event that the volume or parameters change it is anticipated that Abraxas will submit a request with justification for additional funding of the project. If services other than those represented in section 3 are deemed necessary, the fee schedule will apply as outlined in section 3.0.

**5 Signature**

IN WITNESS WHEREOF, Supplier has caused this SOW to be executed and delivered as of the date first written above. Client approval of the work to be performed will be indicated upon signature of this SOW.

TEAM SUPPORT SERVICES, LLC  
d/b/a ABRAXAS

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_

Title

---

Date

**RETENTION AGREEMENT**

**THIS AGREEMENT** dated June \_\_, 2014 is made by and between the **PARTICIPATING SPONSORS** (as defined in the Global Protocol for Coordinated Retrieval, Review and Return of Certain Sponsor Records (“Global Protocol”) that is an exhibit to the Order Approving Motion of Marc P. Barmat, Trustee, and Certain Pharmaceutical Sponsors That Were Customers of the Debtors (i) Approving a Global Protocol for the Coordinated Retrieval, Review and Return of Certain Sponsor Records; (ii) Approving the Retention of Certain Service Providers in Connection Therewith; (iii) Approving a Release and Exculpation of the Trustee, the Participating Sponsors and Certain Other Parties; and (iv) Granting Related Relief] dated June \_\_, 2014 (“Approval Order”) of the U.S. Bankruptcy Court for the Southern District of Florida) and **PACIFIC PHARMA GROUP, LLC** (“PPG”), a [Washington] limited liability company with its principal place of business at 1402 S. Brookside Terrace, Tacoma, Washington 98465-1210. The Participating Sponsors and PPG are hereinafter sometimes each referred to as a “Party” and collectively as “Parties.”

**W I T N E S S E T H:**

That, in consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be bound, agree as follows:

**Article 1. RETENTION OF PPG TO PERFORM SERVICES**

**1.1.** As a result of and effective through the Approval Order, the Participating Sponsors have engaged PPG to provide the services set forth in the Global Protocol to be performed by it (“Services”) under the terms and conditions of this Agreement, which is subject in all respects to the Approval Order, including the Universal Contract Terms that is an exhibit thereto, and PPG hereby accepts such engagement.

**1.2.** All of the Services shall be performed by Jon L. Ruckle, M.D.

**1.3.** PPG shall cause the Services to be performed in a competent, diligent and workmanlike manner with reasonable skill and care in accordance with the terms of this Agreement, standards of professional conduct and applicable law. PPG shall provide all materials, facilities and supplies necessary to perform the Services.

**1.4.** PPG shall report to the Sponsor Committee and the Administrator (as such terms are defined in the Global Protocol) as they may reasonably request from time to time.

**Article 2. COMPENSATION FOR THE SERVICES**

**2.1.** PPG shall submit to the Administrator written invoices for Services performed at least every 30 days during the period of performance of Services and shall provide supporting documentation as reasonably requested by the Administrator. Payment of each invoice shall be in full compensation for Services performed thereunder. All amounts shall be payable within 30 days of date of invoice. This Agreement relates to the provision of Services only,

and PPG shall not purchase equipment, goods, software or other tangible or intangible property for which it will seek reimbursement from the Administrator, any of the IM-Related Account, the AIM-Related Account or the Administrative Expense Account (each as defined in the Global Protocol) or the Participating Sponsors without express prior written authorization from the Administrator.

**2.2.** PPG shall be compensated for performing the Services at the rate of \$360 per hour up to a maximum of 40 hours (or \$14,400).

**Article 3. MISCELLANEOUS**

**3.1.** With respect to the subject matter of this Agreement, the Parties are and remain independent contractors. This Agreement shall not be deemed to create an employer/employee relationship, joint venture, partnership, association or agency between the Parties. Neither Party is authorized to incur or create any obligation, express or implied, on behalf of the other Party or to bind the other Party in any manner whatsoever.

**IN WITNESS WHEREOF**, this Agreement has been executed by PPG through its duly authorized officer effective as of the date set forth above.

**PACIFIC PHARMA GROUP, LLC**

By: \_\_\_\_\_  
Jon L. Ruckle, Managing Member



## EPIQ NOTICING PROJECT AGREEMENT

This Noticing Project Agreement is being entered into by and between Epiq Bankruptcy Solutions, LLC (“Epiq”) and the Participating Sponsors (as defined in the Global Protocol for Coordinated Retrieval, Review and Return of Certain Sponsor Records (“Global Protocol”) that is an exhibit to the Order Approving Motion of Marc P. Barmat, Trustee, and Certain Pharmaceutical Sponsors That Were Customers of the Debtors (i) Approving a Global Protocol for the Coordinated Retrieval, Review and Return of Certain Sponsor Records; (ii) Approving the Retention of Certain Service Providers in Connection Therewith; (iii) Approving a Release and Exculpation of the Trustee, the Participating Sponsors and Certain Other Parties; and (iv) Granting Related Relief dated June \_\_, 2014 (“Approval Order”) of the U.S. Bankruptcy Court for the Southern District of Florida. The Participating Sponsors are referred to herein as “Client.”

