

Exhibit B

(Litigation Trust Agreement)

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

In re:)	Chapter 11
VELTI INC., <i>et al.</i> , ¹)	Case No. 13-12878 (PJW)
Debtors.)	Jointly Administered
)	
)	
)	
)	

LITIGATION TRUST AGREEMENT

by and among

VELTI INC., et al.
as Debtors and Debtors-in possession,

and

OFFICIAL COMMITTEE OF UNSECURED CREDITORS
as representatives of Beneficiaries

and

CHARLES C. REARDON
as Litigation Trustee

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Velti, Inc. (4475), Air2Web, Inc. (5572) Air2Web Interactive, Inc. (2364), Velti North America, Inc. (8900), Velti North America Holdings, Inc. (3953) and Velti US Holdings, Inc. (8299). The mailing address of each of the Debtors, solely for purposes of notices and communications, is Spear Tower, 1 Market Street Suite 1400, San Francisco, California 94105.

THIS LITIGATION TRUST AGREEMENT ("Agreement") is made this ____ day of _____, 2014 by and among Velti Inc., Air2Web, Inc., Air2Web Interactive, Inc., Velti North America, Inc., Velti North America Holdings, Inc., and Velti US Holdings, Inc. ("Debtors"), the Official Committee of Unsecured Creditors as described in the Plan ("Committee"), and Charles C. Reardon (together with any successors, the "Litigation Trustee").

RECITALS:

A. On November 4, 2013, each of the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court") jointly administered as Case No. 13-12878 (PJW) (the "Case").

B. On [May 29, 2014], the Bankruptcy Court entered an order (the "Confirmation Order") confirming the Debtors' Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as same may have been or may be amended or modified, the "Plan").²

C. The Plan provides for the creation of a litigation trust (the "Velti Litigation Trust") on the Effective Date of the Plan (the "Effective Date") to receive the Trust Assets (defined below), to resolve and object to General Unsecured Claims, to investigate, prosecute, settle, abandon, or otherwise resolve the Vested Causes of Action, and to distribute proceeds of Trust Assets in accordance with the Plan to holders of Allowed General Unsecured Claims and the GSO Deficiency Claim (collectively, the "Beneficiaries").

D. The "Trust Assets" consist of (i) the Vested Causes of Action and the proceeds thereof; and (ii) the "Committee Settlement Payments," in the amount of \$550,000, consisting of \$300,000 in Cash for distribution to the Beneficiaries on the Effective Date of the Plan or as soon as reasonably practical thereafter, and \$250,000 in Cash for expenses of the Velti Litigation Trust, held in the Litigation Expense Reserve Account, as described herein.

E. The Velti Litigation Trust is created on behalf of, and for the benefit of, the Beneficiaries.

F. The Velti Litigation Trust is created pursuant to, and to effectuate, the Plan for the primary purpose of liquidating the Trust Assets for the benefit of the Beneficiaries of the trust, in accordance with Treasury Regulation § 301.7701-4(d), and Revenue Procedure 94-45, 1994-28 I.R.B. 124, (July 11, 1994) ("Revenue Procedure 94-45") (or any subsequent Revenue Procedures that may be issued), with no objective to continue or engage in the conduct of a trade or business.

G. The Velti Litigation Trust is intended to qualify as a "grantor trust" for federal income tax purposes. The Beneficiaries of the Velti Litigation Trust will be treated as the

² Capitalized terms used herein without definition shall have the respective meanings assigned to such terms in the Plan.

grantors of the Velti Litigation Trust and deemed owners of the Trust Assets. The Velti Litigation Trust requires the Litigation Trustee to file tax returns for the Velti Litigation Trust as a grantor trust pursuant to Treasury Regulation § 1.671-1 through 4(a).

H. The Velti Litigation Trust is required to distribute to the Beneficiaries its net income plus all net proceeds from litigation recoveries, except that the Velti Litigation Trust may retain an amount of net proceeds or net income reasonably necessary to maintain the value of the Trust Assets and to fund the Litigation Expense Reserve Account.

I. The Debtors shall turn over or otherwise make available to the Litigation Trustee all books, records, and claims registers reasonably required by the Litigation Trustee to investigate, prosecute and compromise the Vested Causes of Action, administer the Velti Litigation Trust (including the reconciliation of and objection to General Unsecured Claims), and make payments to the Beneficiaries as provided herein. The Debtors shall use commercially reasonable efforts to cooperate with the Litigation Trustee's prosecution or settlement of the Vested Causes of Action as provided in this Agreement.

J. The Bankruptcy Court shall have continuing jurisdiction over the Velti Litigation Trust and the Litigation Trustee as provided herein, in the Plan and in the Confirmation Order.

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

SECTION I THE LITIGATION TRUST

A. Creation. In accordance with the Plan, on the Effective Date of the Plan, the Velti Litigation Trust is hereby created.

B. Objective and Purpose. The Velti Litigation Trust shall be established and maintained for the sole purpose of liquidating the Trust Assets, and distributing proceeds thereof, in accordance with Treasury Regulation 301.7701 - 4(d) and resolving and administering General Unsecured Claims, with no objective to continue or engage in the conduct of a trade or business.

