

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

In re:

VL Wind Down Inc., *et al.*,<sup>1</sup>

Debtors

Chapter 11

Case No. 19-12670 (JTD)

(Jointly Administered)

**Re: Docket No. 519**

**NOTICE OF FILING PLAN SUPPLEMENT**

**PLEASE TAKE NOTICE**, that on November 17, 2020, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) and the Official Committee of Unsecured Creditors (the “Committee” and together with the Debtors, the “Plan Proponents”) filed the *Amended Combined Disclosure Statement and Plan of Liquidation of VL Wind Down Inc. and GSC Wind Down Inc.*, dated November 17, 2020 [Docket No. 519] (as the same may be further modified, amended, and/or supplemented from time to time, the “Plan”).<sup>2</sup>

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: VL Wind Down Inc., f/k/a Vector Launch Inc. [4147] and GSC Wind Down Inc. f/k/a Garvey Spacecraft Corporation [4794]. The Debtors’ address is VL Wind Down Inc. and GSC Wind Down Inc., c/o Winter Harbor LLC, Attn: Shaun Martin, Chief Restructuring Officer, 265 Franklin Street, Suite 1004, Boston, MA 02110. All rights to the Debtors’ former names and related intellectual property were previously sold by the Debtors to TLS Bidco, LLC and Debtors no longer use those names.

<sup>2</sup> Capitalized terms not otherwise defined herein shall be given the meanings ascribed to them in the Plan.

**PLEASE TAKE FURTHER NOTICE**, that in connection with the Plan, the Plan

Proponents hereby file the Plan Supplement, which is attached hereto as **Exhibit 1**.

**SULLIVAN HAZELTINE ALLINSON LLC**

/s/ E.E. Allinson III

William D. Sullivan (No. 2820)  
William A. Hazeltine (No. 3294)  
Elihu E. Allinson, III (No. 3476)  
919 North Market Street, Suite 420  
Wilmington, DE 19801  
Telephone: (302) 428-8191  
Facsimile: (302) 428-8195  
Email: bsullivan@sha-llc.com  
whazeltine@sha-llc.com  
zallinson@sha-llc.com

-and-

Hugh M. Ray, III (admitted *pro hac vice*)  
Jason S. Sharp (admitted *pro hac vice*)  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
2 Houston Center  
909 Fannin Street, Suite 2000  
Houston, Texas 77010-1028  
Telephone: (713) 276-7600  
Fax: (713) 276-7673  
Email: hugh.ray@pillsburylaw.com  
jason.sharp@pillsburylaw.com

*Counsel to the Debtors and Debtors in Possession*

**POTTER ANDERSON & CORROON LLP**

/s/ D. Ryan Slauch

Christopher M. Samis (No. 4909)  
L. Katherine Good (No. 5101)  
D. Ryan Slauch (No. 6325)  
1313 N. Market Street, 6<sup>th</sup> Floor  
Wilmington, Delaware 19801  
Telephone: (302) 984-6000  
Facsimile: (302) 658-1192  
Email: csamis@potteranderson.com  
kgood@potteranderson.com  
rslauch@potteranderson.com

-and-

Bennett S. Silverberg, Esq. (admitted *pro hac vice*)  
Kenneth J. Aulet, Esq. (admitted *pro hac vice*)  
BROWN RUDNICK LLP  
7 Times Square  
New York, New York 10036  
Telephone: (212) 209-4800  
Facsimile: (212) 209-4801  
Email: bsilverberg@brownrudnick.com  
kaulet@brownrudnick.com

*Counsel to the Official Committee of Unsecured  
Creditors*

# **EXHIBIT 1**

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

In re:

VL Wind Down Inc., *et al.*,<sup>1</sup>

Debtors

Chapter 11

Case No. 19-12670 (JTD)

(Jointly Administered)

**Re: Docket No. 519**

**PLAN SUPPLEMENT**

This Plan Supplement contains documents filed in connection with *Amended Combined Disclosure Statement and Plan of Liquidation of VL Wind Down Inc. and GSC Wind Down Inc.*, dated November 17, 2020 [Docket No. 519] (as the same may be further modified, amended, and/or supplemented from time to time, the “Plan”).<sup>2</sup> Included in this Plan Supplement are the following:

**Exhibit A      Liquidating Trust Agreement**

**Exhibit B      Redline of Liquidating Trust Agreement**

**Exhibit C      Identity and Compensation of Liquidation Trustee**

**Exhibit D      Retained Action Schedule**

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: VL Wind Down Inc., f/k/a Vector Launch Inc. [4147] and GSC Wind Down Inc. f/k/a Garvey Spacecraft Corporation [4794]. The Debtors’ address is VL Wind Down Inc. and GSC Wind Down Inc., c/o Winter Harbor LLC, Attn: Shaun Martin, Chief Restructuring Officer, 265 Franklin Street, Suite 1004, Boston, MA 02110. All rights to the Debtors’ former names and related intellectual property were previously sold by the Debtors to TLS Bidco, LLC and Debtors no longer use those names.

<sup>2</sup> Capitalized terms not otherwise defined herein shall be given the meanings ascribed to them in the Plan.

The Plan Proponents reserve the right to alter, amend, update, supplement, or modify the Plan Supplement.

**SULLIVAN HAZELTINE ALLINSON LLC**

/s/ E.E. Allinson III

William D. Sullivan (No. 2820)  
William A. Hazeltine (No. 3294)  
Elihu E. Allinson, III (No. 3476)  
919 North Market Street, Suite 420  
Wilmington, DE 19801  
Telephone: (302) 428-8191  
Facsimile: (302) 428-8195  
Email: bsullivan@sha-llc.com  
whazeltine@sha-llc.com  
zallinson@sha-llc.com

-and-

Hugh M. Ray, III (admitted *pro hac vice*)  
Jason S. Sharp (admitted *pro hac vice*)  
PILLSBURY WINTHROP SHAW PITTMAN  
LLP  
2 Houston Center  
909 Fannin Street, Suite 2000  
Houston, Texas 77010-1028  
Telephone: (713) 276-7600  
Fax: (713) 276-7673  
Email: hugh.ray@pillsburylaw.com  
jason.sharp@pillsburylaw.com

*Counsel to the Debtors and Debtors in Possession*

**POTTER ANDERSON & CORROON LLP**

/s/ D. Ryan Slaugh

Christopher M. Samis (No. 4909)  
L. Katherine Good (No. 5101)  
D. Ryan Slaugh (No. 6325)  
1313 N. Market Street, 6<sup>th</sup> Floor  
Wilmington, Delaware 19801  
Telephone: (302) 984-6000  
Facsimile: (302) 658-1192  
Email: csamis@potteranderson.com  
kgood@potteranderson.com  
rslaugh@potteranderson.com

-and-

Bennett S. Silverberg, Esq. (admitted *pro hac vice*)  
Kenneth J. Aulet, Esq. (admitted *pro hac vice*)  
BROWN RUDNICK LLP  
7 Times Square  
New York, New York 10036  
Telephone: (212) 209-4800  
Facsimile: (212) 209-4801  
Email: bsilverberg@brownrudnick.com  
kaulet@brownrudnick.com

*Counsel to the Official Committee of Unsecured Creditors*

# Exhibit A

**VL WIND DOWN CREDITORS' LIQUIDATING TRUST AGREEMENT**

This VL Wind Down Creditors' Liquidating Trust Agreement (this "Agreement") dated as of \_\_\_\_\_, 2021 by and between VL Wind Down Inc., f/k/a Vector Launch Inc., GSC Wind Down Inc. f/k/a Garvey Spacecraft Corporation (collectively, the "Debtors"), and Peter Hurwitz of Dundon Advisors LLC, solely in his capacity as the Trustee, for the benefit of the Holders of Allowed Claims under the terms of the *Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation* (as may be subsequently amended, modified, or supplemented, the "Plan") confirmed by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") in Chapter 11 Case No. 19-12670 (JTD) by Order dated January \_\_\_\_, 2021 (the "Confirmation Order"). Capitalized terms used in this Agreement shall have the meaning ascribed to them in Article I of this Agreement.

**WITNESSETH**

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

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

**WHEREAS**, the Trust is established for the purpose of collecting, distributing and liquidating the Assets for the benefit of the Beneficiaries in accordance with the terms of this Agreement and the Plan with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust;

**WHEREAS**, pursuant to the Plan, the Settlers, the Trustee, and the Beneficiaries are required to treat, for all federal income tax purposes, the transfer of the Assets to the Trust as a transfer of the Assets by the Settlers to the Beneficiaries in satisfaction of their Allowed Claims, followed by a transfer of the Assets by the Beneficiaries to the Trust in exchange for the

beneficial interest herein, and to treat the Beneficiaries as the grantors and owners of the Trust in accordance with Treasury Regulation Section 301.7701-4;

**WHEREAS**, the Trust is intended to be treated as a grantor trust for federal income tax purposes;

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

## **ARTICLE I**

### **DEFINITIONS AND INTERPRETATIONS**

#### **1.1 Definitions.**

1.1.1 “Assets” shall mean the term Liquidating Trust Assets as defined in the Plan.

1.1.2 “Available Trust Cash” shall mean the aggregate of the Cash, Assets and Causes of Action and proceeds thereof after paying, funding, reserving against, or satisfying: (a) fees due to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6); (b) operating and administrative expenses of the Trust, including but not limited to all costs, expenses, and obligations incurred by the Trustee and professionals who may be employed by the Trustee in administering the Trust, the Plan and in carrying out the Trustee’s responsibilities under this Agreement, or in any manner connected, incidental, or related thereto and payment of such expenses; (c) the Disputed Claims Reserve; and (d) the Liquidating Trust Cost Reserve.

1.1.3 “Beneficiaries” shall collectively mean (a) the Holders of Allowed Claims under the Plan, or any successors to such Holders, or (b) their interests in the Trust, whether said Claims are Allowed before or after the Effective Date.

“Settlers” shall mean the Debtors.



1.1.5 “Trust” shall mean the liquidating trust established pursuant to the terms of this Agreement, which is defined in the Plan as the Liquidating Trust.

1.1.6 “Trustee” shall mean (a) initially, Peter Hurwitz of Dundon Advisors LLC, solely in his capacity as trustee, and (b) any successors or replacements duly appointed under the terms of this Agreement and the Plan, who is defined in the Plan as the Liquidating Trustee.

1.1.7 “Permitted Investments” shall include (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States of America as an agency or instrumentality thereof, (c) such other investments as the Bankruptcy Court may approve from time to time, or (d) demand deposits or certificates of deposit at any bank or trust company that has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000, provided, however, that the scope of any Permitted Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise.

1.2 Use of Plan Definitions. All capitalized terms that are used in this Agreement but not defined herein shall have the meaning set forth for such terms in the Plan.

1.3 Interpretation. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the provisions of this Agreement. Words denoting the singular number shall include the plural number and vice versa, and words denoting one gender shall include the other gender.

1.4 Particular Words. Reference in this Agreement to any Section or Article is, unless otherwise specified, to that such Section or Article under this Agreement. The words “hereof,” “herein,” “hereinafter,” and similar terms shall refer to this Agreement and not to any particular Section or Article of this Agreement.

## ARTICLE II

### DECLARATION OF TRUST

2.1 Creation and Name. There is hereby created the Trust, which shall be known as the “VL Wind Down Creditors’ Liquidating Trust,” and is the Trust referred to as the “Liquidating Trust” in the Plan. The Trustee may conduct the affairs of the Trust under the name of the “VL Creditors’ Liquidating Trust.”

2.2 Purpose of Trust. The Settlers and the Trustee, pursuant to the Plan and in accordance with the Bankruptcy Code, hereby create the Trust for the purpose of collecting, distributing, and liquidating the Assets for the benefit of, and making Distributions to, the Beneficiaries in accordance with the terms of this Agreement and the Plan. The activities of the Trust shall be limited to those activities set forth in this Agreement and as otherwise contemplated by the Plan.