In consideration of the premises herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### General Terms and Conditions

#### 1. Services.

In accordance with the charges, terms and conditions contained in this agreement and in the schedule(s) attached hereto (collectively, the “Agreement”), which are subject in all respects to the Approval Order, including the Universal Contract Terms that is an exhibit thereto, Epiq agrees to furnish Client with the noticing services described in the *Motion to Establish Procedures for Notice and Service, Motion to Approve Form and Manner of Notice, Fix Dates for Filing Objections and Responses Thereto, and Schedule Final Hearing on Motion to Approve Global Protocol for Retrieval, Review, and Return of Study Records*, which was filed with the United States Bankruptcy Court for the Southern District of Florida (the “Bankruptcy Court”) in the bankruptcy cases styled *In re: Comprehensive Clinical Development, Inc., et al.*, Case No. 13-17273 (the “Services”). Charges for the Services will be based on the pricing schedule set forth on Exhibit A hereto (the “Pricing Schedule”). The Pricing Schedule sets forth individual unit pricing for each of the Services provided by Epiq and represents a bona fide proposal for that Service. As set forth in the Approval Order, Epiq shall not be required to file any fee applications with this Court or the Trustee, and its compensation shall be payable as provided, and be subject to the limitations (including the limitation of recourse therefor solely to the Escrow Accounts) contained, in the Global Protocol.

#### 2. Charges.

- (a) Epiq shall submit to the Administrator (as defined in the Global Protocol) written invoices for Services performed at least every 30 days during the period of performance of Services and shall provide supporting documentation as reasonably requested by the Administrator. Payment of each invoice shall be in full compensation for Services performed thereunder. All amounts shall be payable within 30 days of date of invoice. This Agreement relates to the provision of Services only, and PPG shall not purchase equipment, goods, software or other tangible or intangible property for which it will seek reimbursement from the Administrator, any of the IM-Related Account, the AIM-Related Account or the Administrative Expense Account (each as defined in the Global Protocol) or the Participating Sponsors without express prior written authorization from the Administrator.





- (b) In the event Client disputes any Payment Amount, the parties agree to promptly use their commercially reasonable best efforts to resolve the dispute. Such efforts shall not constitute a waiver of any other rights which Epiq may have at law or in equity hereunder. If the parties are unable to resolve such dispute within one-hundred twenty (120) days following the disputed invoice date, then either party shall have the right to terminate this Agreement.

### **3. Confidentiality**

Client data provided to Epiq during the term of this Agreement in connection with the Services (“Client Data”) shall be maintained confidentially by Epiq in the same manner and to the same level as Epiq safeguards data relating to its own business; provided, however, that if Client Data is publicly available, was already in Epiq’s possession or known to it, was required to be disclosed by law, was independently developed by Epiq without use or reference to any Client Data, or was rightfully obtained by Epiq from a third party, Epiq shall bear no responsibility for public disclosure of such data. Client agrees that Epiq shall not be liable for damages or losses of any nature whatsoever arising out of the unauthorized acquisition or use of any Client Data or other Client materials provided to Epiq in the performance of this Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED, EPIQ SHALL HAVE NO OBLIGATION OR LIABILITY TO THE CLIENT (WHETHER IN TORT, EQUITY, CONTRACT, WARRANTY OR OTHERWISE) FOR ANY INDIRECT, GENERAL, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY USE, INABILITY TO USE OR RESULTS OF USE OF THE SERVICES OR OTHERWISE, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF EPIQ TO THE CLIENT FOR ALL CLAIMS, LOSSES, COSTS, FINES, SETTLEMENTS, PENALTIES OR DAMAGES, INCLUDING COURT COSTS AND REASONABLE ATTORNEY’S FEES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY USE, INABILITY TO USE OR RESULTS OF USE OF THE SERVICES (COLLECTIVELY, “CLAIMS”) SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY THE CLIENT TO EPIQ FOR THE PARTICULAR SERVICES WHICH GAVE RISE TO THE CLAIMS. TO THE EXTENT CERTAIN JURISDICTIONS GOVERNING THIS AGREEMENT LIMIT THE EXCLUSION OF DAMAGES OR LIMITATION OF LIABILITY HEREUNDER OR OTHERWISE RENDER ANY PART OF THE EXCLUSIONS OF DAMAGES OR LIMITATIONS OF LIABILITY UNENFORCABLE, THE ABOVE EXCLUSIONS AND LIMITATIONS SHALL BE MODIFIED TO THE MAXIMUM EXTENT PERMITTED BY LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

### **5. General**

No waiver, alteration, amendment or modification of any of the provisions of this Agreement shall be binding upon either party unless signed in writing by a duly authorized representative of both parties. This Agreement shall be governed by the laws of the State of New York, without regard to that state’s provisions for choice of law. Client and Epiq agree that any controversy or claim arising out of or relating to this Agreement or the alleged breach thereof shall be resolved by and subject to the exclusive jurisdiction of the Bankruptcy Court.



