

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

In re:	)	
	)	Chapter 11
Curae Health, Inc., <i>et al.</i> <sup>1</sup>	)	Case No. 18-05665
	)	
1721 Midpark Road, Suite B200	)	Judge Walker
Knoxville, TN 37921	)	
Debtors.	)	Jointly Administered

**REPLY TO UNITED STATES TRUSTEE’S OBJECTION TO DISCLOSURE  
STATEMENT AND PROPOSED SOLICITATION PROCEDURES**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby file this reply (this “**Reply**”) in response to *The United States Trustee’s Objection to the Debtors’ Motion for Entry of an Order Granting Interim Approval to their Disclosure Statement and Approving Related Solicitation Procedures* [Docket No. 715] (the “**U.S. Trustee Objection**”) and in further support of the *Debtors’ Chapter 11 Plan of Liquidation* [Docket No. 698] (as may be amended, supplemented, or otherwise modified from time to time, the “**Plan**”)<sup>2</sup>, the *Debtors’ Disclosure Statement in Support of Debtors’ Chapter 11 Plan of Liquidation* [Docket No. 699] (as may be amended, supplemented, or otherwise modified from time to time, the “**Disclosure Statement**”), and the *Debtors’ Motion for an Order (I) Approving Disclosure Statement, (II) Establishing Forms and Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (III), Establishing Deadline and Procedures for Filing Objections to the Confirmation of the Plan; and (IV) Granting Related Relief* [Docket No. 700] (the “**Procedures Motion**”).

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<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 Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); and Clarksdale Regional Medical Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

## PRELIMINARY STATEMENT

1. The U.S. Trustee Objection argues that the Disclosure Statement does not comply with Bankruptcy Code section 1125 and should, therefore, not be approved. The alleged failures of the Disclosure Statement relate to: (a) releases by third parties (the “**Third Party Releases**”); (b) releases by the Debtors (the “**Debtor Releases**”, together with the Third Party Releases, the “**Releases**”), (c) the exculpation of certain parties (the “**Exculpation**”), and (d) dischargeability.

2. To begin, many of the issues raised by the U.S. Trustee Objection are confirmation issues and are not ripe for the Disclosure Statement Hearing. Moreover, Debtors stand firm that inclusion of the Debtor Releases, Third Party Releases, and Exculpation are essential to the implementation of any liquidating plan in these Chapter 11 Cases. However, to resolve the U.S. Trustee Objection, the Debtors propose to make certain revisions to the Plan and Disclosure Statement as set forth more fully below. The Debtors have discussed these revisions with the U.S. Trustee and believe they are sufficient to resolve the U.S. Trustee Objection as it relates to the Disclosure Statement.

3. First, although the Debtors believe that the Third Party Releases contained in the Plan and Disclosure Statement are consensual, the Debtors propose to revise the definition of Releasing Parties to only include Holders of Claims and Corporate Interests that **affirmatively opt in to** the Third Party Releases. Second, the Debtors propose certain revisions to the Plan and Disclosure Statement clarifying the scope of the Debtor Releases and limiting the definition of Released Parties. Third, Debtors also propose certain revisions to clarify the scope of the Exculpation and limit the definition of Exculpated Parties. Fourth, the Debtors acknowledge that certain language may not be consistent with Bankruptcy Code section 1141 and will revise such language accordingly. Finally, to address the U.S. Trustee’s concern that the Disclosure Statement does not provide adequate information about the Liquidating Trust or the claims that are

being released, Debtors propose additional language in support of the Releases, Exculpation, and Liquidating Trust that will be included in the Disclosure Statement if approved by the Court at the February 28 Disclosure Statement Hearing.

## REPLY

**A. With Proposed Modifications, the Releases and Exculpations in the Plan Comply with All Applicable Provisions of the Bankruptcy Code and Relevant Case Law**

**(i) Third Party Releases**

4. First, The U.S. Trustee Objection contends that the Plan seeks “a permanent release of claims against non-consenting non-debtor third parties.” U.S. Trustee Objection, at 2. The Debtors believe that the concerns raised with regard to Third Party Releases are confirmation issues and not ripe for the Disclosure Statement Hearing.