2.3 Transfer of Assets.

A. The Settlers hereby grant, release, assign, convey, transfer and deliver, on behalf of the Beneficiaries, all of the Settlers’ right, title and interest in the Assets to the Trustee as of the Effective Date in trust for the benefit of the Beneficiaries, pursuant to §§ 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code and in accordance with the Plan and Confirmation Order, and as of the Effective Date, free and clear of any and all liens, claims, encumbrances, and interests (legal, beneficial, or otherwise) of all other Persons and

Governmental Units to the maximum extent contemplated by and permissible under § 1141(c) of the Bankruptcy Code for the uses and purposes as specified in this Agreement and the Plan. The Assets can be used to, among other things, satisfy the following liabilities: (a) all fees payable pursuant to 28 U.S.C. § 1930 until such time as the Bankruptcy Court enters a final decree closing each of the Settlers' Chapter 11 Cases; (b) any expenses incurred and unpaid, or to be incurred, by the Settlers, the Creditors' Committee and the Trustee in the performance of their administrative duties in connection with winding up the Settlers' Estates after the Effective Date; and (c) any other obligations as may be specifically set forth in the Plan or Confirmation Order. Notwithstanding anything in this Agreement to the contrary, and subject to the Plan, the Trustee, may abandon or otherwise not accept any Assets that the Trustee believes, in good faith, have no value to the Trust. Any Assets that the Trust so abandons or otherwise does not accept shall not vest in the Trust.

B. The Trustee shall automatically, and without need for further notice or approval of the Bankruptcy Court or the Settlers, be designated as the representative of the Estates pursuant to § 1123 of the Bankruptcy Code to enforce or pursue any Causes of Action transferred to the Trust after the Effective Date in accordance with the terms of this Agreement, the Plan, and the Confirmation Order. Any proceeds of a Cause of Action shall be distributed pursuant to the terms of the Plan and this Agreement.

2.4 Securities Law. Under § 1145 of the Bankruptcy Code, the issuance of beneficial interests in the Trust to the Beneficiaries under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities. If the Trustee determines, with the advice of counsel, that the Trust is required to comply with the registration and reporting requirements of the Securities and

Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Trustee shall take any and all actions to comply with such reporting requirements and file necessary periodic reports with the Securities and Exchange Commission.

2.5 Appointment and Acceptance of Trustee. The Trustee shall be deemed to be appointed pursuant to § 1123(b)(3)(B) and all other applicable sections of the Bankruptcy Code. The Trustee accepts the Trust created by this Agreement and the grant, assignment, transfer, conveyance, and delivery to the Trustee, on behalf, and for the benefit, of the Beneficiaries, by the Settlers of all of their respective right, title, and interest in the Assets, upon and subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation Order.

2.6 No Reversion to Settlers. In no event shall any part of the Assets be distributed to any of the Settlers after the Effective Date. Rights to any reversionary interests in the Assets shall be controlled by the Plan.

### ARTICLE III

#### ADMINISTRATION OF THE TRUST

3.1 Rights, Powers, Privileges and Duties. The Trustee shall have only the rights, powers, privileges, and duties expressly provided in this Agreement, the Plan and the Confirmation Order. Subject to the terms of the Plan and this Agreement, including Section 3.10 of this Agreement, the Trustee shall have the power to take the actions granted in this Section 3.1, and any powers reasonably incidental thereto, which the Trustee reasonably determines to be necessary or appropriate to fulfill the purpose of the Trust, including but not limited to:

A. Prosecuting, settling, assigning, or otherwise compromising or abandoning for the benefit of the Trust any and all Avoidance Actions and Causes of Action transferred to

the Trust or arising in favor of the Trust, including, without limitation, taking any action with respect to appeals, counterclaims, and defenses of or with respect to such claims and causes of action, including retaining counsel to pursue Avoidance Actions and Causes of Action as permitted by the Plan;

B. Exercising all powers provided to the Trustee or the Trust under the Plan or Confirmation Order, including, without limitation, the right to allow, object to, or reconcile Unsecured Claims, Priority Claims (both tax and non-tax), Administrative Claims and Secured Claims and any other Claims asserted against the Estates;

C. Liquidating, selling or abandoning the Assets or any portion thereof;

D. Determining and satisfying any liabilities created, incurred or assumed by the Trust;

E. Executing any documents and taking any other actions related to, or in connection with, the liquidation of the Assets and the exercise of the Trustee's powers granted in this Agreement, the Plan, and Confirmation Order;

F. Holding legal title to any and all rights of the Beneficiaries in, to, or arising from the Assets;

G. Establishing the Disputed Claims Reserve, as well as any other required reserves, in an amount as may be necessary and appropriate for the proper operation of matters incident to the Trust;

H. Protecting and enforcing the rights to the Assets vested in the Trustee by this Agreement by any method reasonably determined to be appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

I. Making distributions of the Assets to or on behalf of the Beneficiaries in accordance with this Agreement, the Plan, and the Confirmation Order at least one time within each twelve month period after the Effective Date;

J. Filing any and all tax and information returns with respect to the Trust and/or the Debtors and paying taxes properly payable by the Trust, if any; and filing and issuing any and all necessary information returns, and taking any and all action necessary to obtain payment of any tax refund(s) due to the Settlers, their Estates and/or the Trust;

K. Making all necessary filings in accordance with any applicable law, statute, or regulation;

L. Determining and satisfying from the Assets any and all taxes and ordinary course liabilities, including reasonable professional fees and expenses, incurred by or on behalf of the Trust;

M. Investing the Assets received by the Trust or Trustee or otherwise held by the Trust or Trustee in accordance with Section 3.11 of this Agreement;

N. In the event that the Trustee determines that the Beneficiaries or the Trust may, will or have become subject to different tax consequences than those described in the Plan, taking such actions that will, or are intended to, address such different tax consequences;

O. Creating sub-trusts or title vehicles of which the Trust or the Beneficiaries hold the beneficial or ownership interests, as applicable;

P. Sending annually to each Beneficiary a separate statement stating the Beneficiary's share of income, gain, loss, deduction, or credit and instructing all such Beneficiaries to report such items on their federal tax returns;

Q. Opening and maintaining bank accounts on behalf of or in the name of the Trust;

R. In reliance upon the official claims register maintained in the Settlers' Chapter 11 Cases and any applicable court order, maintaining a register on the Trustee's books and records evidencing the beneficial interest in the Trust held by each Beneficiary;

S. Performing such functions and taking such actions as are provided for or permitted in this Agreement, the Plan, the Confirmation Order, or any other agreement executed pursuant to this Agreement, the Plan, or the Confirmation Order;

T. Terminating this Trust and seeking to close any of the Settlers' Chapter 11 Cases that were not previously closed pursuant to § 350(a) of the Bankruptcy Code;

U. Dissolving any corporate entities, terminate joint ventures or otherwise wind up any corporate entity owned by the Trust;

V. Execute offsets against claims as provided for in the Plan;

W. Pay all expenses and make all other payments relating to the Trust's Assets;

X. Pay all U.S. Trustee fees until such time as the Bankruptcy Court enters a final decree closing each Debtors' Chapter 11 case; and

3.2 Assets. Subject to the Plan, the Trustee shall be authorized to collect and liquidate all uncollected and unliquidated Assets, including tax refunds.

3.3 Claims Administration. Subject in all respects to the provisions hereof and the Plan, the Trustee shall have the authority to allow, reconcile, and file objections to Claims or Equity Interests, and to settle, compromise, withdraw, or litigate to judgment objections to any

and all Claims or Equity Interests, regardless of whether such Claims or Equity Interests are in a Class or otherwise.

3.4 Subject to the foregoing and the provisions of the Plan, from and after the Effective Date, the Trustee (a) may settle or compromise any Disputed Claim, and (b) shall succeed to the Settlers' rights with respect to any objections filed by the Settlers that remain pending as of the Effective Date. From and after the Effective Date, the Trustee shall have the sole authority to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval of the Bankruptcy Court.

3.5 Cure Costs. Subject to the Plan, on and after the Effective Date, the Trustee, may settle any dispute regarding the amount of any Cure without any further notice to any party or any action, order, or approval of the Bankruptcy Court.

3.6 Estimation. Subject to the Plan, the Trustee may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim pursuant to applicable law and (b) any contingent or unliquidated Claim pursuant to applicable law, including Section 502(c) of the Bankruptcy Code, regardless of whether the Settlers or the Trustee have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to the maximum extent permitted by law as determined by the Bankruptcy Court to estimate any Disputed Claim, contingent Claim, or unliquidated Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection.

3.7 Causes of Action. Subject to the Plan, on and after the Effective Date, the Trustee may pursue Causes of Action and Avoidance Actions.



3.8 Agents and Professionals. Subject to the Plan, the Trustee may, but shall not be required to, consult with and retain attorneys, financial advisors, accountants or other professionals and employees as the Trustee deems appropriate in the reasonable exercise of his or her discretion, and who the Trustee reasonably determines to have qualifications necessary to assist the Trustee in the proper administration of the Trust. Subject to Section 7.8 of this Agreement, the Trustee may pay the reasonable fees, costs and expenses of such persons (including himself) out of the Assets in the ordinary course of business pursuant to the Plan and Confirmation Order. Subject to the terms and conditions of this Agreement, the Plan and Confirmation Order, the Trustee may retain professionals who previously were employed by the Creditors' Committee and/or the Debtors.

3.9 Safekeeping of Assets. All Assets shall, until distributed or paid over as herein provided or in the Plan, be held in trust for the benefit of the Beneficiaries in accordance with the Plan and this Agreement. The Trustee shall be under no liability for interest or producing income on any moneys received by him or her herein and held for distribution or payment to the Beneficiaries, except as such interest or income shall actually be received by the Trustee.

3.10 Limitations on Trustee. The Trustee shall not at any time, on behalf of the Trust or Beneficiaries, enter into or engage in any trade or business, and no part of the Assets or the proceeds, revenue, or income therefrom shall be used or disposed of by the Trust in furtherance of any trade or business. The Trustee shall also not incur indebtedness or commingle the Trust's funds.

3.11 Investment. The Trustee may only invest funds held in the Trust in Permitted Investments, in a manner consistent with the requirements of the Bankruptcy Code or any order of the Bankruptcy Court modifying such requirements and, provided that the Trustee does so, he

or she shall have no liability in the event of insolvency of any institution in which he or she has invested any of the Assets or any proceeds, revenue, or income therefrom.

3.12 Trustee Action. The Trustee shall hold, collect, conserve, protect, and administer the Trust in accordance with the provisions of this Agreement and the Plan, and pay and distribute amounts as set forth therein for the purposes set forth in the Plan and this Agreement. Any good faith determination by the Trustee as to what actions are in the best interests of the Trust shall be determinative.

3.13 Bankruptcy Court Approval of Trustee Actions. Except as provided in the Plan or as otherwise specified in this Agreement, the Trustee need not obtain an order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred hereunder, or account to the Bankruptcy Court. Except as provided in the Plan or otherwise specified in this Agreement, the Trustee shall exercise his or her business judgment for the benefit of the Beneficiaries in order to maximize the value of the Assets and distributions to the Beneficiaries, giving due regard to the cost, risk, and delay of any course of action. Notwithstanding the foregoing in this Section 3.13, the Trustee may seek to the Bankruptcy Court approval for authority to take a particular action which the Trustee may desire to have explicit approval of the Bankruptcy Court with respect to the Assets, the Trust, and the Settlers, and as provided in the Plan or this Agreement, including the administration and distribution of the Assets. The Bankruptcy Court shall retain jurisdiction for such purposes and shall approve or disapprove any such proposed action upon motion.

3.14 Confidentiality. The Trustee shall, during the period that he or she serves as Trustee under this Agreement and for a period of twelve (12) months following the termination of this Agreement or his or her removal or resignation hereunder, hold strictly confidential and

not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Assets, Causes of Action or Avoidance Actions relates, or which he or she has become aware of in his or her capacity as Trustee.