Notices to be given or submitted by either party to the other, pursuant to this Agreement, shall be sufficiently given or made if given or made in writing and sent by hand delivery, overnight or certified mail, postage prepaid, and addressed as follows:

If to Epiq:

Epiq Bankruptcy Solutions, LLC  
757 Third Avenue, Third Floor  
New York, New York 10017  
Attn: Lorenzo Mendizabal

If to Client:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Invoices sent to the Administrator should be delivered to the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**EPIQ BANKRUPTCY SOLUTIONS, LLC**

\_\_\_\_\_  
Name: Lorenzo Mendizabal  
Title: Managing Director



## EPIQ PRICING SCHEDULE

### CLAIM AND NOTICING RATES

<u>Title</u>	<u>Rates</u>
Clerical/Administrative Support	\$35.00 – \$50.00
Case Manager	\$60.00 – \$95.00
IT / Programming	\$80.00 – \$150.00
Senior Case Manager	\$100.00 – \$140.00
Director of Case Management	\$150.00 – \$225.00
Case Analyst	\$75.00 – \$125.00
Consultant/ Senior Consultant	\$160.00 – \$195.00
Director/Vice President Consulting	\$250.00

### NOTICING SERVICES

Printing	\$0.10 per image (volume discounts apply)
Personalization / Labels	\$0.05 each
Postage / Overnight Delivery	At cost
E-Mail Noticing	\$50 per 1,000
Fax Noticing	\$0.10 per page
Publication Noticing	Quoted at time of request
Processing Undeliverable Mail	\$0.25 per piece
CD-Rom	\$5.00 per CD plus single setup charge of \$750



**DATA MANAGEMENT SERVICES**

Data Import / Transfer	No per creditor charge
Electronic Imaging	\$0.12 per image
Weblink Hosting Fee	\$200.00/month
CD- ROM (Mass Document Storage)	Quoted at time of request
Document Storage (paper)	\$2.00 per box
(electronic)	No per creditor/image charge

**Global Protocol Budget***In re: Comprehensive Clinical Development, Inc., et al.*

Case No. 13-17273-JKO

<b>ADMINISTRATIVE ACCOUNT</b>	
Administrator (CBIZ) Fees	95,000
Trustee professional fees	95,000
Trustee costs and expenses	20,000
Notice and other costs	12,500
Contingency	15,000
<b>ADMINISTRATIVE ACCOUNT TOTAL</b>	<b>237,500</b>

<b>AIM-RELATED ACCOUNT</b>	
Abraxas	
<i>Review of study records and common documents</i>	36,875
<i>Destruction of unclaimed records</i>	10,000
<i>Storage of common documents (five years)</i>	1,650
	<hr/>
	48,525
Access Information Management	
<i>Rent (through November 2013)</i>	8,339
<i>Rent (through August 2014)</i>	7,820
<i>Removal charges</i>	21,000
<i>Shipping charges</i>	18,000
	<hr/>
	55,159
Pacific Pharma Group, LLC	15,000
Contingency	10,000
<b>AIM-RELATED ACCOUNT TOTAL</b>	<b>128,684</b>

<b>IM-RELATED ACCOUNT</b>	
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**Global Protocol Budget***In re: Comprehensive Clinical Development, Inc., et al.*

Case No. 13-17273-JKO

Abraxas	
<i>Review of study records and common documents</i>	200,620
<i>Destruction of unclaimed records</i>	52,000
<i>Storage of common documents (five years)</i>	10,000
	262,620
Iron Mountain	
<i>Rent (through October 31, 2014)</i>	123,321
<i>Removal charges</i>	40,343
<i>Shipping charges</i>	50,359
	214,023
Contingency	40,000
<b>IM-RELATED ACCOUNT TOTAL</b>	<b>516,643</b>
<b>PROTOCOL TOTAL</b>	<b>882,827</b>

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION**  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:	Chapter 7
COMPREHENSIVE CLINICAL DEVELOPMENT, INC.,	Case No. 13-17273-JKO
COMPREHENSIVE CLINICAL DEVELOPMENT NW, INC.,	Case No. 13-17282-JKO
Debtors.	(Jointly Administered Under Case No. 13-17273-JKO)

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**NON-BINDING ELECTION FORM FOR RETRIEVAL OF SPONSOR RECORDS**

This Non-Binding Election Form is governed by and subject to the terms of the *Order of the United States Bankruptcy Court for the Southern District of Florida (i) Approving a Global Protocol for the Retrieval, Review And Return of Certain Study Records; (ii) Approving the Retention by the Moving Sponsors of Certain Professionals in Connection Therewith; (iii) Approving a Release and Exculpation in Favor of the Trustee, the Participating Sponsors, and Other Third Parties; and (iv) Granting Related Relief*, dated June \_\_, 2014, Dkt. No. \_\_ (“Order”). Capitalized terms used but not defined herein have the meanings given to them in the Order.