5. Moreover, the Third Party Releases are all considered consensual given the parties ability to opt out of such releases. *See, e.g., In re Indianapolis Downs, LLC*, 486 B.R. 286, 306 (Bankr. D. Del. 2013); *In re Spansion, Inc.*, 426 B.R. 114 (Bankr. D. Del. 2010). Because the Third Party Releases are all considered consensual, the standards provided in *Class Five Nev. Claimants v. Dow Corning Corp. (In re Dow Corning Corp.)* are not applicable. 280 F.3d 648, 658 (6th Cir. 2002) (“*Dow Corning*”).

6. The Plan and Disclosure Statement contains the following definition:

“**Releasing Parties**” means, individually and collectively, (a) each Holder of a Claim or Corporate Interest that (i) votes to accept the Plan, (ii) is conclusively deemed to have accepted the Plan, (iii) abstains from voting on the Plan, (iv) votes to reject the Plan and does not opt out of the releases contained in the Plan, or (v) is conclusively deemed to have rejected the Plan and does not opt out of the releases contained in the Plan; and (b) as to each of the foregoing Entities in the foregoing clause (a), each such Entities’ and their affiliates’ current and former officers, directors, principals, members, partners, managers, employees, agents, advisory board members, financial advisors, attorneys,

accountants, investment bankers, consultants, representatives and all other professionals and retained Professionals (in each case as to the foregoing Entities and their Affiliates in clause (a), solely in their capacity as such.

7. Although the Debtors believe that the Third Party Releases are consensual as drafted, to alleviate any concerns of the U.S. Trustee, the Debtors propose to modify the definition of Releasing Parties so that Releasing Parties will only include those parties that *affirmatively opt in* to the Third Party Release. Debtors propose the following revised definition of Releasing Parties:

**“Releasing Parties”** means, individually and collectively, each Holder of a Claim or Corporate Interest that affirmatively elects on its Opt In Form to voluntarily provide a release to the Released Parties and returns such Opt In Form by the Opt In Deadline.

8. Attached hereto as Exhibit 1 is the proposed Opt In Form, which will be distributed to all Holders of Claims and Corporate Interests in connection with the Plan and Disclosure Statement. With these revisions, the Third Party Releases in the Plan are unequivocally consensual and comply with *Dow Corning* and all relevant law.

9. Second, the US Trustee Objection asserts that the scope of entities to be released is “unnecessarily broad.” The Plan provides the following definition:

**“Released Parties”** means, individually and collectively, in each case solely in their capacity as such, each and all of: (i) Debtors, (ii) the Committee and its members, (iii) the post-Effective Date committee to advise the Liquidating Trustee and its members, (iv) the Liquidating Trustee, (v) Strategic Healthcare Resources, LLC, (vi) GlassRatner as the Debtor Representative, and (vii) each of their respective officers, directors, attorneys, accountants, agents, and other professionals.

10. The scope of the Released Parties is a confirmation issue and not ripe for the Disclosure Statement Hearing. Also, because the Third Party Releases are consensual, the Debtors believe that the scope of the Released Parties is proper. However, to alleviate any

concerns at the Disclosure Statement Hearing, the Debtors propose to modify the definition of Released Parties as follows:

“**Released Parties**” means, individually and collectively, in each case solely in their capacity as such, each and all of: (a) the Debtors’ current Professionals; (b) the Debtors’ directors and officers who are serving in such capacity as of the Petition Date; and (c) the Committee and members of the Committee in their capacity as members of the Committee. With respect to each of the foregoing identified in subsection (c), each and all of their respective Professionals.

Notably, under the Debtors’ revised proposed definition and at the request of the U.S. Trustee, Strategic is no longer a Released Party.

**(ii) Debtor Releases**

11. The Debtors believe that the concerns raised with regard to Debtor Releases are confirmation issues and not ripe for the Disclosure Statement Hearing. The Debtors hold firm that the Debtor Releases are not only permissible, but essential to the implementation of the Plan. On the date hereof, Debtors also filed the *Debtors’ Objection to the Official Committee of Unsecured Creditors’ Motion (I) to Terminate the Debtors’ Exclusivity Periods to Permit the Committee to File a Plan of Liquidation, and (II) for Leave, Standing and Authority to Commence, Prosecute if Appropriate, Settle Certain Causes of Action on Behalf of the Debtors’ Estates* (the “**Objection to Committee Motion**”), pursuant to which Debtors provide arguments in support of the Debtor Releases. The Objection to Committee Motion is fully incorporated herein by reference.