C. Acceptance. The Litigation Trustee accepts the terms, provisions, and conditions of this Agreement and the Plan and agrees to observe, perform, and abide hereby and thereby.

D. 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 such a grantor trust. The Velti Litigation Trust is not intended to constitute nor shall the formation of the Velti Litigation Trust be interpreted as creating an association, partnership, or joint venture of any kind.

E. Transfer of Assets to Velti Litigation Trust.

1. On the Effective Date, all right, title, and interest to the Trust Assets shall vest in the Velti Litigation Trust consistent with the terms of the Plan.

2. On the Effective Date, the Debtors shall be deemed to and do hereby assign, transfer, and convey to the Velti Litigation Trust all of their right, title, and interest in the Trust Assets. Upon the transfer of the Trust Assets, the Debtors shall have no interest in or claim to the Trust Assets, and the Velti Litigation Trust shall succeed to all of the Debtors' title and interest in and to the Trust Assets.

3. For all purposes of the Internal Revenue Code of 1986 ("IRS Code"), as amended, all Persons (including, without limitation, the Litigation Trustee and the Beneficiaries) shall treat the transfer of the Trust Assets to the Velti Litigation Trust, as the deemed transfer of such assets to the Beneficiaries followed by the deemed transfer of such assets by the Beneficiaries to the Velti Litigation Trust. Thus, the Beneficiaries shall be treated as the grantors and owners of the Velti Litigation Trust for federal income tax purposes.

4. As soon as possible (but in no event earlier than thirty (30) days) after the Effective Date, the Litigation Trustee, based upon his good faith determination, shall inform the Beneficiaries in writing as to his estimate of the value of the assets transferred to the Litigation Trust. The valuation shall be used consistently by all parties (including, without limitation, the Litigation Trustee and the Beneficiaries) for all federal income tax purposes, and the parties shall file tax returns consistent with such valuation; *provided, however*, that such valuation shall not be binding on the Litigation Trustee or any other party for any other purposes, including without limitation in regard to the liquidation or prosecution of the Trust Assets, whether by litigation, settlement, or otherwise. Any such valuation shall be inadmissible in any proceeding concerning the Vested Causes of Action.

F. Investment and Safekeeping of the Trust Assets. All Trust Assets received by the Velti Litigation Trust shall, until distributed or paid over as herein provided, be held in trust for the benefit of the Beneficiaries. Investments of any Trust Assets held by the Velti Litigation Trust shall be administered in a manner in which individuals of ordinary prudence, discretion, and judgment would act in the management of their own affairs; provided, however, that the right and power of the Litigation Trustee to invest the Trust Assets, the proceeds thereof, or any income earned by the Velti Litigation Trust, shall be limited to the right and power to invest such assets in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary liquid investments, such as Treasury bills.

G. Termination of Velti Litigation Trust.

1. The Velti Litigation Trust will terminate no later than the fifth (5th) anniversary of the Effective Date; *provided, however*, that the Bankruptcy Court, within the 180 days prior to the date of commencement of the applicable extended term, may approve an extension of the term of the Velti Litigation Trust for a finite period if necessary or appropriate in furthering the liquidating purpose thereof; *provided further, however*, that the aggregate of all such extensions shall not exceed three (3) years unless the Litigation Trustee receives a favorable

ruling from the IRS that any further extension would not adversely affect the status of the Velti Litigation Trust as a liquidating trust within the meaning of Treas. Reg. § 301.7701-4(d) for federal income tax purposes.

2. Prior to and upon termination of the Velti Litigation Trust, the Trust Assets will be distributed to the Beneficiaries in accordance with the Plan and subject to this Agreement. If at any point prior to such termination date, the Litigation Trustee determines that further disbursements of the Trust Assets are unwarranted, the Litigation Trustee shall make a final distribution to Beneficiaries, net of expenses.

3. The Litigation Trustee shall not unduly prolong the duration of the Velti Litigation Trust and shall at all times endeavor to resolve, settle, or otherwise dispose of all claims that constitute Trust Assets and to effect the distribution of the Trust Assets for the benefit of Beneficiaries in accordance with the terms hereof, and terminate the Velti Litigation Trust as soon as practicable in the Litigation Trustee's discretion. For the avoidance of doubt, nothing in this provision is intended to limit the Litigation Trustee's exercise of discretion with respect to investigating, prosecuting, settling, or other resolution of Vested Causes of Action.

4. After the termination of the Velti Litigation Trust and for the purpose of liquidating and winding up the affairs of the Velti Litigation Trust, the Litigation Trustee shall continue to act as such until its duties have been fully performed. Prior to the final distribution of all of the remaining assets of the Velti Litigation Trust and upon approval of the Trust Oversight Committee, the Litigation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for its own reasonable costs and expenses, in accordance with Section II.E hereof, until such time as the winding up of the Velti Litigation Trust is completed. Upon termination of the Velti Litigation Trust, the Litigation Trustee shall retain for a period of two years the books, records, lists of the holders of the Beneficial Interests, and other documents and files that have been delivered to or created by the Litigation Trustee. At the Litigation Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two years from the completion and winding up of the affairs of the Velti Litigation Trust. Except as otherwise specifically provided herein, upon the termination of the Velti Litigation Trust, the Litigation Trustee shall have no further duties or obligations hereunder.