This Non-Binding Election Form will be used by the Administrator to help calculate the Minimum Funding Commitment due from each Sponsor. It asks Sponsors to identify themselves as either an AIM Sponsor, an IM Sponsor or both (and whether such Sponsor has an interest in Common Materials). Certain Sponsors may not know where their Materials are located. In such event, Sponsors are advised that records related to studies performed in the Tacoma, Washington, area are likely stored at AIM; all other records are likely stored at an Iron Mountain facility. Furthermore, Sponsors are advised that there is no penalty imposed by the Global Protocol for Sponsors which complete this Non-Binding Election Form and are later found to have Materials at a location other than the one identified on this Form. Sponsors which are certain they have Materials stored with the Debtors that they wish to retrieve but are unsure of the exact location of their Materials are therefore encouraged to make an “educated guess” in completing this Form.

**COMPLETING AND RETURNING THIS NON-BINDING ELECTION FORM DOES NOT OBLIGATE A SPONSOR TO PAY ANY AMOUNT OR TO PARTICIPATE IN THE RECORD RETRIEVAL PROCESS.**

**1). NAME OF SPONSOR: \_\_\_\_\_ (“Sponsor”)**

On a separate sheet, (1) list all Affiliates (as defined in Section X.11 of the Retrieval Protocol) of Sponsor that also seek the return of Sponsor Materials or access to Common Materials, (2) indicate whether each such Affiliate is an AIM Sponsor, seeks access to Common Materials which relate to studies performed by Debtors at their Tacoma, Washington location, is an IM Sponsor and/or seeks access to Common Materials which relate to studies performed by Debtors at locations other than Tacoma, Washington and on the date of the Order are in storage at Iron Mountain facilities, and (3) provide the name, telephone number and e-mail address for a contact person at each such Affiliate. Sponsor and its Affiliates may return one collective Non-Binding Election Form, or Sponsor and each Affiliate may return its own Non-Binding Election Form. However, if Sponsor and its Affiliates return multiple individual Non-Binding Election Forms, they must call the Administrator’s attention to the fact that they have done so in order that they be considered as one Sponsor in accordance with the Global Protocol:

**2). NON-BINDING ELECTIONS (CHECK ALL THAT APPLY):**

- |  |   |
|--|---|
| <input type="checkbox"/> Sponsor is an AIM Sponsor | <input type="checkbox"/> Sponsor seeks access to Common Materials which relate to studies performed by Debtors at their Tacoma, Washington location   |
| <input type="checkbox"/> Sponsor is an IM Sponsor  | <input type="checkbox"/> Sponsor seeks access to Common Materials which relate to studies performed by Debtors at locations other than Tacoma, Washington and on the date of the Order are in storage at Iron Mountain facilities |

**Yes**  **No** Sponsor (including all its Affiliates whether or not they are also Sponsors in connection with Debtors) had sales in their most recently completed fiscal year of \$5 billion or more (to be completed **only** by Sponsors that are, or have Affiliates on behalf of which this Form has been completed that are, IM Sponsors and/or seek access to Common Materials which relate to studies performed by Debtors at locations other than Tacoma, Washington and on the date of the Order are in storage at Iron Mountain facilities).

**4). CONTACT INFORMATION (for the individual completing this form):**

Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_



**5). RETURN OF NON-BINDING ELECTION FORM**

The Non-Binding Election Form shall be completed and e-mailed to the Administrator ([E-MAIL ADDRESS]) no later than [DATE]. Sponsors that do not timely return the Non-Binding Election Form shall not be permitted to become Original Funding Sponsors but may become Additional Participating Sponsors in accordance with the terms of the Order.

**6). QUESTIONS**

Any Sponsor with questions regarding the Order or this Non-Binding Election Form should contact [NAME] at [NUMBER] or send an e-mail to [E-MAIL ADDRESS].

[CBIZ Letterhead]

Dear [Sponsor] (“you”),

CBIZ MHM, LLC is the Administrator for the Global Protocol as those terms are defined in the *Order of the United States Bankruptcy Court for the Southern District of Florida (i) Approving a Global Protocol for the Retrieval, Review And Return of Certain Study Records; (ii) Approving the Retention by the Moving Sponsors of Certain Professionals in Connection Therewith; (iii) Approving a Release and Exculpation in Favor of the Trustee, the Participating Sponsors, and Certain Other Third Parties; and (iv) Granting Related Relief*, dated June \_\_, 2014, Dkt. No. \_\_ (including exhibits and attachments thereto, the “Order”). Capitalized terms used but not defined herein have the meanings given to them in the Order. A copy of the Order is available at the following website: [Epiq website].

Pursuant to the Order, you are hereby notified that the Minimum Funding Commitment required for you to become an Original Funding Sponsor is: [AMOUNT]. (“Minimum Funding Commitment”).