3.15 Privileged Documents. Subject to the Plan, any disclosure or examination of any Privileged Documents shall be limited to the Trustee and the attorneys that the Trustee has retained on behalf of the Trust for the purpose of pursuing Causes of Action or Avoidance Actions or claims not released by the Settlor, those attorneys' administrative support personnel, and any consulting, non-testifying experts retained by the Trustee on behalf of the Trust for the purpose of assisting the Trust in pursuing such Causes of Action and Avoidance Actions and/or objecting to Claims. The Trustee may not disclose any of the Privileged Documents (or the contents of the Privileged Documents), or otherwise take any actions that may constitute a waiver of the attorney-client privilege, work product privilege, common interest privilege, or any other applicable privileges with respect to the Privileged Documents, without giving three (3) Business Days' notice to the applicable affected party and an opportunity to object. Nothing in the Plan or this Agreement shall constitute a waiver of any privilege claims over any of the documents, including the Privileged Documents that are produced to or received by the Trust or Trustee. For the avoidance of doubt, the Trust is a successor-in-interest to the Settlor, and thus, the transfer of the Privileged Documents as provided herein does not impair or waive any privilege.

#### **ARTICLE IV**

##### **DISTRIBUTIONS FROM THE TRUST**

4.1 Distributions. On and after the Effective Date, the Trustee shall make Distributions as and when required under the terms of the Plan. The Trustee shall require any

Beneficiary to furnish to the Trustee in writing his/her or its Employer or Taxpayer Identification Number as assigned by the IRS or an executed IRS Form W-9 or similar tax form, such as IRS Form W-8, and the Trustee may condition any Distribution upon receipt of such identification number or document. The Trustee shall not make any distributions of Assets to the Beneficiaries unless the Trustee retains and reserves in the Disputed Claims Reserve such amounts as are reasonably necessary to satisfy amounts that would have been distributed in accordance with this Article IV in respect of Disputed Claims if the Disputed Claims were determined to be Allowed Claims immediately prior to such proposed distribution to the Beneficiaries.

4.2 Distributions After Allowance or Disallowance of a Disputed Claim. Within thirty (30) days of a Disputed Claim becoming an Allowed Claim, the Trustee shall distribute to the Holder thereof, from the Disputed Claim Reserve, such amount of Available Trust Cash as would have been distributed to such Holder if its Claim had been an Allowed Claim on the Effective Date. The Trustee shall no longer reserve for and shall distribute to the Beneficiaries, pursuant to this Agreement, their Pro Rata share of the funds held in the Disputed Claim Reserve on account of any Disputed Claim that becomes Disallowed.

4.3 Undeliverable Property. If any distribution of Available Trust Cash to or on behalf of a Beneficiary is returned to the Trustee or his or her agent as undeliverable, no further distribution to such Beneficiary shall be made unless and until the Trustee is notified in writing of such Beneficiary's then-current address. Any Beneficiary that does not assert a claim for an undeliverable distribution of Available Trust Cash within three (3) months after the last Distribution Date on which the relevant distribution became deliverable shall no longer have any claim to or interest in the Available Trust Cash represented by such undeliverable distribution, and in such cases, all title to and all beneficial interests in the Assets represented by any such

undeliverable distributions shall revert to and/or remain in the Trust and shall be distributed in accordance with Article IV of this Agreement and the Plan. The Trustee has no obligation to search for a Beneficiary's address if a check is undeliverable and the Beneficiary did not provide an updated address.

4.4 Payments Limited to Assets. All payments to be made by the Trustee to or for the benefit of any Beneficiary shall be made only from the Assets or proceeds from Causes of Action or Avoidance Actions.

4.5 United States Trustee Fees and Reports. After the Effective Date, the Trustee shall pay as an expense of the Trust all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Trust's disbursements as required under the Plan and Confirmation Order until the Settlor's Chapter 11 Cases are closed. After the Confirmation Date, the Trustee shall prepare and serve on the Office of the U.S. Trustee such quarterly disbursement reports for the Trust as required by the U.S. Trustee for as long as the Chapter 11 Cases remain open.

4.6 Insurance. Subject to the Plan, the Trustee shall use Assets in the Trustee's reasonable business judgment to maintain customary insurance coverage, if available, for the protection of the Persons or Entities serving as Trustee or administrator of the Trust on and after the Effective Date.

## **ARTICLE V**

### **BENEFICIARIES**

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

5.2 Interest Beneficial Only. The ownership of a beneficial interest in the Trust shall not entitle any Beneficiary or any of the Settlers to any title in or to the Assets or to any right to call for a partition or division of such assets or to require an accounting, except as specifically provided herein or in the Plan.

5.3 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Assets shall not be evidenced by any certificate, security, or receipt, or in any other form or manner whatsoever, except as maintained on the books and records of the Trust by the Trustee. The Trustee may rely on the claims register maintained by Epiq Corporate Restructuring, LLC or its successor.

5.4 Notice of Transfer of Beneficial Interest. Any notice of a change of beneficial interest ownership shall be provided in accordance with Section 13.3 of this Agreement. The notice shall be executed by both the transferee and the transferor and as required by Bankruptcy Rule 3001(e). The notice must clearly describe the interest to be transferred. The Trustee may rely upon such signatures and acknowledgments as evidence of such transfer without the requirement of any further investigation.

## **ARTICLE VI**

### **THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY**

6.1 Reliance. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, the Trustee may rely upon and shall be protected in acting upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed to be genuine and to have been signed or presented to the Trustee.

6.2 Parties Dealing With the Trustee. In the absence of actual knowledge to the contrary, any person dealing with the Trust or the Trustee shall be entitled to rely on the authority of the Trustee or any of the Trustee's agents to act in connection with the Assets. There is no obligation on any Person dealing with the Trustee to inquire into the validity, expediency, or propriety of any transaction by the Trustee or any agent of the Trustee.

6.3 Limited Recourse. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, Persons (including any professionals retained by the Trustee in accordance with this Agreement) engaged in transactions with the Trust or the Trustee shall look only to the Assets to satisfy any liability incurred in connection with the carrying out the terms of this Agreement, the Plan, or the Confirmation Order.

6.4 Limitation of Liability. The Trustee and his or her agents, employees, officers, directors, professionals, attorneys, accountants, advisors, and representatives shall not be subject to any personal liability whatsoever, in tort, contract, or otherwise, to any Person in connection with the Assets or the affairs of the Trust, except for their own gross negligence, willful misconduct, fraud, bad faith, self-dealing or breach of the duty of loyalty and shall not include indemnification or exculpation for breach of contract claims. Other than as set forth in the Plan or Confirmation Order, nothing in this Agreement shall be deemed to release any Beneficiary from any actions or omissions occurring prior to the Effective Date.

6.5 Non-Liability for Acts of Others. Nothing contained in this Agreement, the Plan, or the Confirmation Order shall be deemed to be an assumption by the Trustee of any of the liabilities, obligations, or duties of the Settlers or Beneficiaries and shall not be deemed to be or contain a covenant or agreement by the Trustee to assume or accept any such liability, obligation, or duty. Any successor Trustee may accept and rely upon any accounting made by or

on behalf of any predecessor Trustee hereunder, and any statement or representation made by a predecessor Trustee or his or her agents as to the assets comprising the Trust Assets or as to any other fact bearing upon the prior administration of the Trust, so long as he or she has a good faith basis to do so. A Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. A Trustee or successor Trustee shall not be liable for any act or omission of any predecessor Trustee, nor have a duty to enforce any claims against any predecessor Trustee on account of any such act or omission.

6.6 Indemnification. The Trustee, and each of its respective agents, employees, officers, directors, managers, professionals, attorneys, accountants, advisors and representatives (collectively, the “Indemnified Parties”) shall be indemnified and held harmless by the Trust, to the fullest extent permitted by law, solely from the Assets for any losses, claims, damages, liabilities and expenses, including, without limitation, reasonable attorneys’ fees, disbursements, and related expenses which the Indemnified Parties may incur or to which the Indemnified Parties may become subject in connection with any action, suit, proceeding, or investigation brought or threatened against one or more of the Indemnified Parties on account of the acts or omissions of an Indemnified Party solely in its capacity as such; provided, however, that the Trust shall not be liable to indemnify any Indemnified Party for any loss finally judicially determined by the Bankruptcy Court to have resulted primarily from any act or omission constituting gross negligence, willful misconduct, fraud, bad faith, self-dealing or breach of the duty of loyalty by such Indemnified Party, which in either event caused actual material damage to the Trust or the Beneficiaries, or for breach of contract claims. Notwithstanding any provision in this Agreement to the contrary, the Indemnified Parties shall be entitled to request advances



from the Trust to cover reasonable fees and necessary expenses incurred in connection with defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of an Indemnified Party in its capacity as such; provided, however, that the Trustee shall not be required to make any such advances; provided further, however, that any Indemnified Parties receiving such advances shall repay the amounts so advanced to the Trust upon the entry of a final order of a court of competent jurisdiction finding that such Indemnified Parties were not entitled to any indemnity under the provisions of this Section 6.6. This indemnification shall survive the death, dissolution, resignation, or removal, as may be applicable, of the Indemnified Parties, or the termination of the Trust, and shall inure to the benefit of the Indemnified Parties' heirs and assigns.

## **ARTICLE VII**

### **SELECTION, REMOVAL AND COMPENSATION OF TRUSTEE**

7.1 Initial Trustee. The initial Trustee shall be Peter Hurwitz of Dundon Advisors LLC.

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

7.3 Removal of a Trustee. Subject to the Plan, a Beneficiary may seek by motion to the Bankruptcy Court to remove and replace the Trustee for cause, including, without limitation, incapacity or failure or refusal to perform his duties under the Plan, this Agreement and the Confirmation Order. If removal of the Trustee is sought from the Bankruptcy Court by a motion

for cause (or similar motion), then the Trustee is entitled to oppose such motion and to pay his or her reasonable attorneys' fees and expenses in connection with such objection from the Assets of the Trust.

7.4 Resignation of Trustee. The Trustee may resign at any time by filing a notice with the Bankruptcy Court at least thirty (30) days' in advance of the Trustee's intention to do so. In the event of a resignation, the resigning Trustee shall render to the successor Trustee and to counsel to the Trustee, a full and complete accounting of monies and assets received, disbursed, and held during the term of office of that Trustee. The resignation shall be effective on the later of (a) the date specified in the notice; (b) the date that is thirty days (30) after the date the notice is delivered; or (c) the date the accounting described in the preceding sentence is delivered.

7.5 Appointment of Successor Trustee. Upon the resignation, death, incapacity, or removal of a Trustee, counsel to the Trustee shall appoint a successor Trustee to fill the vacancy so created, or the Bankruptcy Court may appoint a successor Trustee to the extent necessary or requested. Any successor Trustee so appointed shall consent to and accept in writing the terms of this Agreement and agree that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Trustee and all of the successor Trustee's heirs and legal and personal representatives, successors or assigns.

7.6 Powers and Duties of Successor Trustee. A successor Trustee shall have all the rights, privileges, powers, and duties of the predecessor Trustee under this Agreement and the Plan.

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

7.8 Compensation and Costs of Administration. Subject to the Plan, the Trustee may retain and compensate professionals (including himself) as provided for in Section 3.8 of this Agreement. The reasonable fees and actual and necessary expenses of such professionals and the Trustee shall be paid by the Trustee upon each monthly submission of a fee statement to the Trustee in accordance with the following procedures. Any professionals retained by the Trustee pursuant to this Agreement shall deliver their invoices or fee statements to the Trustee before payment from the Trust Assets shall be allowed. The Trustee shall have fifteen (15) days from the delivery of any invoice or fee statement to give notice of an objection to the fee statement to the professional seeking compensation or reimbursement (including the Trustee himself). For an objection to be valid, it shall be in writing and set forth in detail the specific fees objected to and the basis for the objection. The uncontested portion of each invoice shall be paid within twenty-five (25) days after its original delivery to the Trustee. Any objection that remains unresolved fifteen (15) days after it is made shall be submitted to the Bankruptcy Court for resolution.