SECTION II LITIGATION TRUSTEE

A. Appointment. Pursuant to sections 1123(a)(5)(B) and 1123(b)(3) of the Bankruptcy Code, the Plan provides for the appointment of a Litigation Trustee as the duly appointed representative of the Debtors with respect to the Vested Causes of Action and adjudication of General Unsecured Claims, and as such, the Litigation Trustee succeeds to all of the rights and powers of a trustee in bankruptcy for the benefit of the Beneficiaries in accordance with the terms of this Agreement, the Plan and the Confirmation Order. Charles C. Reardon shall serve as the Litigation Trustee under the Plan, and the Litigation Trustee hereby accepts such appointment and agrees to serve in such capacity, upon the Effective Date of the Plan. It is acknowledged that Charles C. Reardon shall also serve as the Responsible Person upon the Effective Date of the Plan.

B. Generally. The Litigation Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of this Velti Litigation Trust and not otherwise. The Litigation Trustee shall have the authority to bind the Velti Litigation Trust, but shall for all purposes hereunder be acting in the capacity as Litigation Trustee and not personally or individually. The Litigation Trustee shall not be obligated to give any bond, surety, or other security for the performance of any duties or obligations hereunder. The Litigation Trustee shall be entitled to engage in all such activities as the Litigation Trustee deems necessary and appropriate, in the Litigation Trustee's sole discretion; provided, however, that such activities do not conflict with the purpose of the Velti Litigation Trust, are in accordance with the Plan and the other provisions of this Agreement, are in the best interests of the Beneficiaries; and provided, further, that the Litigation Trustee shall devote such time and effort as is necessary to timely and properly fulfill all such duties.

C. Scope of Authority. The responsibilities and authority of the Litigation Trustee shall include: (1) investigating, prosecuting, settling, abandoning, or other resolution of Vested Causes of Action; (2) administering and liquidating the Trust Assets; (3) reconciling, objecting to, and estimating General Unsecured Claims against the Debtors; (4) calculating and implementing distributions to holders of Allowed General Unsecured Claims in accordance with the Plan and this Agreement; (5) filing all required tax returns of the Velti Litigation Trust; and (6) such other responsibilities as may be vested in the Litigation Trustee pursuant to the Plan, this Agreement, any Final Order of the Bankruptcy Court, or as may be necessary and proper to carry out the provisions of the Plan.

D. Powers.

1. In connection with the administration of the Velti Litigation Trust, except as otherwise set forth in this Agreement or the Plan, the Litigation Trustee is authorized to perform any and all acts necessary and reasonable to accomplish the purposes of the Velti Litigation Trust. Without limiting, but subject to the foregoing, and subject in all respects to the other terms and conditions of this Agreement, the Litigation Trustee shall be expressly authorized, but shall not be required, to, in addition to any powers and authority conferred by law:

(a) review, analyze, prosecute, compromise, abandon, and otherwise resolve any Vested Causes of Action upon such terms and conditions as the Litigation Trustee deems appropriate and in the best interests of the Velti Litigation Trust;

(b) review, analyze, object to, and, as appropriate, compromise and resolve any General Unsecured Claims upon such terms and conditions as the Litigation Trustee deems appropriate and in the best interests of the Velti Litigation Trust;

(c) open new bank or other depository accounts in the name of the Velti Litigation Trust as may be necessary or appropriate in the discretion of the Litigation Trustee to enable the Litigation Trustee to administer the Velti Litigation Trust in accordance with the terms of this Agreement;

(d) maintain all accounts, make distributions to Beneficiaries of the Velti Litigation Trust from the Trust Assets, and take other actions consistent with the Plan in the name of the Velti Litigation Trust;

(e) invest funds in and withdraw, make distributions, and pay expenses, taxes, and other obligations owed by the Velti Litigation Trust from funds held by the Litigation Trustee in accordance with the Plan and this Agreement;

(f) maintain books and records relating to the assets and income of the Velti Litigation Trust and the payment of expenses of, and liabilities of the Velti Litigation Trust in such detail and for such period of time as may be necessary to make full and proper accounting in accordance with applicable provisions of law. Beneficiaries shall have the right upon thirty (30) days' prior written notice delivered to the Litigation Trustee to inspect such books and records, provided that, if so requested, such Beneficiary shall have entered into a confidentiality agreement satisfactory in form and substance to the Litigation Trustee;

(g) retain or engage, without the necessity of obtaining any approval from the Bankruptcy Court, such employees, independent contractors, professional persons, and agents (including any such individuals who are employed by or affiliated with Asgaard Capital LLC, the Litigation Trustee, the Debtors, or the Committee) as are appropriate, necessary, or desirable to complete the general administration of the Velti Litigation Trust as required by this Agreement and applicable law;

(h) incur any reasonable and necessary expenses on behalf of the Velti Litigation Trust in carrying out the Litigation Trustee's obligations and responsibilities, and make disbursements from Trust Assets to pay the ordinary and necessary expenses of administering the Velti Litigation Trust, without the necessity of providing any notice or seeking or obtaining any approval of the Bankruptcy Court with respect to such disbursements;

(i) make interim and final distributions of the Trust Assets to the Beneficiaries of the Velti Litigation Trust in accordance with the terms of this Agreement, the Plan, and applicable law;

(j) prepare and file tax and informational returns on behalf of the Velti Litigation Trust as required by applicable federal, state, and local law;

(k) file with the Bankruptcy Court and/or the Office of the United States Trustee the reports and other documents required by the Plan or otherwise required to close the Case; and

(l) take all other actions not inconsistent with the provisions of the Plan or the other provisions of this Agreement that the Litigation Trustee deems reasonably necessary or desirable in connection with the administration of the Velti Litigation Trust.