12. Although the Debtors firmly believe that the Debtor Releases, as drafted, are fair, reasonable, and in the best interests of the Estates, Debtors propose to add the following paragraph to the Debtor Releases to clarify the scope of the releases granted to Debtors’ directors and officers:

Notwithstanding the foregoing, the Debtors' directors and officers, shall only be deemed released by the Debtors and the Estates from Claims, obligations, Debts, rights, suits, damages, Causes of Action, remedies, and liabilities: (i) to which the Debtors' directors and officers are immune from suit under T.C.A. § 48-58-601; (ii) may not be the subject of equitable relief or give rise to an award of damages or other sanctions against a director or officer under T.C.A. § 48-58-702; and (iii) for monetary damages for breach of fiduciary duty which have been eliminated pursuant to the Debtors' Charters and Bylaws in accordance with T.C.A. §§ 48–51–101 *et seq.*

13. The above paragraph clarifies that the releases granted to the Debtors' directors and officers only apply Claims and Causes of Action to which the Debtors' Estates would have no remedy. In addition, Debtors propose to exclude Chapter 5 Actions from the Debtor Releases. Debtors further agree to provide additional information regarding the Debtor Releases to the Disclosure Statement as provided in Part B of this Reply.

**(iii) Exculpation**

14. The Debtors believe that the concerns raised with regard to the Exculpation are confirmation issues and not ripe for the Disclosure Statement Hearing. Debtors further believe that the Plan does not provide for impermissible exculpation. The Plan contains the following definition:

**“Exculpated Parties”** means, individually and collectively, in each case solely in their capacity as such, each and all of: (i) the Debtors, (ii) the Committee and its members, (iii) the POC and its members, (iv) the Liquidating Trustee, (v) Strategic, (vi) the Debtor Representative, and (vii) each of their respective officers, directors, attorneys, accountants, agents, and other professionals.

15. All parties included within the definition of Exculpated Parties have performed necessary and valuable services and/or made important contributions to the Chapter 11 Cases, including the Debtors' officers and directors. *See, e.g., In re The Walking Company Holdings, Inc.*, Case No. 18-10474 (LSS) [Docket No. 359] (Bankr. D. Del. June 13, 2018) (approving

exculpation for “the Debtors’ officers and directors that served during the Chapter 11 Cases”). The Debtors’ officers and directors have been critical to the success of the Chapter 11 Cases. Without the Debtors’ directors and officers, the Plan would not be possible, thus, the directors and officers should be entitled to exculpation.

16. Further, bankruptcy courts regularly approve exculpation provisions that include a much broader scope of exculpated parties. *See, e.g., In re Gibson Brands, Inc.*, Case No. 18-11025 (CSS) [Docket No. 872] (Bankr. D. Del. Oct. 4, 2018) (approving exculpation for the Committee); *In re Claire’s Stores, Inc.*, Case No. 18-10584 [Docket No. 1040] (Bankr. D. Del. Sept. 21, 2018) (approving exculpation for, among others, the Committee, first and second lien parties); *In re Synagro Techs., Inc.*, Case No. 13-11041 (BLS) [Docket No. 794] (Bankr. D. Del. Aug. 20, 2013) (approving exculpation for secured lenders and DIP lenders).

17. Nevertheless, to alleviate any concerns at the Disclosure Statement Hearing, the Debtors propose to modify the definition of Exculpated Parties as follows:

“**Exculpated Parties**” means, individually and collectively, in each case solely in their capacity as such, each and all of: (a) the Debtors’ current Professionals; (b) the Debtors’ directors and officers who are serving in such capacity as of the Petition Date; and (c) the Committee and members of the Committee in their capacity as members of the Committee. With respect to each of the foregoing identified in subsection (c), each and all of their respective Professionals.