7.9 Reporting and Filing Requirements.

A. Within thirty (30) days after the last day of each calendar quarter in which the Trust shall remain in existence, the Trustee shall file a report with the Bankruptcy Court of all Assets held and received by the Trust, all Available Trust Cash disbursed to Beneficiaries, and all fees, income, and expenses related to the Trust during the preceding calendar year. The Trustee's report shall be available to any Beneficiary upon written request.

B. The Trustee shall also timely prepare, file and distribute such additional statements, reports and submissions as may be necessary to cause the Trust and the Trustee to be in compliance with applicable law, such as the filing of tax or informational returns.

## **ARTICLE VIII**

### **TRUST RIGHTS AND OBLIGATIONS**

8.1 The Trustee shall file tax returns for the Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and any other applicable laws or regulations.

8.2 To the extent reasonably practicable unless otherwise ordered by the Bankruptcy Court, the Trustee shall, within 110 days after the end of each calendar year, send to each Beneficiary a statement setting forth the Beneficiary's share or items of income, gain, loss, deduction, or credit and will instruct all such holders to report such items on their federal income tax returns. Such a statement shall also be sent to each Beneficiary within 110 days of the dissolution of the Trust. The Trust's taxable income, gain, loss, deduction, or credit will be allocated (subject to provisions of the Plan and Confirmation Order relating to Disputed Claims) to the Beneficiaries in accordance with their relative beneficial interests in the Trust, as determined pursuant to this Agreement.

8.3 In addition to the Trustee's rights and duties with respect to the Trust, and subject to the Plan, on and after the Effective Date, the Trustee is authorized to implement the Plan and any applicable orders of the Bankruptcy Court.

## **ARTICLE IX**

### **MAINTENANCE OF BOOKS AND RECORDS**

9.1 Subject to the Plan, on the Effective Date, the Trust shall: (a) to the extent provided for in the Plan, take possession of all books, records, and files of the Settlers and their Estates, in all forms including electronic and hard copy, other than the documents of the Settlers' professionals; and (b) provide for the retention and storage of such books, records, and files until such time as the Trustee determines, in accordance with this Agreement, that retention of same is no longer necessary or required.

9.2 The Trustee shall maintain books and records containing a description of all property from time to time constituting the Assets and an accounting of all receipts and disbursements. The Trustee shall furnish to any Beneficiary upon written request an annual statement of receipts and disbursements, including a summary of all income and expenses of the Trust.

## **ARTICLE X**

### **DURATION OF TRUST**

10.1 Duration. The Trust shall become effective upon the Effective Date of the Plan, and the Trust and its provisions herein shall remain and continue in full force and effect until the Trust is terminated.

10.2 Termination. Subject to the Plan, the Trustee shall be discharged and the Trust shall be terminated, at such time as (a) all Disputed Claims have been resolved, (b) all of the Assets have been liquidated, (c) all duties and obligations of the Trustee hereunder and in the Plan have been fulfilled, (d) all Distributions required to be made by the Trust under the Plan and the Agreement have been made, and (e) the Chapter 11 Cases of the Debtors have been closed,

but in no event shall the Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion by the Trustee within the six-month period prior to the fifth anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service, to the extent required under applicable law at that time, that any further extension would not adversely affect the status of the Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the liquidation, recovery and distribution of the Assets to the Beneficiaries.

10.3 Continuance of Trust for Winding Up. After the termination of the Trust and for the purpose of liquidating and winding up the affairs of the Trust, the Trustee shall continue to act as such until the Trustee's duties have been fully performed, including, without limitation, such post-distribution tasks as necessary to windup the affairs of the Trust. After the termination of the Trust, the Trustee shall retain for a period of six (6) months the books, records, Beneficiary lists, and certificates and other documents and files which shall have been delivered to or created by the Trustee. At the Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after six (6) months from the completion and winding up of the affairs of the Trust. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the Trust and after final distributions of the Trust are made, the Trustee shall have no further duties or obligations hereunder. For the avoidance of doubt, the limitations on liability and indemnification rights contained in Article VI hereof shall apply to any actions taken by the Trustee and his professionals during the course of winding up the affairs of the Trust.

## ARTICLE XI

## **TAX TREATMENT OF THE TRUST**

11.1 Intention of Parties to Establish Grantor Trust. This Agreement is intended to create a grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as a grantor trust. For all federal income tax purposes, the Beneficiaries of the Trust will be treated as grantors and owners thereof and it is intended that the Trust be classified as a liquidating Trust under 26 C.F.R. § 301.7701-4 and that the Trust is owned by the Beneficiaries. Accordingly, for federal income tax purposes, it is intended that the Beneficiaries be treated as if they had received a Distribution of an undivided interest in the Assets and then contributed such interests to the Trust. Accordingly, the Trust shall, in an expeditious but orderly manner, and pursuant to the terms of this Agreement, the Plan and the Confirmation Order, liquidate and convert to Cash the Assets, make timely Distributions to the Beneficiaries pursuant to the Plan, and not unduly prolong the Trust's duration. The Trust shall not be deemed a successor in interest of the Settlers for any purpose other than as specifically set forth herein, the Plan and Confirmation Order.

11.2 Tax Returns. In accordance with the Plan, the Trustee shall cause the filing of file returns for the Trust, except with respect to any Disputed Claims Reserve, as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). The Trust's taxable income, gain, loss, deduction or credit will be allocated to each one of the Beneficiaries in accordance with their relative beneficial interests in the Trust.

11.3 Valuation of Assets. As soon as practicable after the Effective Date, the Trustee (to the extent that he or she deems it necessary or appropriate in the reasonable exercise of his or her discretion) shall, in good faith, value the Assets, and shall apprise the Beneficiaries of such valuation (but the Trust is not required to engage an expert to make such a valuation) for tax

purposes. The valuation shall be used consistently by all parties (including the Settlers, the Trustee, and the Beneficiaries) for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding the valuation of the Assets.

11.4 Disputed Claims Reserve. The Trustee shall file all income tax returns with respect to any income attributable to the Disputed Claims Reserve and shall pay any federal, state and local income taxes attributable to the Disputed Claims Reserve, based on the items of income, deduction, credit or loss allocable thereto.

11.5 Determination of Taxes. The Trustee may request an expedited determination of any local, state and/or federal taxes of the Settlers or of the Trust, including the Disputed Claims Reserve, under Bankruptcy Code Section 505(b) for all returns filed for, or on behalf of, the Settlers and the Trust for all taxable periods through the dissolution of the Trust, and to take any and all action necessary to obtain payment of any tax refund(s) due to the Settlers, their Estates and/or the Trust.

11.6 Filing, Reporting, Withholding. The Trustee shall be responsible for filing all federal, state, local and foreign tax returns for the Settlers and the Trust. The Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions made by the Trust shall be subject to any such withholding and reporting requirements. The Trust is also authorized to make tax elections on behalf of the Trust and/or Debtors

## **ARTICLE XII**

### **WIND-DOWN**

12.1 Wind-Down of Surviving Settlers. In addition to the Trustee's rights and duties with respect to the Trust as set forth herein, on and after the Effective Date, the Trustee shall also



have the power and authority to take any action necessary to wind down the Estates, taking into account any applicable requirements to maintain the existence of one or more of the Debtors in order to collect and liquidate the Assets.

### **ARTICLE XIII**

#### **MISCELLANEOUS**

13.1 Jurisdiction. The Bankruptcy Court shall have exclusive jurisdiction over (a) the Trust, and the Trustee with respect to the administration of and activities relating to the Trust, as well as (b) any issues or disputes arising out of this Agreement; provided, however, that notwithstanding the foregoing, the Trustee shall have the power and authority to bring any action in any court of competent jurisdiction to prosecute any Causes of Action and/or Avoidance Actions assigned to the Trust, subject to the oversight and consent requirements set forth in this Agreement, the Plan and the Confirmation Order.

13.2 Limitation on Transferability. A beneficial interest in the Trust shall be non-assignable and non-transferable except upon death of the interest holder or by operation of law. An assignment or transfer shall not be effective until appropriate notification and proof thereof is submitted to the Trustee, and the Trustee may continue to pay all amounts to or for the benefit of the assigning or transferring Beneficiary until receipt of proper notification and proof of assignment or transfer. The Trustee may rely upon such proof without the requirement of any further investigation.

13.3 Notices. All notices to be given to Beneficiaries may be given by ordinary mail, or may be delivered personally, to the holders at the addresses appearing on the books kept by Trustee. Any notice or other communication which may be or is required to be given, served, or sent to the Trustee shall be in writing and shall be sent by registered or certified United States

mail, return receipt requested, postage prepaid, or transmitted by hand delivery or facsimile (if receipt is confirmed) addressed as follows:

If to the Trust/Trustee:

Peter Hurwitz  
Dundon Advisers LLC  
440 Mamaroneck Avenue  
Fifth Floor  
Harrison, NY 10528

With a copy to:

Christopher M. Samis, Esq.  
Potter Anderson & Corroon LLP  
1313 N. Market Street  
Wilmington, DE 19801

or to such other address as may from time to time be provided in written notice by the Trustee.

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

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

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

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

13.8 No Execution. All funds in the Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Beneficiary, and no Beneficiary or any other Person can bind, pledge, encumber, execute upon, garnish, or attach the

Assets or the Trustee in any manner or compel payment from the Trust except by final order of the Bankruptcy Court.

13.9 Plan and Confirmation Order. To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Plan, then the terms of the Plan shall govern and control. To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Confirmation Order, then the terms of the Confirmation Order shall govern and control.

13.10 Amendment. This Agreement may only be amended by order of the Bankruptcy Court, provided, however, such amendment may not be inconsistent with the Plan or the Confirmation Order.

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

IN WITNESS WHEREOF, the parties have executed this Agreement (or are deemed to have so executed this Agreement) as of the day and year written above.

Trustee

VL Wind Down Inc., f/k/a Vector Launch Inc

By: \_\_\_\_\_  
Name: Peter Hurwitz  
Title: Liquidating Trustee

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

GSC Wind Down Inc. f/k/a Garvey Spacecraft Corporation

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

# Exhibit B

**VL WIND DOWN CREDITORS' LIQUIDATING TRUST AGREEMENT**

This VL Wind Down Creditors' Liquidating Trust Agreement (this "Agreement") dated as of \_\_\_\_\_, ~~2020~~2021 by and between VL Wind Down Inc., f/k/a Vector Launch Inc., GSC Wind Down Inc. f/k/a Garvey Spacecraft Corporation (collectively, the "Debtors"), and Peter Hurwitz of Dundon Advisors LLC, solely in his capacity as the Trustee, for the benefit of the Holders of Allowed Claims under the terms of the *Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation* (as may be subsequently amended, modified, or supplemented, the "Plan") confirmed by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") in Chapter 11 Case No. 19-12670 (JTD) by Order dated January \_\_\_\_\_, 2021 (the "Confirmation Order"). Capitalized terms used in this Agreement shall have the meaning ascribed to them in Article I of this Agreement.

**WITNESSETH**

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

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

**WHEREAS**, the Trust is established for the purpose of collecting, distributing and liquidating the Assets for the benefit of the Beneficiaries in accordance with the terms of this Agreement and the Plan with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust;

**WHEREAS**, pursuant to the Plan, the Settlers, the Trustee, and the Beneficiaries are required to treat, for all federal income tax purposes, the transfer of the Assets to the Trust as a transfer of the Assets by the Settlers to the Beneficiaries in satisfaction of their Allowed Claims, followed by a transfer of the Assets by the Beneficiaries to the Trust in exchange for the

beneficial interest herein, and to treat the Beneficiaries as the grantors and owners of the Trust in accordance with Treasury Regulation Section 301.7701-4;

**WHEREAS**, the Trust is intended to be treated as a grantor trust for federal income tax purposes;

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

## **ARTICLE I**

### **DEFINITIONS AND INTERPRETATIONS**

#### **1.1 Definitions.**

1.1.1 “Assets” shall mean the term Liquidating Trust Assets as defined in the Plan.