Your Minimum Funding Commitment has been calculated as follows:

<b>ACCESS</b>	<i>Estimated Number of Boxes at AIM</i>	<i>Per Box Amount</i>	<i>Total Funding Amount</i>
AIM Funding Amount			
<b>IRON MOUNTAIN</b>	<i>Larger Company? (Y/N)</i>		
IM Funding Amount			
<b>ADMINISTRATIVE</b>			
Administrative Funding Amount			
<b>TOTAL FUNDING AMOUNT</b>			<b>\$</b>

In order for you to become an Original Funding Sponsor, you must (a) pay your Minimum Funding Commitment by check [or wire transfer] to the Administrator on or before [DATE] (“Payment Deadline”) in accordance with the payment instructions below, (b) countersign this Letter Agreement and return it to the Administrator at the address set forth below, and (c) sign and return the Global Release (a copy of which is also enclosed herewith). *We urge you to seek independent advice and review of this Letter Agreement, the Order and the Global Release from legal counsel of your choice.*

By countersigning and returning this Letter Agreement to the Administrator, you acknowledge and agree that:

1. You irrevocably promise to pay your Minimum Funding Commitment on or before the Payment Deadline.
2. This Letter Agreement is subject to the Order in all respects. In the event of any conflict between this Letter Agreement and the Order, the Order shall control. Specifically, the Universal Contract Terms appended to the Order are hereby incorporated by reference and made a part of this Letter Agreement. This Letter Agreement is a "Contract" as defined therein.
3. All other Sponsors that return a copy of this Letter Agreement to the Administrator, pay their Minimum Funding Commitment prior to the Payment Deadline and sign and return the Global Release shall be express third-party beneficiaries of this Letter Agreement.
4. It is critically important that all Sponsors that sign and return this Letter Agreement honor their commitment to pay the Minimum Funding Commitment by the Payment Deadline. The failure of some Sponsors to pay timely will result in the Administrator receiving insufficient funds to administer the Global Protocol. This will require other Sponsors to contribute additional funds or cause the process to fail. In a suit to recover any unpaid portion of your Minimum Funding Commitment and/or for any damages arising from or proximately caused by such non-payment, the Administrator (or any other Sponsor acting on its behalf) shall be entitled to collect not only the unpaid portion of your Minimum Funding Commitment but also any damages, as well as any costs and expenses, including reasonable attorneys' fees, expended as a result of your non-payment.

Please countersign this Letter Agreement below and return it to me no later than [DATE].

Very truly yours,

CBIZ MHM, LLC, in its capacity as Administrator and in no other capacity

ACKNOWLEDGED AND AGREED

[SPONSOR]

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

**PAYMENT INSTRUCTIONS AND DELIVERY ADDRESS**

Return signed Letter Agreement and Signed Global Release to:

CBIZ  
[Address]

Make checks payable to:

[Payee]

Wire instructions:

[Wire instructions]

**APPENDIX TO APPROVAL ORDER**

**1. Applicability and Incorporation**

The Approval Order dated June \_\_, 2014, and the provisions of this Appendix (which is Exhibit 10 to the Approval Order) shall be deemed incorporated in and become a part of each contractual or other commercial relationship and related document created or approved by or entered into pursuant to or in connection with the Approval Order (each, a “Contract”), including with each of the Service Providers, and shall supersede each and every provision of a Contract to the full extent of any inconsistency between such provision and any provision of the Approval Order or this Appendix. In addition, the provisions of this Appendix may be expressly incorporated by reference to this Appendix into any other document created or approved by or entered into pursuant to or in connection with the Approval Order.

**2. Representations and Warranties**

2.1. Each party to a Contract other than the Trustee or the Participating Sponsors represents and warrants to the other parties to that Contract and, if they are not parties, also to the Trustee and the Participating Sponsors as follows, each such representation and warranty being deemed to be independently material and conclusively presumed to have been relied upon by the other parties, the Trustee and the Participating Sponsors regardless of any investigation made or information obtained by any of them, and whether such information was obtained from a party or otherwise and whether it is obtained before or after the execution and delivery of such Contract:

(a) It is (and agrees that it shall continue to be) a duly organized and validly existing Person in good standing under the Applicable Law of the jurisdiction of its formation and has (and agrees that it shall continue to have) the power to execute and deliver the Contract to which it is a party and perform its obligations thereunder. The execution, delivery and performance by it of the Contract to which it is a party have been duly authorized by all necessary action on its part and the part of its Governing Body, and the Contract to which it is a party has been duly executed and delivered by it. The Contract to which it is a party constitutes its legal, valid and binding obligation, enforceable against it and its Successors in accordance with its terms.

(b) Its execution and delivery of the Contract to which it is a party and the performance of its obligations thereunder do not breach its Governing Documents and do not and will not violate any Applicable Law.

(c) No consent, approval or authorization of or declaration or filing with, or the taking of any other action by or in respect of, any Person is required in connection with its execution, delivery and performance of the Contract to which it is a party which has not been obtained or made, and such execution, delivery and performance by it are, except as otherwise expressly provided in the Contract, unconditional.

(d) Neither it nor any of its officers, employees or contractors that will perform any services under the Contract has ever been debarred pursuant to the United States Food, Drug and Cosmetic Act or excluded from any federal health care program (including Medicare or Medicaid), and it will notify the Administrator and the Sponsor Committee immediately if any of the foregoing occurs.