2. Except as otherwise set forth in this Agreement or in the Plan, and subject to the retained jurisdiction of the Bankruptcy Court as provided for in the Plan, the Litigation Trustee may control and exercise authority over the Trust Assets and over the protection, conservation, and disposition thereof. No person dealing with the Velti Litigation Trust shall be obligated to inquire into the authority of the Litigation Trustee in connection with the protection, conservation, or disposition of the Trust Assets. It is intended that a signed copy of this Agreement serve as adequate proof of the Litigation Trustee's authority to act if such proof is required for any reason by any third party.

E. Compensation of the Litigation Trustee and Professionals Retained by the Litigation Trustee.

1. The costs and expenses of the Velti Litigation Trust, including the fees and expenses of the Litigation Trustee and his retained professionals, shall be paid from the Velti Litigation Trust. Such costs and expenses shall be treated as a first priority in right of distribution from the Velti Litigation Trust. The Litigation Trustee shall maintain a reserve for such costs and expenses (the "Litigation Expense Reserve Account"), which will be initially funded by \$250,000 of the Committee Settlement Payment in accordance with the Plan and referenced above in Recital D. The Litigation Trustee shall retain such amounts as are reasonably necessary (at the discretion of the Litigation Trustee) in the Litigation Expense Reserve Account to meet the future fees and expenses in administering the Velti Litigation Trust.

2. The compensation payable to the Litigation Trustee shall be based on (and paid at the same time as, without necessity for Bankruptcy Court approval) moneys distributed by the Litigation Trustee on a cumulative basis to Beneficiaries, and shall be equal to twenty-five percent (25%) on the first \$5,000 or less that is distributed, ten percent (10%) on any amount in excess of \$5,000 but not in excess of \$50,000 that is distributed, five percent (5%) on any amount in excess of \$50,000 but not in excess of \$1,000,000 that is distributed, and three percent (3%) of such moneys in excess of \$1,000,000 that is distributed, unless the Trust Oversight Committee approves an increase in such compensation by unanimous vote.

3. The Litigation Trustee also serves as the Responsible Person and Disbursing Agent (subject to the Responsible Person's ability to designate another entity as the Disbursing Agent) under the Plan. The Case wind-down budget includes an approved amount of \$75,000 for the fees and expenses of the Responsible Person. The Litigation Trustee shall be entitled to reasonable compensation for his work as the Responsible Person and Disbursing Agent, which shall be at hourly rates consistent with the ordinary rate that the Litigation Trustee charges in other restructuring and insolvency engagements. If the \$75,000 budgeted for the fees and expenses of the Responsible Person and Disbursing Agent is insufficient to pay such fees and expenses in full, then the Litigation Trustee may (if approved by unanimous vote of the Trust Oversight Committee or the Bankruptcy Court after notice and a hearing) pay such fees and expenses from the Litigation Expense Reserve Account.

4. The Litigation Trustee will engage the law firm of Reid Collins and Tsai LLP to manage and litigate the Vested Causes of Action against officers and directors of the Debtors, and against the Debtors' accountants and auditors on a contingency basis. The structure of contingency compensation and other terms of engagement are established in an agreement

between Reid Collins and Tsai LLP and the Litigation Trustee. The Litigation Trustee will engage other legal counsel on a contingency basis (or other terms acceptable to the Litigation Trustee and approved by unanimous vote of the Trust Oversight Committee) to pursue other Vested Causes of Action, including but not limited to preference actions, fraudulence conveyance actions, other estate recoveries, any other claims of any type or kind under state, federal, or common law, and Chapter 5 causes of action.

5. Other professionals and advisors retained by the Litigation Trustee shall be entitled to reasonable compensation as agreed to by the Litigation Trustee. The compensation payable to the Litigation Trustee and professionals and advisors retained by the Litigation Trustee shall be paid on a monthly basis from the Litigation Expense Reserve Account (or on some basis other than monthly in the discretion of the Litigation Trustee, if the Litigation Trustee determines it is necessary to deal with cash flow or short term liquidity needs of the Velti Litigation Trust).

F. Limitation of Litigation Trustee's Authority.

1. No Trade or Business. The Litigation Trustee shall not, and shall not be authorized to, engage in any trade or business. The Litigation Trustee shall take such actions consistent with the prompt orderly liquidation of the Trust Assets as are required by applicable law and consistent with the treatment of the Velti Litigation Trust as a litigation trust under Treasury Regulation § 301.7701-4(d) and Revenue Procedure 94-45 (or any subsequent Revenue Procedures that may be issued), and such actions permitted herein.

2. Released Claims. The Litigation Trustee shall not have any authority to pursue any GSO Causes of Action or any other Causes of Action waived, exculpated, or released in accordance with the provisions of the Plan or Final Order of the Bankruptcy Court.