1.1.2 “Available Trust Cash” shall mean the aggregate of the Cash, Assets and Causes of Action and proceeds thereof after paying, funding, reserving against, or satisfying: (a) fees due to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6); (b) operating and administrative expenses of the Trust, including but not limited to all costs, expenses, and obligations incurred by the Trustee and professionals who may be employed by the Trustee in administering the Trust, the Plan and in carrying out the Trustee’s responsibilities under this Agreement, or in any manner connected, incidental, or related thereto and payment of such expenses; (c) the Disputed Claims Reserve; and (d) the Liquidating Trust Cost Reserve.

1.1.3 “Beneficiaries” shall collectively mean (a) the Holders of Allowed Claims under the Plan, or any successors to such Holders, or (b) their interests in the Trust, whether said Claims are Allowed before or after the Effective Date.

~~1.1.4 “Liquidating Trust Committee” shall have the meaning ascribed to it in section 3.1 of this Agreement.~~

“Settlors” shall mean the Debtors.

1.1.5 “Trust” shall mean the liquidating trust established pursuant to the terms of this Agreement, which is defined in the Plan as the Liquidating Trust.

1.1.6 “Trustee” shall mean (a) initially, Peter Hurwitz of Dundon Advisors LLC, solely in his capacity as trustee, and (b) any successors or replacements duly appointed under the terms of this Agreement and the Plan, who is defined in the Plan as the Liquidating Trustee.

1.1.7 “Permitted Investments” shall include (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States of America as an agency or instrumentality thereof, (c) such other investments as the Bankruptcy Court may approve from time to time, or (d) demand deposits or certificates of deposit at any bank or trust company that has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000, provided, however, that the scope of any Permitted Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise.

1.2 Use of Plan Definitions. All capitalized terms that are used in this Agreement but not defined herein shall have the meaning set forth for such terms in the Plan.

1.3 Interpretation. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the provisions of this Agreement. Words denoting the

singular number shall include the plural number and vice versa, and words denoting one gender shall include the other gender.

1.4 Particular Words. Reference in this Agreement to any Section or Article is, unless otherwise specified, to that such Section or Article under this Agreement. The words “hereof,” “herein,” “hereinafter,” and similar terms shall refer to this Agreement and not to any particular Section or Article of this Agreement.

## ARTICLE II

### DECLARATION OF TRUST

2.1 Creation and Name. There is hereby created the Trust, which shall be known as the “VL Wind Down Creditors’ Liquidating Trust,” and is the Trust referred to as the “Liquidating Trust” in the Plan. The Trustee may conduct the affairs of the Trust under the name of the “VL Creditors’ Liquidating Trust.”

2.2 Purpose of Trust. The Settlers and the Trustee, pursuant to the Plan and in accordance with the Bankruptcy Code, hereby create the Trust for the purpose of collecting, distributing, and liquidating the Assets for the benefit of, and making Distributions to, the Beneficiaries in accordance with the terms of this Agreement and the Plan. The activities of the Trust shall be limited to those activities set forth in this Agreement and as otherwise contemplated by the Plan.

2.3 Transfer of Assets.

A. The Settlers hereby grant, release, assign, convey, transfer and deliver, on behalf of the Beneficiaries, all of the Settlers’ right, title and interest in the Assets to the Trustee as of the Effective Date in trust for the benefit of the Beneficiaries, pursuant to §§ 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code and in accordance with the Plan and



Confirmation Order, and as of the Effective Date, free and clear of any and all liens, claims, encumbrances, and interests (legal, beneficial, or otherwise) of all other Persons and Governmental Units to the maximum extent contemplated by and permissible under § 1141(c) of the Bankruptcy Code for the uses and purposes as specified in this Agreement and the Plan. The Assets can be used to, among other things, satisfy the following liabilities: (a) all fees payable pursuant to 28 U.S.C. § 1930 until such time as the Bankruptcy Court enters a final decree closing each of the Settlor's Chapter 11 Cases; (b) any expenses incurred and unpaid, or to be incurred, by the Settlor, the Creditors' Committee and the Trustee in the performance of their administrative duties in connection with winding up the Settlor's Estates after the Effective Date; and (c) any other obligations as may be specifically set forth in the Plan or Confirmation Order. Notwithstanding anything in this Agreement to the contrary, and subject to the Plan, the Trustee, ~~with the consent of the Liquidating Trust Committee or, in the absence of such consent, by order of the Bankruptcy Court,~~ may abandon or otherwise not accept any Assets that the Trustee believes, in good faith, have no value to the Trust. Any Assets that the Trust so abandons or otherwise does not accept shall not vest in the Trust.

B. The Trustee shall automatically, and without need for further notice or approval of the Bankruptcy Court or the Settlor, be designated as the representative of the Estates pursuant to § 1123 of the Bankruptcy Code to enforce or pursue any Causes of Action transferred to the Trust after the Effective Date in accordance with the terms of this Agreement, the Plan, and the Confirmation Order. Any proceeds of a Cause of Action shall be distributed pursuant to the terms of the Plan and this Agreement.

2.4 Securities Law. Under § 1145 of the Bankruptcy Code, the issuance of beneficial interests in the Trust to the Beneficiaries under the Plan shall be exempt from registration under

the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities. If the Trustee determines, with the advice of counsel, that the Trust is required to comply with the registration and reporting requirements of the Securities and Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Trustee shall take any and all actions to comply with such reporting requirements and file necessary periodic reports with the Securities and Exchange Commission.

2.5 Appointment and Acceptance of Trustee. The Trustee shall be deemed to be appointed pursuant to § 1123(b)(3)(B) and all other applicable sections of the Bankruptcy Code. The Trustee accepts the Trust created by this Agreement and the grant, assignment, transfer, conveyance, and delivery to the Trustee, on behalf, and for the benefit, of the Beneficiaries, by the Settlers of all of their respective right, title, and interest in the Assets, upon and subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation Order.

2.6 No Reversion to Settlers. In no event shall any part of the Assets be distributed to any of the Settlers after the Effective Date. Rights to any reversionary interests in the Assets shall be controlled by the Plan.

### ARTICLE III

#### ADMINISTRATION OF THE TRUST

3.1 ~~Liquidating Trust Committee. Pursuant to the Plan, on the Effective Date, the Liquidating Trust Committee shall be established to oversee the implementation of the Plan. The Liquidating Trust Committee shall have access to the Trustee and the right to consult with and, to the extent provided in the Plan and this Agreement, direct the Trustee in connection with the administration and implementation of the Plan on and after the Effective Date as set forth in the Plan and this Agreement. The Liquidating Trust Committee shall initially consist of at least three~~

~~(3) persons, all members of the Creditors' Committee. The Liquidating Trust Committee can retain counsel in accordance with the procedures set forth in section 3.9 below whose reasonable fees and expenses shall be paid from the Assets without the need for an order or approval by the Bankruptcy Court fifteen (15) days after the submission of an invoice to the Trustee and the Liquidating Trust Committee (and subject to the consent and approval of the Trustee and the Liquidating Trust Committee, whose consent shall not be unreasonably withheld, or, in the absence of such consent, by order of the Bankruptcy Court).~~

3.2 Rights, Powers, Privileges and Duties. The Trustee shall have only the rights, powers, privileges, and duties expressly provided in this Agreement, the Plan and the Confirmation Order. Subject to the terms of the Plan and this Agreement, including Section ~~3.11~~3.10 of this Agreement, ~~and in consultation with or approval of the Liquidating Trust Committee (but only where expressly provided below or in the Plan),~~ the Trustee shall have the power to take the actions granted in this Section ~~3.2~~3.1, and any powers reasonably incidental thereto, which the Trustee reasonably determines to be necessary or appropriate to fulfill the purpose of the Trust, including but not limited to:

A. Prosecuting, settling, assigning, or otherwise compromising or abandoning for the benefit of the Trust any and all Avoidance Actions and Causes of Action transferred to the Trust or arising in favor of the Trust, including, without limitation, taking any action with respect to appeals, counterclaims, and defenses of or with respect to such claims and causes of action, including retaining counsel to pursue Avoidance Actions and Causes of Action as permitted ~~by the Plan and as directed by the Liquidating Trust Committee as required~~ by the Plan;

B. Exercising all powers provided to the Trustee or the Trust under the Plan or Confirmation Order, including, without limitation, the right to allow, object to, or reconcile

Unsecured Claims, Priority Claims (both tax and non-tax), Administrative Claims and Secured Claims and any other Claims asserted against the Estates;

C. Liquidating, selling or abandoning the Assets or any portion thereof;

D. Determin~~e~~ing and satisf~~y~~ing any liabilities created, incurred or assumed by the Trust;

E. Executing any documents and taking any other actions related to, or in connection with, the liquidation of the Assets and the exercise of the Trustee's powers granted in this Agreement, the Plan, and Confirmation Order;

F. Holding legal title to any and all rights of the Beneficiaries in, to, or arising from the Assets;

G. Establishing the Disputed Claims Reserve, as well as any other required reserves, in an amount as may be necessary and appropriate for the proper operation of matters incident to the Trust, ~~in consultation with the Liquidating Trust Committee (in the event the Trustee and/or the Liquidating Trust Committee do not agree on the amount of Cash to be maintained in the Disputed Claims Reserve, the Bankruptcy Court shall determine the appropriate amount of the Disputed Claims Reserve);~~

H. Protecting and enforcing the rights to the Assets vested in the Trustee by this Agreement by any method reasonably determined to be appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

I. Making distributions of the Assets to or on behalf of the Beneficiaries in accordance with this Agreement, the Plan, and the Confirmation Order at least one time within each twelve month period after the Effective Date;

J. Filing any and all tax and information returns with respect to the Trust and/or the Debtors and paying taxes properly payable by the Trust, if any; and filing and issuing any and all necessary information returns, and taking any and all action necessary to obtain payment of any tax refund(s) due to the Settlor(s), their Estates and/or the Trust;

K. Making all necessary filings in accordance with any applicable law, statute, or regulation;

L. Determining and satisfying from the Assets any and all taxes and ordinary course liabilities, including reasonable professional fees and expenses, incurred by or on behalf of the Trust ~~and the Liquidating Trust Committee;~~

M. Investing the Assets received by the Trust or Trustee or otherwise held by the Trust or Trustee in accordance with Section ~~3.123.11~~ of this Agreement;

N. In the event that the Trustee determines that the Beneficiaries or the Trust may, will or have become subject to different tax consequences than those described in the Plan, taking such actions that will, or are intended to, address such different tax consequences, ~~in consultation with the Liquidating Trust Committee;~~

O. Creating sub-trusts or title vehicles of which the Trust or the Beneficiaries hold the beneficial or ownership interests, as applicable, ~~in consultation with the Liquidating Trust Committee;~~

P. Sending annually to each Beneficiary a separate statement stating the Beneficiary's share of income, gain, loss, deduction, or credit and instructing all such Beneficiaries to report such items on their federal tax returns;

Q. Opening and maintaining bank accounts on behalf of or in the name of the Trust;

R. In reliance upon the official claims register maintained in the Settlers' Chapter 11 Cases and any applicable court order, maintaining a register on the Trustee's books and records evidencing the beneficial interest in the Trust held by each Beneficiary;

S. Performing such functions and taking such actions as are provided for or permitted in this Agreement, the Plan, the Confirmation Order, or any other agreement executed pursuant to this Agreement, the Plan, or the Confirmation Order;

T. Terminating this Trust and seeking to close any of the Settlers' Chapter 11 Cases that were not previously closed pursuant to § 350(a) of the Bankruptcy Code, ~~in consultation with the Liquidating Trust Committee;~~

U. Dissolving any corporate entities, terminate joint ventures or otherwise wind up any corporate entity owned by the Trust;

V. Execute offsets against claims as provided for in the Plan;

W. Pay all expenses and make all other payments relating to the Trust's Assets;

X. Pay all U.S. Trustee fees until such time as the Bankruptcy Court enters a final decree closing each Debtors' Chapter 11 case; and

~~Y. — Prepare periodic reports on the status of the wind-down for the Liquidating Trust Committee.~~

~~3.3~~

3.2 Assets. Subject to the Plan, the Trustee shall be authorized to, ~~and at the direction of the Liquidating Trust Committee shall,~~ collect and liquidate all uncollected and unliquidated Assets, including tax refunds.