**2.2. There are no representations or warranties, express or implied, made by the Trustee or the Participating Sponsors (or any of their Affiliates) to any party to a Contract (or any of its Affiliates) in connection with such Contract or the transaction(s) contemplated thereby.**

**3. Acknowledgement of Limited Recourse**

Each party to a Contract other than the Trustee or the Participating Sponsors, by entering into it, acknowledges and agrees that the Trustee and the Participating Sponsors shall have no liability to such party whatsoever, for monetary obligations or liabilities or otherwise, arising under such Contract or otherwise directly or indirectly relating thereto except for its own gross negligence or willful misconduct. Any provision of such Contract providing or implying otherwise shall, to that extent, have no force or effect. Such party's rights and remedies with respect to the transaction(s) contemplated by such Contract are solely as provided in the Approval Order and in such Contract (as modified and after giving effect to the supersession and supplementation thereof by the Approval Order and this Appendix).

**4. Confidentiality**

4.1. Each party to a Contract (other than the Trustee and the Participating Sponsors) acknowledges that the Confidential Information is extremely confidential, proprietary information of the Sponsors. Such party shall take all steps necessary to insure that Confidential Information is kept in confidence by it and its employees, Affiliates and contractors and that no Confidential Information shall be disclosed to any Person other than the applicable Sponsor to whom the Confidential Information relates, including any other Sponsors. Confidential Information may be disclosed, on a strictly need-to-know basis, to certain Persons, including employees, Affiliates and contractors of such party to a Contract, who have agreed in writing to maintain its confidentiality in accordance with this section.

4.2. All of the Participating Sponsors and their Successors are intended third-party beneficiaries of Section 4.1 and shall be entitled, in addition to all other legal and equitable remedies available to it, to injunctive relief and orders of specific performance to enforce such Section without posting a bond or other security and without proof of the inadequacy of its legal remedies or the extent or irreparability of its harm.

4.3. If a party to a Contract (other than the Trustee and the Participating Sponsors) receives a request or demand, by subpoena or otherwise, from a Person that appears to seek disclosure or production of any Confidential Information from such party or any of its Affiliates, employees, contractors or counsel (other than a request or demand for access to Confidential Information received from the U.S. Food and Drug Administration), such party shall immediately notify the affected Participating Sponsor(s) and shall not voluntarily surrender or disclose any such Confidential Information without first providing, to the extent permitted by Applicable Law, the Participating Sponsors having an interest therein a reasonable opportunity to protect their interests in an appropriate court or in other appropriate manner. Notwithstanding anything to the contrary in this Appendix, no party to a Contract shall be obligated hereunder to refuse to obey any Applicable Law that has not been stayed.

**5. Performance; Transparency**

5.1. In performing its obligations under a Contract, each party thereto shall comply with all Applicable Laws timely and in full without any waiver thereof or deviation therefrom, notwithstanding the consent of a Governmental Entity to such waiver or deviation, unless the Participating Sponsors shall also have consented thereto.

5.2. Each provider of services under a Contract shall provide such services (a) competently, diligently and carefully in accordance with the highest standards of the service provider's profession or industry, (b) in compliance with the best practices of the service provider's profession or industry and (c) with personnel of such service provider who are skilled and experienced, understand their obligations with respect to such services, including obligations of confidentiality, and hold all necessary licenses and professional designations.

5.3. Each provider of services under a Contract shall provide access, at any reasonable time and from time to time, to representatives of the Participating Sponsors to the service provider's places of business where the services are being performed and its books and records relating to such services and the Contract under which it is providing them.

**6. Consent to Jurisdiction; Waiver of Immunity**

6.1. All parties to a Contract irrevocably submit to the exclusive jurisdiction and venue of the Bankruptcy Court for the purpose of any action or other proceeding arising under, in connection with or relating to such Contract and consent to the entry of final judgments by the Bankruptcy Court. **Each such party waives any objection to venue therein based on grounds of *forum non conveniens* or otherwise and the right to a trial by jury in any such action or proceeding.**

6.2. All parties to a Contract waives all forms of immunity (sovereign, diplomatic, charitable or otherwise) which, if asserted, could prevent the full resolution on the merits of any action or other proceeding arising under, in connection with or relating to such Contract.

**7. General Provisions**

7.1. Each Contract shall be binding upon the parties thereto and their respective Successors and shall inure to the benefit of the parties and their respective Successors (except to the extent, if any, that any such Successor became a Successor in contravention of the Contract). There are no intended third-party beneficiaries of any Contract except that the Participating Sponsors are third-party beneficiaries of all of the Contracts.

7.2. No party to a Contract may assign its interest therein or delegate or subcontract its duties thereunder without the prior written consent of the other parties thereto and the Committee (together with such approval of the Court as may otherwise be required).

7.3. Each Contract (as modified and after giving effect to the supersession and supplementation thereof by the Approval Order and this Appendix) constitutes the entire agreement among the parties thereto with respect to the transaction(s) contemplated by such Contract

and wholly supersedes any and all previous agreements and understandings among them, oral or written, relating thereto.