3. Limiting Transfers. The Litigation Trustee shall not take, or cause the Velti Litigation Trust to take, any action that would cause the interests in the Velti Litigation Trust to be considered readily tradable on a secondary market (or a substantial equivalent thereof) within the meaning of Section 7704(b)(2) of the IRS Code, and Treasury Regulations § 1.7704-1(c), and the Litigation Trustee shall not permit any transfer of an interest in the Velti Litigation Trust if it would cause the Velti Litigation Trust (were it to be classified as a partnership rather than a grantor trust) to be treated as a "publicly traded partnership" as defined in IRS Code § 7704.

G. Liability of Litigation Trustee. In no event shall the Litigation Trustee, the Litigation Trustee's officers, employees, independent contractors, or any of the Litigation Trustee's professionals, agents, or representatives (or their designees) be held personally liable for any claim asserted against the Velti Litigation Trust, the Litigation Trustee, the Litigation Trustee's officers, employees, independent contractors, and/or any of the Litigation Trustee's professionals, agents, or representatives (or their designees), except to the extent occasioned by or based their upon their own fraud, willful misconduct, or gross negligence. Specifically, the Litigation Trustee, the Litigation Trustee's officers, employees, independent contractors, or any of the Litigation Trustee's professionals, agents, or representatives (or their designees) shall not be liable for any negligence or any error of judgment in either case made in good faith, in the

exercise of its or their business judgment, or with respect to any action taken or omitted to be taken in good faith, except to the extent that such action is determined by a Final Order of a court of competent jurisdiction to be due to their own respective fraud, gross negligence, or willful misconduct. The Litigation Trustee shall be under no liability for interest or producing income on any Trust Assets received by the Velti Litigation Trust hereunder and held for distribution or payment to the Beneficiaries.

H. Reliance by Litigation Trustee.

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

2. The Litigation Trustee may consult with legal counsel, financial or accounting advisors, and other professionals, and the Litigation Trustee shall not be liable for any action taken or omitted to be taken by him in accordance with the advice thereof.

3. All persons or entities hired by, retained by, doing business with, or otherwise dealing with the Litigation Trustee shall look only to the Trust Assets to satisfy any liability incurred by the Litigation Trustee on behalf of the Velti Litigation Trust to such persons or entities in carrying out the terms of this Agreement, and the Litigation Trustee shall have no personal obligation to satisfy any such liability, except to the extent such liability or obligation arises as a result of the fraud, gross negligence, or willful misconduct of the Litigation Trustee as determined in accordance with Section II.G of this Agreement, in which case the Trust Assets shall not be subject to such claims or liabilities.

I. Exculpation; Indemnification. The Litigation Trustee, the Litigation Trustee's officers, employees, independent contractors, or any of the Litigation Trustee's professionals, agents, or representatives (or their designees) shall be and hereby are exculpated by all persons and entities including, without limitation, holders of Claims against the Debtors and other parties in interest, from any and all claims, causes of action, and other assertions of liability arising out of the discharge of the powers and duties conferred upon the Litigation Trustee by this Agreement, the Plan, or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan or this Agreement, or applicable law or otherwise, except only for actions or omissions to act only to the extent determined by a Final Order of a court of competent jurisdiction to be due to their own fraud, gross negligence, or willful misconduct. No holder of a Claim against the Debtors will have or be permitted to pursue any claim or cause of action against the Litigation Trustee, the Velti Litigation Trust, or the Litigation Trustee's officers, employees, independent contractors, professionals, agents, or representatives (or their designees) for making payments in accordance with the Plan or this Agreement or for implementing the provisions of the Plan or this Agreement except in cases of fraud, gross negligence, or willful misconduct. The Velti Litigation Trust shall indemnify, defend, and hold harmless the Litigation Trustee, the Litigation Trustee's officers, employees, independent contractors, and any of the Litigation Trustee's professionals, agents, or representatives (or their designees) from and against any and all claims, causes of action, liabilities, obligations, losses, damages, or expenses

(including attorneys' fees), except to the extent determined by a Final Order of a court of competent jurisdiction to arise out of fraud, gross negligence, or willful misconduct.

SECTION III SUCCESSOR TRUSTEES

A. Removal. The Litigation Trustee may only be removed by order of the Bankruptcy Court, for cause, including: (a) fraud, gross negligence, or willful misconduct in connection with the affairs of the Velti Litigation Trust; (b) physical or mental disability that substantially prevents the Litigation Trustee from performing the duties as Litigation Trustee hereunder; or (c) breach of fiduciary duty.

B. Resignation. The Litigation Trustee may resign by giving not less than sixty (60) days' prior written notice thereof to the Trust Oversight Committee. Such resignation shall become effective on the later to occur of (i) the date specified in such notice and (ii) the selection of a Successor Trustee (defined herein) and the acceptance by such Successor Trustee of such appointment.