Notably, under the Debtors’ revised proposed definition and at the request of the U.S. Trustee, Strategic is no longer a Released Party.

18. Debtors further agree to provide additional information regarding the Exculpation to the Disclosure Statement as provided in Part B of this Reply.

19. The U.S. Trustee Objection also contends that the Plan provides for exculpation of fraudulent acts. The Exculpation does not specifically grant exculpation for conduct which

risers to this level. Nevertheless, the Debtors propose to revise the Plan and Disclosure Statement to specifically limit the exculpation to exclude conduct which rises to this level. The Debtors propose to revise Exculpation provision as follows (changes in italics):

Except as otherwise specifically provided in the Plan, none of the Exculpated Parties shall have or incur any liability to any holder of a Claim or Corporate Interest (including Estate Claims) for any act or omission in connection with, related to, or arising out of the Chapter 11 Cases, the Plan, the Disclosure Statement, the pursuit of Confirmation, the consummation of the Plan, the administration of the Plan, the property to be liquidated and/or distributed under the Plan or any prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the liquidation of the Debtors (*except for their willful or gross negligence, illegal conduct, or fraud*) as determined by a Final Order of a court of competent jurisdiction, and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan.

The foregoing paragraph shall apply to attorneys to the greatest extent permissible under applicable bar rules and case law.

20. The inclusion of the phrase “except for their willful or gross negligence, illegal conduct, or fraud” in the Exculpation clarifies that the Exculpation does not apply to fraudulent conduct. With these proposed modifications, Debtors believe that the Exculpation complies with all applicable law.

**(iv) Dischargeability**

21. The Debtors also propose to make certain changes to the Plan and Disclosure Statement in response to the U.S. Trustee Objection with regard to Bankruptcy Code section 1141(d)(3). As provided in Paragraphs 11 and 18 herein, the Debtors propose modifications to the definitions of Released Parties and Exculpated Parties to alleviate any concerns that the Plan purports to grant the Debtors a discharge.

22. The U.S. Trustee’s objections with regard to the Releases and Exculpation are confirmation issues and not ripe for the Disclosure Statement Hearing. Nevertheless, Debtors



propose the above modifications in an effort to expediently resolve all such objections and to allow these Chapter 11 cases to continue to progress in an efficient manner.

**B. With the Inclusion of Additional Information, the Disclosure Statement Provides Adequate Information and Should Be Approved Pursuant to Section 1125 of the Bankruptcy Code**

23. The Debtors have also agreed with the U.S. Trustee to make the following additional changes to the Plan and Disclosure Statement:

- a. Debtors' will include the following as exhibits to the Plan: a proposed Liquidating Trust Agreement, a draft of which is attached hereto as Exhibit 2, and a proposed Cooperation Agreement, a draft of which is attached hereto as Exhibit 3. Both the Liquidating Trust Agreement and Cooperation Agreement must be approved by the Court in connection with confirmation of the Plan.
- b. Debtors' will add the following paragraphs to the Disclosure Statement in connection with the Releases:

The Released Parties include the Debtors' Professionals, the Committee and members of the Committee and their respective Professionals, and the Debtors' directors and officers as of the Petition Date. All of the Released Parties are fiduciaries to the Debtors' Estates. And all of the Released Parties have made substantial contributions to the Chapter 11 Cases, including, among other things, overseeing the sale processes and transitions of the Debtors' hospitals and negotiating the Plan. The contributions of the Released Parties, and in particular, the officers and directors, were essential to administering these Chapter 11 Cases and preserving the value for the Debtors' creditors.

The Releases are narrowly tailored to maximize the benefits to the Debtors' Estates and minimize any unnecessary liabilities. Under Tennessee law, the Debtors' officers and directors are immune from suit arising from conduct of the affairs of the Debtors except when such conduct amounts to willful, wanton, or gross negligence. Also under Tennessee law, the officers and directors are entitled to indemnification by the Debtors in the event they are successful in a suit brought against them. The Releases prevent such unnecessary costs to the Estates and ensure the cooperation of the Debtors' officers and directors post-confirmation.