7.4. If any provision of a Contract (as modified and after giving effect to the supersession and supplementation thereof by the Approval Order and this Appendix) or the application thereof to any Person or circumstance is held by a Governmental Entity of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of such Contract (as modified and after giving effect to the supersession and supplementation thereof by the Approval Order and this Appendix), and the application of such problematic provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of such Contract (as modified and after giving effect to the supersession and supplementation thereof by the Approval Order including this Appendix), including the problematic provision, shall be valid and enforceable to the fullest extent permitted by Applicable Law, but only so long as the economic and legal substance of the transaction(s) contemplated thereby is not affected in a manner that is materially adverse to any party thereto. Upon a determination of such invalidity or unenforceability, the parties and the Committee shall negotiate in good faith to modify the Contract so as to effect its original intent as closely as possible in an acceptable and reasonable manner in order that the transaction(s) contemplated thereby may be consummated as originally contemplated to the fullest possible extent consistent with Applicable Law.

7.5. Whenever the consent or approval of a party to a Contract is required thereby for the taking of any action and no standard is otherwise provided therefor in a Contract, such consent or approval, having been duly sought, shall not be unreasonably withheld, conditioned or delayed.

7.6. A Contract may be signed in any number of copies on the same or separate multiple counterparts, but all such copies and counterparts constitute one and the same agreement and it shall not be necessary in making proof of such Contract to produce or account for more than one such counterpart. Facsimile signatures and printable electronic images of original signatures shall be deemed to be originals for all purposes thereunder.

7.7. At any time and from time to time and without further consideration, each party to a Contract shall execute, acknowledge and deliver all such other instruments and take such other actions as another party or the Committee may reasonably determine to be necessary or desirable in order to consummate the transactions contemplated by the Contract and to otherwise effectuate the intent thereof.

7.8. All notices, demands, elections, directions, requests and other communications given or made under a Contract ("Notices") must be in writing and shall be properly given or made only if transmitted to the appropriate address (which shall be the address of which the sender has most recently been notified as provided in this Section) by hand, by certified mail (return receipt requested) from an office or collection box of the U.S. Postal Service, or by a nationally recognized courier service offering next Business Day delivery. Delivery thereof shall be deemed made (a) if transmitted by hand, on the date of receipt or refusal of such delivery; (b) if transmitted by certified mail, on the earlier to occur of the date of receipt or the third business day after the date of posting; and (c) if transmitted by courier service offering next business day



delivery and the sender specifies and prepays for such delivery, on the earlier to occur of receipt or the business day next succeeding the business day on which the same is delivered to such courier for overnight delivery:

7.9. Except as otherwise expressly set forth in the Approval Order or a Contract, (a) the relationship of the parties to such Contract is and shall at all times continue to be that of contractual counterparties; (b) no party thereto is, or shall represent itself or hold itself out to be, a representative, partner, joint venturer or agent of any other party, the Trustee or the Participating Sponsors for any purpose whatsoever; (c) no party thereto shall purport to act for any other party, the Trustee or the Participating Sponsors in the creation or assumption of any obligation or liability whatsoever; and (d) nothing contained in such Contract shall be construed to cause a party thereto to be obligated to assume, perform or discharge any obligation or liability of any other party.

7.10. TIME IS OF THE ESSENCE with respect to every Contract provision and obligation thereunder.

7.11. Performance of a party's obligations under a Contract shall be excused to the extent it is prevented from performing them by any cause beyond its reasonable control, including natural disasters; acts of a Governmental Entity; war, terrorist acts or civil commotion; strikes, lock-outs or labor disturbances; and failure of public utilities or common carriers (each, a "Force Majeure Event"), for the shorter of 60 business days and the duration of such prevention, if such party gives prompt written notice of the Force Majeure Event to the other parties thereto and the Committee and exerts continuous reasonable efforts to eliminate or avoid such prevention as soon as practicable.

7.12. Except to the extent required by Applicable Law, no party to a Contract shall originate any publicity, news release or other announcement, written or oral, whether to the public or trade press, to a party's customers, suppliers or investors, or otherwise, relating to such Contract. No party to a Contract shall use any names, trademarks or logos of any other party or any other party's Affiliates.

## **8. Definitions and Principles of Construction**

8.1. The following terms used this Appendix have the meanings given to them in the Approval Order: "Committee," "Consultant," "Debtor," "Participating Sponsors," "Sponsor," "Sponsor Materials" and "Trustee." Other capitalized terms used in this Appendix without definitions have the respective meanings assigned to them in the Approval Order or, if not defined therein, in the Bankruptcy Code.

8.2. An "Affiliate" of a Person means any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person. For purposes of this definition, a Person shall be deemed to be controlled by another Person if such other Person possesses, directly or indirectly, power to direct or cause the direction of its management and policies by ownership, contract or otherwise.