C. Appointment of Successor Trustee. In the event of the death, resignation or removal of the Litigation Trustee, the Trust Oversight Committee shall appoint a successor to the Litigation Trustee ("Successor Trustee"). Any Successor Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall file such acceptance with the Velti Litigation Trust's records. Thereupon, such Successor Trustee shall, without any further act, become vested with all the Trust Assets, properties, rights, powers, trusts, and duties of his or her or its predecessor in the Velti Litigation Trust with like effect as if originally named herein as Litigation Trustee; provided, however, that a removed or resigning trustee shall, nevertheless, when requested in writing by the Successor Trustee, execute and deliver an instrument or instruments conveying and transferring to such Successor Trustee under the Velti Litigation Trust all of the rights in connection with the Trust Assets, properties, rights, powers, trusts, and duties of such predecessor trustee. No Successor Trustee shall be in any way liable for the acts or omissions of any predecessor trustee unless a Successor Trustee expressly assumes such responsibility.

D. Trust Continuance. The death, resignation, or removal of the Litigation Trustee shall not operate to terminate the Velti Litigation Trust created by this Agreement or invalidate any action previously taken by the Litigation Trustee. The Litigation Trustee agrees that the provisions of this Agreement shall be binding on or inure to the benefit of any Successor Trustee.

E. Turnover of Documents. Upon the resignation or removal of the Litigation Trustee, the Litigation Trustee shall promptly: (a) execute and deliver, by the effective date of resignation or removal, all such documents, instruments, and other writings as may be required to effect the termination of the Litigation Trustee's capacity under this Agreement and conveyance of the Trust Assets held by the Litigation Trustee to the Successor Trustee; (b) deliver to the Successor Trustee all documents, instruments, books, records, and other writings relating to the Velti Litigation Trust as may be in the possession or under control of the Litigation Trustee; and (c) otherwise assist and cooperate in effecting the assumption of the rights, powers, duties, and obligations under this Agreement by the Successor Trustee.

SECTION IV BENEFICIAL INTERESTS

A. Interest Beneficial Only. Each Beneficiary's share of Trust Assets, determined in accordance with the terms of the Plan and the terms of this Agreement, is referred to herein as a "Beneficial Interest". The ownership of a Beneficial Interest in the Velti Litigation Trust shall not entitle any Beneficiary to any title or direct ownership in or to the Trust Assets or to any right to call for a partition or division of such assets.

B. Ownership of Beneficial Interests Hereunder. The Litigation Trustee may deem and treat each Beneficiary as the owner of a Beneficial Interest herein which shall be entitled to distributions in the amounts, and at the times, set forth in the Plan and in this Agreement.

C. Evidence of Beneficial Interest. Ownership of a Beneficial Interest in the Trust Assets shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Velti Litigation Trust by the Litigation Trustee.

D. Limitation on Transferability. It is understood and agreed that the Beneficial Interests of the Beneficiaries herein shall be non-transferable and non-assignable during the term of this Agreement except pursuant to the laws of descent and distribution upon the death of a Beneficiary or otherwise by operation of law. An assignment by descent and distribution or by operation of law shall not be effective until appropriate notification and proof thereof is submitted to the Litigation Trustee, and the Litigation Trustee may continue to cause the Velti Litigation Trust to pay all amounts to or for the benefit of the assigning Beneficiaries until receipt of proper notification and proof of assignment. The Litigation Trustee may rely upon such proof without the requirement of any further investigation, or the Litigation Trustee may seek further notice or evidence in his discretion prior to the recognition of any assignment.

E. Exemption from Registration. The rights of the Beneficiaries arising under this Agreement may be deemed "securities" under applicable law. However, such rights have not been defined as "securities" under the Plan because (i) the parties hereto intend that such rights shall not be securities and (ii) if the rights arising under the Agreement in favor of the Beneficiaries are deemed to be "securities," the exemption from registration under section 1145 of the Bankruptcy Code is intended to be applicable to such securities. No party to this Agreement shall make a contrary or different contention.

SECTION V DISTRIBUTIONS

A. Distributions to Beneficiaries from Trust Assets. All distributions to be made by the Velti Litigation Trust to any Beneficiary shall be made only in accordance with the Plan, the Confirmation Order, and this Agreement and from the Trust Assets (and from the income and proceeds realized from the Trust Assets) net of any reserves established pursuant to the Plan, the Confirmation Order, or this Agreement and only to the extent that the Velti Litigation Trust has sufficient Trust Assets (or income and proceeds realized from the Trust Assets) to make such

payments. All distributions and/or payments to be made to the holders of Allowed General Unsecured Claims pursuant to this Agreement shall be made pro rata based on the amount of Beneficial Interests held by such holder of Beneficial Interests compared with the aggregate amount of the Beneficial Interests outstanding, subject, in each case, to the terms of the Confirmation Order, the Plan, and this Agreement.

B. Distributions. Pursuant to Article IV.C of the Plan, the Litigation Trustee shall make an initial distribution in the amount of at least \$300,000 to holders of Allowed Class 3a General Unsecured Claims, as soon as practical after the Effective Date. At various intervals thereafter, the Litigation Trustee may also make one or more distributions to holders of Allowed General Unsecured Claims and the GSO Deficiency Claim, including from recoveries on account of Vested Causes of Action or unused portions of the Litigation Expense Reserve Account, in accordance with the terms of the Plan. No distributions shall be made on account of Disputed Claims, including Claims considered Disputed by the Litigation Trustee, in his sole discretion, prior to the expiration of the deadline to object to such Claim under the Plan, unless otherwise ordered by the Court, and no distribution shall impair or impact the Litigation Trustee's ability to bring any Vested Causes of Action against any Creditor.