The Debtor Releases contemplated by the Plan are an essential component of the Plan process. The Claims and Causes of Action released by the Debtors do not have any value to the Debtors' Estates. The cooperation of the Released Parties, specifically the officers and directors, is essential to any potential recovery and distribution to general unsecured creditors.

Accordingly, the Debtors believe that the Debtor Releases are fair, reasonable, and in the best interests of the Debtors and the Estates.

All Holders of Allowed Claims and Corporate Interests must affirmatively elect to opt in to the Third Party Releases. Accordingly, the Third Party Releases are voluntary and, thus, consensual under all applicable law.

- c. Debtors will add the following paragraphs to the Disclosure Statement in connection with the Exculpation.

The Exculpated Parties include the Debtors' Professionals, the Committee and members of the Committee and their respective Professionals, and the Debtors' directors and officers as of the Petition Date. The Exculpated Parties are all fiduciaries of the Debtors' Estates. All of the Exculpated Parties have made substantial contributions to the Chapter 11 Cases, including, among other things, overseeing the sale processes and transitions of the Debtors' hospitals and negotiating the Plan. The contributions of the Exculpated Parties were essential to administering these Chapter 11 Cases and preserving the value for the Debtors' creditors.

The Exculpation contemplated by the Plan is an essential component of the Plan and is provided in consideration for the substantial contributions of each of the Exculpated Parties throughout the Chapter 11 Cases.

- d. Debtors will add the following paragraph with respect to selection of the Liquidating Trustee:

Under the Plan, GlassRatner will serve as the Liquidating Trustee. GlassRatner is currently employed as the Debtors' financial advisor. As the Debtors' financial advisor, GlassRatner has acquired significant knowledge of and familiarity with the Debtors' businesses and the Chapter 11 Cases. This knowledge and familiarity will allow GlassRatner to serve as an effective and efficient Liquidating Trustee. Accordingly, Debtors believe that appointment of GlassRatner as the Liquidating Trustee is in the best interests of the Debtors' Estates and creditors.

## CONCLUSION

Based upon the foregoing, the Debtors respectfully request that the Court approve the adequacy of the Disclosure Statement, approve the Procedures Motion, and grant such other relief as is just and proper.

Dated: February 21, 2019  
Nashville, Tennessee

**POLSINELLI PC**

/s/ Michael Malone

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*Counsel to the Debtors and  
Debtors in Possession*

**EXHIBIT 1**

**Proposed Opt In Form**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

In re:

Curae Health, Inc., *et al.*<sup>1</sup>

1721 Midpark Road, Suite B200  
Knoxville, TN 37921

Debtors.

Chapter 11

Lead Case No. 18-05665

Judge Walker

Jointly Administered

**OPT IN FORM FOR THE DEBTORS' PLAN**

**PLEASE READ CAREFULLY AND FOLLOW THE ENCLOSED INSTRUCTIONS FOR COMPLETING AND RETURNING THE OPT IN FORM.**

**YOUR OPT IN FORM MUST BE RECEIVED BY THE CLAIMS AND BALLOTING AGENT, BMC GROUP, INC., BY 4:00 P.M. (ET) ON [APRIL 1, 2019].**

**IF YOU HAVE ANY QUESTIONS REGARDING THE OPT IN FORM OR THE VOTING PROCEDURES, PLEASE CONTACT THE CLAIMS AND BALLOTING AGENT AT (888) 909-0100. THE CLAIMS AND BALLOTING AGENT IS NOT AUTHORIZED TO PROVIDE LEGAL ADVICE.**

Article XI.C of the Debtors' Chapter 11 Plan of Liquidation [Docket No. 698] (as amended, modified, or supplemented from time to time, the "**Plan**")<sup>2</sup> proposed by the Debtors includes a release from the Debtors' creditors and interest holders in favor of certain specified parties (the "**Released Parties**") that will be granted to the fullest extent permitted by applicable law (such release, as set forth in Article XI.C, the "**Third Party Release**"). As a creditor or interest holder of the Debtors, you should read Article XI.C carefully as it affects your rights by releasing claims that you may hold against the Released Parties. The Debtors believe that the Third Party Release, in the context of the Chapter 11 Cases and the Plan, is permissible under applicable law even without the consent of the Releasing Parties. However, parties may object to the Third Party Release and the Court may find that such release may only be granted with consent of the Releasing Parties.