3.43.3 Claims Administration. Subject in all respects to the provisions hereof and the Plan, the Trustee, ~~in consultation with the Liquidating Trust Committee,~~ shall have the authority to allow, reconcile, and file objections to Claims or Equity Interests, and to settle, compromise, withdraw, or litigate to judgment objections to any and all Claims or Equity Interests, regardless of whether such Claims or Equity Interests are in a Class or otherwise. ~~Notwithstanding the foregoing, the Trustee will not commence litigation of any Causes of Action without the consent of the Liquidating Trust Committee or, in the absence of such consent, by order of the Bankruptcy Court. In addition, prior to commencing any such litigation, there must be a budget approved by the Liquidating Trust Committee (or the Bankruptcy Court) for any such litigation.~~

3.53.4 Subject to the foregoing and the provisions of the Plan, from and after the Effective Date, the Trustee (a) may settle or compromise any Disputed Claim, and (b) shall succeed to the Settlor's rights with respect to any objections filed by the Settlor that remain pending as of the Effective Date. From and after the Effective Date, the Trustee shall have the sole authority to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval of the Bankruptcy Court.

3.63.5 Cure Costs. Subject to the Plan, on and after the Effective Date, the Trustee, ~~with the consent of the Liquidating Trust Committee (which consent shall not be unreasonably withheld), or to the extent the Trustee and the Liquidating Trust Committee do not agree, as ordered by the Bankruptcy Court,~~ may settle any dispute regarding the amount of any Cure without any further notice to any party or any action, order, or approval of the Bankruptcy Court.

3.73.6 Estimation. Subject to the Plan, the Trustee may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim pursuant to applicable law and (b) any contingent or unliquidated Claim pursuant to applicable law, including Section 502(c) of the

Bankruptcy Code, regardless of whether the Settlers or the Trustee have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to the maximum extent permitted by law as determined by the Bankruptcy Court to estimate any Disputed Claim, contingent Claim, or unliquidated Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection.

~~3.8~~3.7 Causes of Action. Subject to the Plan, on and after the Effective Date, the Trustee may pursue Causes of Action and Avoidance Actions ~~with the consent of the Liquidating Trust Committee or, to the extent the Trustee and of the Liquidating Trust Committee do not agree, as ordered by the Bankruptcy Court.~~

~~3.9~~3.8 Agents and Professionals. Subject to the Plan, the Trustee may, but shall not be required to, consult with and retain attorneys, financial advisors, accountants or other professionals and employees as the Trustee deems appropriate in the reasonable exercise of his or her discretion, and who the Trustee reasonably determines to have qualifications necessary to assist the Trustee in the proper administration of the Trust. Subject to Section 7.8 of this Agreement, the Trustee may pay the reasonable fees, costs and expenses of such persons (including himself) out of the Assets in the ordinary course of business pursuant to the Plan and Confirmation Order. Subject to the terms and conditions of this Agreement, the Plan and Confirmation Order, the Trustee may retain professionals who previously were employed by the Creditors' Committee and/or the Debtors.

~~3.10~~3.9 Safekeeping of Assets. All Assets shall, until distributed or paid over as herein provided or in the Plan, be held in trust for the benefit of the Beneficiaries in accordance with the Plan and this Agreement. The Trustee shall be under no liability for interest or



producing income on any moneys received by him or her herein and held for distribution or payment to the Beneficiaries, except as such interest or income shall actually be received by the Trustee.

~~3.11~~3.10 Limitations on Trustee. The Trustee shall not at any time, on behalf of the Trust or Beneficiaries, enter into or engage in any trade or business, and no part of the Assets or the proceeds, revenue, or income therefrom shall be used or disposed of by the Trust in furtherance of any trade or business. The Trustee shall also not incur indebtedness or commingle the Trust's funds.

~~3.12~~3.11 Investment. The Trustee may only invest funds held in the Trust in Permitted Investments, in a manner consistent with the requirements of the Bankruptcy Code or any order of the Bankruptcy Court modifying such requirements and, provided that the Trustee does so, he or she shall have no liability in the event of insolvency of any institution in which he or she has invested any of the Assets or any proceeds, revenue, or income therefrom.

~~3.13~~3.12 Trustee Action. The Trustee shall hold, collect, conserve, protect, and administer the Trust in accordance with the provisions of this Agreement and the Plan, and pay and distribute amounts as set forth therein for the purposes set forth in the Plan and this Agreement. Any good faith determination by the Trustee as to what actions are in the best interests of the Trust shall be determinative, ~~subject to approval by the Liquidating Trust Committee as may be required by the Plan.~~

~~3.14~~3.13 Bankruptcy Court Approval of Trustee Actions. Except as provided in the Plan or as otherwise specified in this Agreement, the Trustee need not obtain an order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred hereunder, or account to the Bankruptcy Court. Except as provided in the Plan or otherwise

specified in this Agreement, the Trustee shall exercise his or her business judgment for the benefit of the Beneficiaries in order to maximize the value of the Assets and distributions to the Beneficiaries, giving due regard to the cost, risk, and delay of any course of action. Notwithstanding the foregoing in this Section ~~3.14~~3.13, the Trustee may seek to the Bankruptcy Court approval for authority to take a particular action which the Trustee may desire to have explicit approval of the Bankruptcy Court with respect to the Assets, the Trust, and the Settlers, and as provided in the Plan or this Agreement, including the administration and distribution of the Assets. The Bankruptcy Court shall retain jurisdiction for such purposes and shall approve or disapprove any such proposed action upon motion.

~~3.15~~3.14 Confidentiality. The Trustee shall, during the period that he or she serves as Trustee under this Agreement and for a period of twelve (12) months following the termination of this Agreement or his or her removal or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Assets, Causes of Action or Avoidance Actions relates, or which he or she has become aware of in his or her capacity as Trustee.

~~3.16~~3.15 Privileged Documents. Subject to the Plan, any disclosure or examination of any Privileged Documents shall be limited to the Trustee and the attorneys that the Trustee has retained on behalf of the Trust for the purpose of pursuing Causes of Action or Avoidance Actions or claims not released by the Settlers, those attorneys' administrative support personnel, and any consulting, non-testifying experts retained by the Trustee on behalf of the Trust for the purpose of assisting the Trust in pursuing such Causes of Action and Avoidance Actions and/or objecting to Claims. The Trustee may not disclose any of the Privileged Documents (or the contents of the Privileged Documents), or otherwise take any actions that may constitute a waiver

of the attorney-client privilege, work product privilege, common interest privilege, or any other applicable privileges with respect to the Privileged Documents, without giving three (3) Business Days' notice to the applicable affected party and an opportunity to object. Nothing in the Plan or this Agreement shall constitute a waiver of any privilege claims over any of the documents, including the Privileged Documents that are produced to or received by the Trust or Trustee. For the avoidance of doubt, the Trust is a successor-in-interest to the Settlor, and thus, the transfer of the Privileged Documents as provided herein does not impair or waive any privilege.

## ARTICLE IV

### DISTRIBUTIONS FROM THE TRUST

4.1 Distributions. On and after the Effective Date, the Trustee shall make Distributions as and when required under the terms of the Plan. The Trustee shall require any Beneficiary to furnish to the Trustee in writing his/her or its Employer or Taxpayer Identification Number as assigned by the IRS or an executed IRS Form W-9 or similar tax form, such as IRS Form W-8, and the Trustee may condition any Distribution upon receipt of such identification number or document. The Trustee shall not make any distributions of Assets to the Beneficiaries unless the Trustee retains and reserves in the Disputed Claims Reserve such amounts as are reasonably necessary to satisfy amounts that would have been distributed in accordance with this Article IV in respect of Disputed Claims if the Disputed Claims were determined to be Allowed Claims immediately prior to such proposed distribution to the Beneficiaries.~~—Every six (6) months after the Effective Date, the Trustee shall provide the Liquidating Trust Committee with an update on the activity and current balance of the Disputed Claims Reserve.~~

4.2 Distributions After Allowance or Disallowance of a Disputed Claim. Within thirty (30) days of a Disputed Claim becoming an Allowed Claim, the Trustee shall distribute to

the Holder thereof, from the Disputed Claim Reserve, such amount of Available Trust Cash as would have been distributed to such Holder if its Claim had been an Allowed Claim on the Effective Date. The Trustee shall no longer reserve for and shall distribute to the Beneficiaries, pursuant to this Agreement, their Pro Rata share of the funds held in the Disputed Claim Reserve on account of any Disputed Claim that becomes Disallowed.

4.3 Undeliverable Property. If any distribution of Available Trust Cash to or on behalf of a Beneficiary is returned to the Trustee or his or her agent as undeliverable, no further distribution to such Beneficiary shall be made unless and until the Trustee is notified in writing of such Beneficiary's then-current address. Any Beneficiary that does not assert a claim for an undeliverable distribution of Available Trust Cash within three (3) months after the last Distribution Date on which the relevant distribution became deliverable shall no longer have any claim to or interest in the Available Trust Cash represented by such undeliverable distribution, and in such cases, all title to and all beneficial interests in the Assets represented by any such undeliverable distributions shall revert to and/or remain in the Trust and shall be distributed in accordance with Article IV of this Agreement and the Plan. The Trustee has no obligation to search for a Beneficiary's address if a check is undeliverable and the Beneficiary did not provide an updated address.

4.4 Payments Limited to Assets. All payments to be made by the Trustee to or for the benefit of any Beneficiary shall be made only from the Assets or proceeds from Causes of Action or Avoidance Actions.

4.5 United States Trustee Fees and Reports. After the Effective Date, the Trustee shall pay as an expense of the Trust all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Trust's disbursements as required under the Plan and Confirmation Order until the Settlers'

Chapter 11 Cases are closed. After the Confirmation Date, the Trustee shall prepare and serve on the Office of the U.S. Trustee such quarterly disbursement reports for the Trust as required by the U.S. Trustee for as long as the Chapter 11 Cases remain open.

4.6 Insurance. Subject to the Plan, the Trustee shall use Assets in the Trustee's reasonable business judgment to maintain customary insurance coverage, if available, for the protection of the Persons or Entities serving as Trustee or administrator of the Trust on and after the Effective Date.

## **ARTICLE V**

### **BENEFICIARIES**

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

5.2 Interest Beneficial Only. The ownership of a beneficial interest in the Trust shall not entitle any Beneficiary or any of the Settlers to any title in or to the Assets or to any right to call for a partition or division of such assets or to require an accounting, except as specifically provided herein or in the Plan.

5.3 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Assets shall not be evidenced by any certificate, security, or receipt, or in any other form or manner whatsoever, except as maintained on the books and records of the Trust by the Trustee. The Trustee may rely on the claims register maintained by Epiq Corporate Restructuring, LLC or its successor.

5.4 Notice of Transfer of Beneficial Interest. Any notice of a change of beneficial interest ownership shall be provided in accordance with Section 13.3 of this Agreement. The notice shall be executed by both the transferee and the transferor and as required by Bankruptcy Rule 3001(e). The notice must clearly describe the interest to be transferred. The Trustee may rely upon such signatures and acknowledgments as evidence of such transfer without the requirement of any further investigation.

## ARTICLE VI

### THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY

6.1 Reliance. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, the Trustee may rely upon and shall be protected in acting upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed to be genuine and to have been signed or presented to the Trustee.

6.2 Parties Dealing With the Trustee. In the absence of actual knowledge to the contrary, any person dealing with the Trust or the Trustee shall be entitled to rely on the authority of the Trustee or any of the Trustee's agents to act in connection with the Assets. There is no obligation on any Person dealing with the Trustee to inquire into the validity, expediency, or propriety of any transaction by the Trustee or any agent of the Trustee.