C. Disputed General Unsecured Claims Reserve. In the event there are any Disputed General Unsecured Claims at the time the Litigation Trustee makes any distribution from the Velti Litigation Trust on account of Allowed General Unsecured Claims, the Litigation Trustee shall set aside funds to ensure equivalent distributions on account of such Disputed General Unsecured Claims in the event they are later determined to be Allowed General Unsecured Claims.

D. Setoff Rights. The Litigation Trustee may, but shall not be required to, setoff against or recoup from the holder of any Allowed General Unsecured Claim on which payments or other distributions are to be made hereunder, claims of any nature that the Velti Litigation Trust may have against the holder of such Allowed General Unsecured Claim. However, neither the failure to do so, nor the allowance of any Claim under the Plan, shall constitute a waiver or release of any such claim, right of setoff, or right of recoupment against the holder of such Allowed General Unsecured Claim. For the avoidance of doubt, nothing in this Agreement is intended to prejudice the ability of the Responsible Person to setoff against or recoup from any other claim.

E. Unclaimed Distributions. If any distribution remains unclaimed for a period of ninety (90) days after it has been delivered (or 60 days after the final Distribution has been delivered) in accordance with the Plan, such unclaimed property shall be forfeited by such Beneficiary, whereupon all right, title, and interest in and to the unclaimed property shall revert in the Velti Litigation Trust.

F. Fractional and De Minimis Distributions. -In accordance with the Plan, no payment of fractional dollars shall be made pursuant to this Agreement. Whenever any payment of a fraction of a dollar under this Agreement would otherwise be required, the actual distribution made shall reflect a rounding down of such fraction to the nearest whole dollar. The aggregate amount of the retained fractional distributions from the distribution amount shall be retained in the Velti Litigation Trust by the Litigation Trustee and shall remain Trust Assets.

The Litigation Trustee shall not be required to make a distribution to any Beneficiary if the dollar amount of the distribution is less than \$25 or otherwise so small that the cost of making that distribution exceeds the dollar amount of such distribution. Any funds so withheld and not distributed shall be held in reserve and distributed in subsequent distributions, unless it is the final distribution. During the final distribution, any funds so withheld shall be distributed to the Beneficiaries entitled to a distribution of \$25 or greater.

G. Withholding Taxes. Article V.H of the Plan shall apply to any distributions hereunder.

H. No Distribution in Excess of Allowed Amount of Claim. Notwithstanding anything to the contrary herein, no holder of an Allowed General Unsecured Claim shall receive in respect of such Claim any distribution in excess of the Allowed amount of such Claim. Pursuant to the Plan, the holder of the GSO Deficiency Claim in Class 3b will not receive any distribution unless and until all Class 3a Allowed General Unsecured Claims have been paid in full.

I. Final Distribution. Upon the final collection or liquidation of all of the Trust Assets, and in any event prior to termination of the Velti Litigation Trust (as described in Section I.G hereof), the Litigation Trustee shall prepare a final accounting of any and all Cash remaining in any accounts maintained by the Litigation Trustee on behalf of the Velti Litigation Trust and make a final distribution.

SECTION VI TRUST OVERSIGHT COMMITTEE

A. Appointment. The Creditors' Committee shall designate up to two (2) holders of General Unsecured Claims as the members of the Trust Oversight Committee, effective as of the Effective Date. The Trust Oversight Committee shall have the duties set forth herein in order to maximize Distributions to Beneficiaries.

B. Material Transactions. Notwithstanding the other provisions of this Agreement, but subject to Section VI(I) hereof, the Litigation Trustee shall obtain the approval of the Trust Oversight Committee, if one is then serving, prior to entering into any settlement of any Cause of Action if the amount in dispute exceeds \$100,000.

C. Approval and Authorization on Negative Notice. The Litigation Trustee may obtain any approval or authorization required under this Agreement from the Trust Oversight Committee on five (5) business days' negative notice, or less if the circumstances require as determined by the Litigation Trustee in its sole discretion. The Litigation Trustee may make requests on behalf of the Velti Litigation Trust for approval or authorization by the Trust Oversight Committee in writing, which may be made in the form of an e-mail. In the event any Trust Oversight Committee member objects to the Trustee's request, the Trustee shall consult with the members of the Trust Oversight Committee about how to proceed.

D. Binding Nature of the Litigation Trustee's Action. All actions taken and determinations made by the Litigation Trustee hereunder in accordance with the provisions of

the Plan or this Agreement shall be final and binding upon any and all Beneficiaries, *provided, however*, that to the extent the Litigation Trustee is required hereunder to obtain the approval of the Trust Oversight Committee, then all actions taken and determinations made by the Litigation Trustee hereunder in accordance with the provisions of the Plan or this Trust Agreement shall be final and binding upon any and all Beneficiaries once such approval is obtained.

E. Reimbursement of Trust Oversight Committee Expenses. The Litigation Trustee shall pay from the Litigation Expense Reserve Account all reasonable costs and expenses, including reasonable attorneys' fees and expenses, of members of the Trust Oversight Committee.