8.3. "Applicable Law" means all of the following, as amended, re-enacted, supplemented or otherwise modified from time to time and as in effect at the relevant time: (a) ap-

plicable constitutions, codes, statutes (including the interpretation or administrative guidelines of any Governmental Entity charged with the enforcement, interpretation or administration thereof), laws (including common law and principles of equity), treaties, ordinances, rules, regulations, executive orders, directives, decisions, directions or requirements of any Governmental Entity; and (b) orders (including consent and stipulated orders), judgments, decrees, writs, injunctions and other decisions and determinations of any court or other tribunal; awards and other determinations of any arbitrator.

8.4. “Confidential Information” includes all information, whether in written, graphic or electronic form, that is (i) furnished to the Debtor or any of its predecessors, Affiliates, agents or subcontractors by or on behalf of a Sponsor; (ii) contained in any Sponsor Materials; or (iii) disclosed to any party to a Contract by or on behalf of a Sponsor or the Trustee, which information may include ideas, know-how, intellectual property, materials, inventions, clinical trials, clinical trial data, study protocols, investigators’ notes, instructions or other scientific or technical information, formulas, compounds, devices, specifications, designs, plans, methods, software, technical information, concepts, procedures, processes, financial and operational information, trade secrets, marketing prospects and all copies, reproductions, notes, analyses, compilations, studies, interpretations, summaries and other documents incorporating or including any of the foregoing, but excluding, information that was publicly known at the time of the disclosure.

8.5. “Governing Body” means, with respect to a Person other than an individual or a Governmental Entity, the board of directors, managers or trustees of such Person or any duly authorized committee of that board, or, if there is no board of directors, managers or trustees, the Person or body that, pursuant to Applicable Law or the Governing Documents of such Person, is vested with powers similar to those vested in a board of directors, managers or trustees.

8.6. “Governing Documents” means, with respect to any Person other than an individual or a Governmental Entity, the certificate or articles of incorporation, charter, bylaws, operating agreement, partnership agreement, trust agreement, joint venture agreement and other organizational or constitutive documents of such Person, as amended, and any notice or other document with respect thereto filed in connection with the Person’s formation or organization with any Governmental Entity in the Person’s jurisdiction of formation or organization

8.7. “Governmental Entity” means any supranational, national, state, municipal, local or foreign government; any state, commonwealth, province, district or territory thereof; any subdivision, court, department, commission, agency, authority or other instrumentality thereof including the U.S. Food and Drug Administration and the similar agencies of other nations; any central bank; any intergovernmental organization; and any other individual or group of individuals, entity or body (whether public, quasi-governmental or private) exercising any executive, legislative, judicial, arbitral, law enforcement, taxing, regulatory or administrative governmental or quasi-governmental function, including a self-regulatory organization and any entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

8.8. “Person” includes individual, corporation, partnership (general or limited), joint venture, association, limited liability or joint stock company, bank, trust company, trust (whether a land trust, a business trust or otherwise), estate, unincorporated organization, Gov-

ernmental Entity, and every other kind of legal, juridical, commercial and political person, entity, organization, department, bureau or agency whatsoever. A reference herein to a Person shall be construed to include such Person's Successors.

8.9. "Successors" means a Person's heirs, executors, administrators, other successors and assigns.

8.10. For purposes of this Appendix, unless (a) otherwise expressly provided or the context otherwise requires, (i) "herein," "hereof" and words of similar import refer to this Appendix as a whole and not to any particular provision; (ii) a word defined anywhere in this Appendix has the same meaning throughout this Appendix; (iii) "shall" expresses an obligation (and "will" does not), "may" (not followed by "not") is permissive, and "shall not" and "may not" both forbid the action specified; (iv) each reference to a "Section," an "Article," an "Exhibit" or a "Schedule" refers to a section or an article of, or exhibit or schedule to, this Appendix; (v) whenever from the context it is appropriate, each word, whether stated in the singular or the plural, shall include both the singular and the plural; (vi) each word of any gender includes all genders; (vii) "or" is not exclusive (unless used in conjunction with "either"), "includes" and "including" are not limiting, but "means" is limiting; (viii) any reference to an agreement (including this Appendix), instrument or other document (1) includes any schedules, exhibits, annexes or other attachments thereto and (2) "as amended" means and is a reference to such agreement, instrument or other document as it has been or may be amended, amended and restated, supplemented, novated or otherwise modified from time to time (except to the extent, if any, that any such agreement, instrument or other document was amended, amended and restated, supplemented, novated or otherwise modified in breach of its own terms, the Approval Order, this Appendix or Applicable Law); (ix) any reference to a statute (1) includes all regulations, rules, subordinate legislation and other Applicable Law issued or promulgated thereunder and all consolidations, codifications, re-enactments, extensions and replacements thereof and (2) "as amended" means and is a reference to such statute as it has been or may be amended, re-enacted, amended and restated, supplemented or otherwise modified from time to time; (x) any reference to a document being in a particular form or containing particular terms and conditions means and is a reference to such document being substantially in such form or containing substantially such terms and conditions; (xi) a reference to a Person in a particular capacity excludes such Person in any other capacity and individually; and (xii) a reference to a month refers to a calendar month and a reference to a year refers to a calendar year.