6.3 Limited Recourse. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, Persons (including any professionals retained by the Trustee ~~or the Liquidating Trust Committee~~ in accordance with this Agreement) engaged in transactions with the Trust, or the Trustee ~~or the Liquidating Trust Committee~~ shall look only to the Assets to

satisfy any liability incurred in connection with the carrying out the terms of this Agreement, the Plan, or the Confirmation Order.

6.4 Limitation of Liability. The Trustee and his or her agents, employees, officers, directors, professionals, attorneys, accountants, advisors, and representatives shall not be subject to any personal liability whatsoever, in tort, contract, or otherwise, to any Person in connection with the Assets or the affairs of the Trust, except for their own gross negligence, willful misconduct, fraud, bad faith, self-dealing or breach of the duty of loyalty and shall not include indemnification or exculpation for breach of contract claims. Other than as set forth in the Plan or Confirmation Order, nothing in this Agreement shall be deemed to release any Beneficiary from any actions or omissions occurring prior to the Effective Date.

6.5 Non-Liability for Acts of Others. Nothing contained in this Agreement, the Plan, or the Confirmation Order shall be deemed to be an assumption by the Trustee of any of the liabilities, obligations, or duties of the Settlers or Beneficiaries and shall not be deemed to be or contain a covenant or agreement by the Trustee to assume or accept any such liability, obligation, or duty. Any successor Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Trustee hereunder, and any statement or representation made by a predecessor Trustee or his or her agents as to the assets comprising the Trust Assets or as to any other fact bearing upon the prior administration of the Trust, so long as he or she has a good faith basis to do so. A Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. A Trustee or successor Trustee shall not be liable for any act or omission of any predecessor Trustee, nor have a duty to enforce any claims against any predecessor Trustee on account of any such act or omission.

6.6 Indemnification. The Trustee ~~and Liquidating Trust Committee and its members,~~ and each of ~~their~~its respective agents, employees, officers, directors, managers, professionals, attorneys, accountants, advisors and representatives (collectively, the “Indemnified Parties”) shall be indemnified and held harmless by the Trust, to the fullest extent permitted by law, solely from the Assets for any losses, claims, damages, liabilities and expenses, including, without limitation, reasonable attorneys’ fees, disbursements, and related expenses which the Indemnified Parties may incur or to which the Indemnified Parties may become subject in connection with any action, suit, proceeding, or investigation brought or threatened against one or more of the Indemnified Parties on account of the acts or omissions of an Indemnified Party solely in its capacity as such; provided, however, that the Trust shall not be liable to indemnify any Indemnified Party for any loss finally judicially determined by the Bankruptcy Court to have resulted primarily from any act or omission constituting gross negligence, willful misconduct, fraud, bad faith, self-dealing or breach of the duty of loyalty by such Indemnified Party, which in either event caused actual material damage to the Trust or the Beneficiaries, or for breach of contract claims. Notwithstanding any provision in this Agreement to the contrary, the Indemnified Parties shall be entitled to request advances from the Trust to cover reasonable fees and necessary expenses incurred in connection with defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of an Indemnified Party in its capacity as such; provided, however, that the Trustee shall not be required to make any such advances; provided further, however, that any Indemnified Parties receiving such advances shall repay the amounts so advanced to the Trust upon the entry of a final order of a court of competent jurisdiction finding that such Indemnified Parties were not entitled to any indemnity under the provisions of this Section 6.6. This indemnification shall survive the death, dissolution, resignation, or



removal, as may be applicable, of the Indemnified Parties, or the termination of the Trust, and shall inure to the benefit of the Indemnified Parties' heirs and assigns.

## ARTICLE VII

### SELECTION, REMOVAL AND COMPENSATION OF TRUSTEE

7.1 Initial Trustee. The initial Trustee shall be Peter Hurwitz of Dundon Advisors LLC.

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

7.3 Removal of a Trustee. Subject to the Plan, ~~the Liquidating Trust Committee may a~~  
Beneficiary may seek by motion to the Bankruptcy Court to remove and replace the Trustee for cause, including, without limitation, incapacity or failure or refusal to perform his duties under the Plan, this Agreement and the Confirmation Order. If removal of the Trustee is sought from the Bankruptcy Court by a motion for cause (or similar motion), then the Trustee is entitled to oppose such motion and to pay his or her reasonable attorneys' fees and expenses in connection with such objection from the Assets of the Trust.

7.4 Resignation of Trustee. The Trustee may resign at any time by ~~giving~~filing a  
notice with the ~~Liquidating Trust Committee~~Bankruptcy Court at least thirty (30) days' ~~written~~  
~~notice~~in advance of the Trustee's intention to do so. In the event of a resignation, the resigning Trustee shall render to the ~~Liquidating Trust Committee~~successor Trustee and to counsel to the  
Trustee, a full and complete accounting of monies and assets received, disbursed, and held during

the term of office of that Trustee. The resignation shall be effective on the later of (a) the date specified in the notice; (b) the date that is thirty days (30) after the date the notice is delivered; or (c) the date the accounting described in the preceding sentence is delivered.

7.5 Appointment of Successor Trustee. ~~Subject to the Plan, upon~~Upon the resignation, death, incapacity, or removal of a Trustee, counsel to the ~~Liquidating Trust Committee~~Trustee shall appoint, ~~by majority vote,~~ a successor Trustee to fill the vacancy so created, or ~~in the absence of majority vote,~~ the Bankruptcy Court ~~shall~~may appoint a successor Trustee to the extent necessary or requested. Any successor Trustee so appointed shall consent to and accept in writing the terms of this Agreement and agree that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Trustee and all of the successor Trustee's heirs and legal and personal representatives, successors or assigns. ~~Notwithstanding anything in this Agreement, in the event that a successor Trustee is not appointed within sixty (60) days of the occurrence or effectiveness, as applicable, of the prior Trustee's resignation, death, incapacity, or removal, the Liquidating Trust Committee shall be authorized to move the Bankruptcy Court for the appointment of a successor Trustee.~~

7.6 Powers and Duties of Successor Trustee. A successor Trustee shall have all the rights, privileges, powers, and duties of the predecessor Trustee under this Agreement and the Plan.

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

7.8 Compensation and Costs of Administration. Subject to the Plan, the Trustee may retain and compensate professionals (including himself) as provided for in Section ~~3.9~~3.8 of this

Agreement. The reasonable fees and actual and necessary expenses of such professionals and the Trustee shall be paid by the Trustee upon each monthly submission of a fee statement to the Trustee ~~and/or the Liquidating Trust Committee, as applicable,~~ in accordance with the following procedures. ~~The Trustee shall deliver his or her invoices or fee statements to the Liquidating Trust Committee before payment from the Assets shall be allowed.~~ Any professionals retained by the Trustee pursuant to this Agreement shall deliver their invoices or fee statements to the Trustee ~~and the Liquidating Trust Committee~~ before payment from the Trust Assets shall be allowed. The Trustee ~~and Liquidating Trust Committee, as applicable,~~ shall have fifteen (15) days from the delivery of any invoice or fee statement to give notice of an objection to the fee statement to the professional seeking compensation or reimbursement (including the Trustee himself). For an objection to be valid, it shall be in writing and set forth in detail the specific fees objected to and the basis for the objection. The uncontested portion of each invoice shall be paid within twenty-five (25) days after its original delivery to the Trustee. Any objection that remains unresolved fifteen (15) days after it is made shall be submitted to the Bankruptcy Court for resolution.

#### 7.9 Reporting and Filing Requirements.

A. Within thirty (30) days after the last day of each calendar quarter in which the Trust shall remain in existence, the Trustee shall file a report with the Bankruptcy Court of all Assets held and received by the Trust, all Available Trust Cash disbursed to Beneficiaries, and all fees, income, and expenses related to the Trust during the preceding calendar year. The Trustee's report ~~shall be provided to the Liquidating Trust Committee upon filing with the Bankruptcy Court, and~~ shall be available to any Beneficiary upon written request.

B. The Trustee shall also timely prepare, file and distribute such additional statements, reports and submissions as may be necessary to cause the Trust and the Trustee to be in compliance with applicable law, such as the filing of tax or informational returns.

~~C. The Trustee shall provide such additional statements, reports, submissions and information to the Liquidating Trust Committee as may reasonably be requested, including without limitation, periodic updates on the status of the Trust, its Assets (including tax refunds), and the projected timing of future distributions (to the extent known by the Trustee).~~

## ARTICLE VIII

### TRUST RIGHTS AND OBLIGATIONS

8.1 The Trustee shall file tax returns for the Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and any other applicable laws or regulations.

8.2 To the extent reasonably practicable unless otherwise ordered by the Bankruptcy Court, the Trustee shall, within 110 days after the end of each calendar year, send to each Beneficiary a statement setting forth the Beneficiary's share or items of income, gain, loss, deduction, or credit and will instruct all such holders to report such items on their federal income tax returns. Such a statement shall also be sent to each Beneficiary within 110 days of the dissolution of the Trust. The Trust's taxable income, gain, loss, deduction, or credit will be allocated (subject to provisions of the Plan and Confirmation Order relating to Disputed Claims) to the Beneficiaries in accordance with their relative beneficial interests in the Trust, as determined pursuant to this Agreement.

8.3 In addition to the Trustee's rights and duties with respect to the Trust, and subject to the Plan, on and after the Effective Date, the Trustee is authorized to implement the Plan and any applicable orders of the Bankruptcy Court.

## ARTICLE IX

### MAINTENANCE OF BOOKS AND RECORDS

9.1 Subject to the Plan, on the Effective Date, the Trust shall: (a) to the extent provided for in the Plan, take possession of all books, records, and files of the Settlers and their Estates, in all forms including electronic and hard copy, other than the documents of the Settlers' professionals; and (b) provide for the retention and storage of such books, records, and files until such time as the Trustee determines, in accordance with this Agreement ~~and in consultation with the Liquidating Trust Committee~~, that retention of same is no longer necessary or required.

9.2 The Trustee shall maintain books and records containing a description of all property from time to time constituting the Assets and an accounting of all receipts and disbursements. The Trustee shall furnish to any Beneficiary upon written request an annual statement of receipts and disbursements, including a summary of all income and expenses of the Trust.

## ARTICLE X

### DURATION OF TRUST

10.1 Duration. The Trust shall become effective upon the Effective Date of the Plan, and the Trust and its provisions herein shall remain and continue in full force and effect until the Trust is terminated.

10.2 Termination. Subject to the Plan, the Trustee ~~and members of the Liquidating Trust Committee~~ shall be discharged and the Trust ~~and Liquidating Trust Committee~~ shall be

terminated, at such time as (a) all Disputed Claims have been resolved, (b) all of the Assets have been liquidated, (c) all duties and obligations of the Trustee hereunder and in the Plan have been fulfilled, (d) all Distributions required to be made by the Trust under the Plan and the Agreement have been made, and (e) the Chapter 11 Cases of the Debtors have been closed, but in no event shall the Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion by the Trustee within the six-month period prior to the fifth anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service, to the extent required under applicable law at that time, that any further extension would not adversely affect the status of the Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the liquidation, recovery and distribution of the Assets to the Beneficiaries. ~~The Trustee may seek such an extension with the consent of the Liquidating Trust Committee, which consent shall not be unreasonably withheld.~~

10.3 Continuance of Trust for Winding Up. After the termination of the Trust and for the purpose of liquidating and winding up the affairs of the Trust, the Trustee shall continue to act as such until the Trustee's duties have been fully performed, including, without limitation, such post-distribution tasks as necessary to windup the affairs of the Trust. After the termination of the Trust, the Trustee shall retain for a period of six (6) months the books, records, Beneficiary lists, and certificates and other documents and files which shall have been delivered to or created by the Trustee. At the Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after six (6) months from the completion and winding up of the affairs of the Trust. Except as otherwise specifically provided herein, upon the discharge of all

liabilities of the Trust and after final distributions of the Trust are made, the Trustee shall have no further duties or obligations hereunder. For the avoidance of doubt, the limitations on liability and indemnification rights contained in Article VI hereof shall apply to any actions taken by the Trustee and his professionals during the course of winding up the affairs of the Trust.