F. Conflicts of Interest. Each member of the Trust Oversight Committee shall disclose any actual and potential conflict of interest and recuse itself from participation in meetings regarding, or from voting on, any such actual or potential conflict of interest.

G. Resignation of Trust Oversight Committee Member. A member of the Trust Oversight Committee may resign at any time on notice (including e-mailed notice) to the other Trust Oversight Committee members and the Litigation Trustee. The resignation shall be effective on the later of (i) the date specified in the notice delivered to the other Trust Oversight Committee members and the Litigation Trustee or (ii) the date that is thirty days (30) after the date such notice is delivered.

H. Appointment of Replacement Trust Oversight Committee Members. In the event of the resignation, death, incapacity, or removal of a member of the Trust Oversight Committee, the Litigation Trustee or the remaining members of the Trust Oversight Committee, if any, may nominate an additional member of the Trust Oversight Committee.

I. Absence of Trust Oversight Committee. In the event there shall have been no Trust Oversight Committee members for a period of thirty (30) consecutive days, then the Litigation Trustee may, during such vacancy and thereafter, ignore any reference in this Agreement to a Trust Oversight Committee, and all references to the Trust Oversight Committee's rights and responsibilities in this Agreement will be null and void.

SECTION VII MISCELLANEOUS PROVISIONS

A. Amendment; Waiver. This Agreement can be amended, waived, modified, or changed after the Effective Date; provided, however, that in no event shall a change be made to this Agreement that would be inconsistent with the Plan or adversely affect the federal income tax status of the Velti Litigation Trust as a "grantor trust."

B. Preservation of Privilege. In connection with the rights, claims, and Vested Causes of Action that constitute the Trust Assets, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents, work-product or communications (whether written or oral) transferred to the Velti Litigation Trust shall vest in

the Velti Litigation Trust and its representatives, and the Debtors and the Litigation Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges.

C. Cooperation of Debtors. The Debtors shall provide to the Litigation Trustee reasonable access to books and records, and other forms of information to enable the Litigation Trustee to perform his tasks and duties under this Agreement and the Plan, including, but not limited to (a) information regarding the claims register for purposes of making distributions to Beneficiaries in accordance with this Agreement and the Plan; (b) information to enable the Litigation Trustee to evaluate General Unsecured Claims that may be subject to objection; and (c) information to enable the Litigation Trustee to evaluate the Vested Causes of Action.

D. Identification of Beneficiaries. For purposes of distributions to Beneficiaries, the Debtors and/or the Debtors' Claims Agent shall provide to the Litigation Trustee the legal name of each Creditor with a scheduled or filed claim, tax identification number (if available to the Debtors), current mailing address and amount of the Claim with respect to each Beneficiary and, if possible, an email address and telephone number for each Beneficiary. The Litigation Trustee may rely on this information for purposes of making distributions to and noticing Beneficiaries and shall be under no obligation to conduct an independent investigation of each or any Beneficiary in connection with its duties as set forth in this Agreement and in the Plan.

E. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to rules governing the conflict of law.

F. Relationship to Plan. The principal purpose of this Agreement is to aid in the implementation and effectuation of the Plan, and therefore, is subject to the provisions of the Plan. In the event of a conflict between the Plan and this Agreement, the Plan shall control.

G. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law unless this Agreement, as modified, will no longer effectuate the intent of the parties hereto in all material respects.

H. Retention of Jurisdiction; Venue. The Bankruptcy Court shall retain jurisdiction over any dispute pertaining to this Agreement to the fullest extent permitted under applicable law and the Plan. In the event that the Bankruptcy Court lacks jurisdiction or fails or refuses to exercise jurisdiction, the parties agree to bring any claims or causes of action arising out of, relating to or in connection with the Agreement in the United States District Court for the District of Delaware or the Chancery Court of the State of Delaware, and hereby irrevocably submit to the jurisdiction of such Courts. The parties hereto irrevocably waive any objection to the laying of venue in any action, suit, or proceeding arising out of, relating to or in connection with this Agreement that is brought in the aforementioned Court and further waive any claim of forum non conveniens. For the avoidance of doubt, nothing herein shall prejudice the ability of

the Litigation Trustee, in his sole discretion, to pursue any Vested Cause of Action before the Bankruptcy Court or any other court of competent jurisdiction.

I. Notices. Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the person for whom such notice is intended at such address as set forth below:

Counsel to the Debtors:

Richard A. Chesley
DLA Piper LLP (US)
203 North LaSalle Street, Suite 1900
Chicago, IL 60601

The Litigation Trustee:

Charles C. Reardon
Asgard Capital LLC
1934 Old Gallows Road, Suite 350
Tysons Corner, VA 22182

Counsel to the Litigation Trustee:

David I. Swan
McGuireWoods LLP
1750 Tysons Boulevard, Suite 1800
Tysons Corner, VA 22102

J. Notices if to a Beneficiary. Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the person for whom such notice is intended to the name and address determined in accordance with Section VII.D. hereof.

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

L. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

[Remainder of this page intentionally left blank – signatures on following pages]

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

VELTI INC., et al.

By: _____
Its: _____

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS

By: _____
Its: _____

LITIGATION TRUSTEE

By: _____
Its: _____

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