## **ARTICLE XI**

### **TAX TREATMENT OF THE TRUST**

11.1 Intention of Parties to Establish Grantor Trust. This Agreement is intended to create a grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as a grantor trust. For all federal income tax purposes, the Beneficiaries of the Trust will be treated as grantors and owners thereof and it is intended that the Trust be classified as a liquidating Trust under 26 C.F.R. § 301.7701-4 and that the Trust is owned by the Beneficiaries. Accordingly, for federal income tax purposes, it is intended that the Beneficiaries be treated as if they had received a Distribution of an undivided interest in the Assets and then contributed such interests to the Trust. Accordingly, the Trust shall, in an expeditious but orderly manner, and pursuant to the terms of this Agreement, the Plan and the Confirmation Order, liquidate and convert to Cash the Assets, make timely Distributions to the Beneficiaries pursuant to the Plan, and not unduly prolong the Trust's duration. The Trust shall not be deemed a successor in interest of the Settlers for any purpose other than as specifically set forth herein, the Plan and Confirmation Order.

11.2 Tax Returns. In accordance with the Plan, the Trustee shall cause the filing of file returns for the Trust, except with respect to any Disputed Claims Reserve, as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). The Trust's taxable income, gain, loss,

deduction or credit will be allocated to each one of the Beneficiaries in accordance with their relative beneficial interests in the Trust.

11.3 Valuation of Assets. As soon as practicable after the Effective Date, the Trustee (to the extent that he or she deems it necessary or appropriate in the reasonable exercise of his or her discretion) shall, in good faith, value the Assets, and shall apprise the Beneficiaries of such valuation (but the Trust is not required to engage an expert to make such a valuation) for tax purposes. The valuation shall be used consistently by all parties (including the Settlers, the Trustee, and the Beneficiaries) for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding the valuation of the Assets.

11.4 Disputed Claims Reserve. The Trustee shall file all income tax returns with respect to any income attributable to the Disputed Claims Reserve and shall pay any federal, state and local income taxes attributable to the Disputed Claims Reserve, based on the items of income, deduction, credit or loss allocable thereto.

11.5 Determination of Taxes. The Trustee may request an expedited determination of any local, state and/or federal taxes of the Settlers or of the Trust, including the Disputed Claims Reserve, under Bankruptcy Code Section 505(b) for all returns filed for, or on behalf of, the Settlers and the Trust for all taxable periods through the dissolution of the Trust, and to take any and all action necessary to obtain payment of any tax refund(s) due to the Settlers, their Estates and/or the Trust.

11.6 Filing, Reporting, Withholding. The Trustee shall be responsible for filing all federal, state, local and foreign tax returns for the Settlers and the Trust. The Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions made by the Trust shall be subject to any such withholding



and reporting requirements. The Trust is also authorized to make tax elections on behalf of the Trust and/or Debtors

## **ARTICLE XII**

### **WIND-DOWN**

12.1 Wind-Down of Surviving Settlers. In addition to the Trustee's rights and duties with respect to the Trust as set forth herein, on and after the Effective Date, the Trustee shall also have the power and authority to take any action necessary to wind down the Estates, taking into account any applicable requirements to maintain the existence of one or more of the Debtors in order to collect and liquidate the Assets.

## **ARTICLE XIII**

### **MISCELLANEOUS**

13.1 Jurisdiction. The Bankruptcy Court shall have exclusive jurisdiction over (a) the Trust, and the Trustee ~~and the Liquidating Trust Committee~~ with respect to the administration of and activities relating to the Trust, as well as (b) any issues or disputes arising out of this Agreement; provided, however, that notwithstanding the foregoing, the Trustee shall have the power and authority to bring any action in any court of competent jurisdiction to prosecute any Causes of Action and/or Avoidance Actions assigned to the Trust, subject to the oversight and consent requirements set forth in this Agreement, the Plan and the Confirmation Order.

13.2 Limitation on Transferability. A beneficial interest in the Trust shall be non-assignable and non-transferable except upon death of the interest holder or by operation of law. An assignment or transfer shall not be effective until appropriate notification and proof thereof is submitted to the Trustee, and the Trustee may continue to pay all amounts to or for the benefit of the assigning or transferring Beneficiary until receipt of proper notification and proof

of assignment or transfer. The Trustee may rely upon such proof without the requirement of any further investigation.

13.3 Notices. All notices to be given to Beneficiaries may be given by ordinary mail, or may be delivered personally, to the holders at the addresses appearing on the books kept by Trustee. Any notice or other communication which may be or is required to be given, served, or sent to the Trustee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or facsimile (if receipt is confirmed) addressed as follows:

If to the Trust/Trustee:

~~{Trustee}~~  
Peter Hurwitz  
Dundon Advisers LLC  
440 Mamaroneck Avenue  
Fifth Floor  
Harrison, NY 10528

With a copy to:

~~{Counsel}~~

~~If to the Liquidating Trust Committee:~~

~~Liquidating Trust Committee Members:~~

~~{Committee Member}~~

~~With a copy to:~~

~~{Counsel}~~  
Christopher M. Samis, Esq.  
Potter Anderson & Corroon LLP  
1313 N. Market Street

Wilmington, DE 19801

or to such other address as may from time to time be provided in written notice by the Trustee ~~or the Liquidating Trust Committee.~~

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

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

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

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

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

13.9 Plan and Confirmation Order. To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Plan, then the terms of the Plan shall govern and control. To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Confirmation Order, then the terms of the Confirmation Order shall govern and control.

13.10 Amendment. This Agreement may only be amended ~~with the consent of each member of the Liquidating Trust Committee (which consent shall not be unreasonably withheld) or, in the absence of such agreement,~~ by order of the Bankruptcy Court, provided, however, such amendment may not be inconsistent with the Plan or the Confirmation Order.

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

IN WITNESS WHEREOF, the parties have executed this Agreement (or are deemed to have so executed this Agreement) as of the day and year written above.

Trustee

VL Wind Down Inc., f/k/a Vector Launch Inc

By: \_\_\_\_\_  
Name: Peter Hurwitz  
Title: Liquidating Trustee

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

GSC Wind Down Inc. f/k/a Garvey Spacecraft Corporation

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

# Exhibit C

**IDENTITY AND COMPENSATION OF THE LIQUIDATING TRUSTEE**

Liquidating Trustee

1. Peter Hurwitz of Dundon Advisors LLC

Compensation

1. The Trustee shall receive \$10,000 per month as compensation, and shall be entitled to reimbursement for documented actual and reasonable expenses incurred in performing his duties as Trustee.

# Exhibit D

### **Retained Action Schedule**

This Retained Action Schedule (this “Schedule”) represents a list of the Causes of Action retained by the Debtors pursuant to Section XIV.B.2. of the Plan,<sup>1</sup> and for which is proposed to be transferred to the Liquidating Trust and shall constitute Liquidating Trust Assets. The Debtors expressly reserve the right to alter, modify, amend, remove, augment, or supplement this Schedule at any time in accordance with the Plan and the Liquidating Trust Agreement. If the Plan is not confirmed, no limitation will be created on claims or Causes of Action of the Debtors.

Section XIV.B.2. of the Plan provides as follows:

Unless a Cause of Action against any Entity is expressly waived, relinquished, released, compromised, or settled in this Plan or any Final Order (including the Confirmation Order), the Debtors expressly reserve such Cause of Action, including all Liquidating Trust Claims to be transferred by the Debtors to the Liquidating Trust pursuant to this Plan, which include without limitation the Causes of Action, and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action upon or after the entry of the Confirmation Order or Effective Date based on the Disclosure Statement, this Plan or the Confirmation Order or any other Final Order (including the Confirmation Order). In addition, the Liquidating Trust reserves the right to pursue or adopt any claims alleged in any lawsuit in which the Debtors or the Creditors’ Committee is a defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

Subject to the immediately preceding paragraph, any Entity to whom the Debtors have incurred an obligation (whether on account of services, purchase or sale of goods or otherwise), or who has received services from the Debtors or a transfer of money or property of the Debtors, or who has transacted business with the Debtors, or leased equipment or property from the Debtors should assume that any such obligation, transfer, or transaction may be reviewed by the Liquidating Trust subsequent to the Effective Date and may be the subject of an action after the Effective Date, regardless of whether: (i) such Entity has filed a proof of claim against the Debtors in the Chapter 11 Cases; (ii) the Debtors or the Liquidating Trust have objected to any such Entity’s proof of claim; (iii) any such Entity’s Claim was included in the Schedules; (iv) the Debtors or the Liquidating Trust have objected to any such Entity’s scheduled Claim; or (v) any such Entity’s scheduled Claim has been

---

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.



identified by the Debtors or the Liquidating Trust as disputed, contingent, or unliquidated.

The failure of the Debtors to list a claim, right, cause of action, suit or proceeding shall not constitute a waiver or release by the Debtors of such claim, right of action, suit or proceeding. **No Entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Causes of Action against them as any indication that the Liquidating Trustee will not pursue any and all available Causes of Action against them.**

Notwithstanding, and without limiting the generality of, XIV.B.2. of the Plan, for the avoidance of doubt, among all other rights of action, the Causes of Action that the Debtors and the Liquidating Trustee, on behalf of the Liquidating Trust, wish to retain and preserve for prosecution on or after the Effective Date (except where such Causes of Action have been expressly waived, relinquished, released, compromised, or settled in the Plan or any Final Order (including the Confirmation Order)) include, but are not limited to, the following:

- a. any and all Claims and Causes of Action including, but not limited to Claims and Causes of Action for indemnification, insurance recovery claims and any other rights of the Debtors or Liquidating Trustee, on behalf of the Liquidating Trust, under applicable insurance agreements, against the Debtors' insurers in connection with any Causes of Action;
- b. any and all Claims, Causes of Action, crossclaims, counterclaims, and rights of action that the Debtors hold against any of the parties to the Causes of Action;
- c. any and all Claims, Causes of Action, crossclaims, counterclaims, and rights of action that the Debtors hold or maintain pursuant to, or against any of the parties in, any and all sale or acquisition agreements (and all documents related thereto) entered into by the Debtors for, among other things, any right to indemnification, claims for breach of representations or warranties, or breach of contract;
- d. any and all Claims, Causes of Action, crossclaims, counterclaims, and rights of action based in whole or in part upon any and all postings of a security deposit, adequate assurance payment, or any other type of deposit or collateral;
- e. any and all Claims, Causes of Action, crossclaims, counterclaims, and rights of action based in whole or in part upon any and all contracts and leases to which any Debtors or Liquidating Trust are a party or pursuant to which any Debtor or the Liquidating Trust has any rights whatsoever;
- f. any and all Claims, Causes of Action, crossclaims, counterclaims, and rights of action against or related to all entities that owe or that may in the future owe money to the Debtors or Liquidating Trust;

- g. any and all Claims, Causes of Action, crossclaims, counterclaims, and rights of action to Allow, settle, object to or reconcile any Claims against the Debtors' Estates (as those terms are used in the Liquidating Trust Agreement). For avoidance of doubt, the Debtors expressly reserve all Causes of Action against or related to all entities who assert or may assert that the Debtors or Liquidating Trust owe money to them; and
- h. any and all Avoidance Actions and similar Causes of Action including Causes of Action to avoid or recover preferential payments or other prepetition transfers under sections 510(c), 542, 543, 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code, and any analogous provisions of applicable state law.

Additionally, the Liquidating Trustee, on behalf of the Liquidating Trust, may bring Causes of Action (except where such Causes of Action have been expressly waived, relinquished, released, compromised, or settled in the Plan or any Final Order (including the Confirmation Order)) against the following Persons including, but not limited to:

- a. any Person previously involved in litigation with any Debtor;
  - b. any Person against whom a Cause of Action is discovered after the confirmation of the Plan;
  - c. any Person that may have committed any tortious act against any Debtor;
  - d. any potential litigation parties, including but not limited to the following:
    - 1. James Cantrell
    - 2. Other current and former officers and directors of the Debtors not otherwise released in accordance with the Plan
- and;
- e. any parties to the potential Avoidance Actions.