**IF YOU TIMELY COMPLETE AND RETURN THIS OPT IN FORM INDICATING THAT YOU OPT IN TO BEING A RELEASING PARTY, UPON THE BANKRUPTCY COURT'S APPROVAL AND CONFIRMATION OF THE PLAN AND DISCLOSURE STATEMENT, YOU WILL BE A RELEASING PARTY AND DEEMED TO HAVE CONSENTED TO THE THIRD PARTY RELEASE CONTAINED IN ARTICLE XI.C OF THE PLAN AND DISCLOSURE STATEMENT TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.**

Opt In Instructions

A completed Opt In Form should be returned in the envelope provide to you with this Opt In Form. **Completed Opt In Forms must be properly completed, signed, and actually received by the Claims and Balloting Agent, no later than [April 1, 2019 at 4:00 p.m. (ET)] (the "Opt In Deadline") at the following addresses:**

<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 Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); and Clarksdale Regional Medical Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

<sup>2</sup> Capitalized terms used or not otherwise defined shall have the meanings ascribed to them in the Plan and Disclosure Statement.

<p><b><u>If by First Class Mail:</u></b></p> <p>BMC Group, Inc. Attn: Curae Health, Inc PO Box 90100 Los Angeles, CA 90009</p>	<p><b><u>If by Overnight Courier, Messenger, or Hand Delivery:</u></b></p> <p>BMC Group, Inc. Attn: Curae Health, Inc. 3732 West 120th Street Hawthorne, CA 90250</p>
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If your Opt In Form is timely received, you will be deemed to have consented to the Third Party Release and will be a Releasing Party. Any Opt In Form that is illegible or does not provide sufficient information to identify the Claim or Interest Holder will not be valid.

OPT IN FORMS SUBMITTED BY FACSIMILE OR OTHER FORMS OF ELECTRONIC SUBMISSION WILL IN ACCORDANCE WITH THE INSTRUCTIONS ABOVE WILL **NOT** BE ACCEPTED. DO NOT MAIL YOUR OPT IN FORM TO THE DEBTORS, THE DEBTORS' AGENTS (OTHER THAN THE CLAIMS AND BALLOTING AGENT), OR THE DEBTORS' FINANCIAL OR LEGAL ADVISORS.

IF YOU HAVE ANY QUESTIONS REGARDING THIS OPT IN FORM OR IF YOU NEED COPIES OF THE PLAN AND DISCLOSURE STATEMENT OR OTHER ENCLOSED MATERIALS, PLEASE CONTACT THE VOTING AGENT BY TELEPHONE AT (888) 909-0100. THE CLAIMS AND BALLOTING AGENT IS NOT PERMITTED TO PROVIDE LEGAL ADVICE.

☐ **OPT IN** —The undersigned Holder of the Claim or Corporate Interest elects to opt in to the Third Party Release in Article XI.C of the Plan.

#### Third Party Release

EFFECTIVE AS OF THE EFFECTIVE DATE, EACH OF THE RELEASING PARTIES CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASES (AND EACH ENTITY SO RELEASED SHALL BE DEEMED RELEASED BY THE RELEASING PARTIES) EACH AND ALL OF THE RELEASED PARTIES, AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER (OTHER THAN FOR ILLEGAL CONDUCT, GROSS NEGLIGENCE, BAD FAITH, OR FRAUD), INCLUDING WITH RESPECT TO ANY RIGHTS OR CLAIMS THAT COULD HAVE BEEN ASSERTED AGAINST ANY OR ALL OF THE RELEASED PARTIES WITH RESPECT TO ANY DERIVATIVE CLAIMS, ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTORS, OR THE ESTATES, AS APPLICABLE, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT SUCH ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT (WHETHER INDIVIDUALLY OR COLLECTIVELY), BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTORS, THE CHAPTER 11 CASES, THE PURCHASE, SALE, TRANSFER, OR RESCISSION OF THE PURCHASE, SALE, OR TRANSFER OF ANY DEBT, ASSET, RIGHT, OR INTEREST OF THE DEBTORS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTORS AND ANY RELEASED PARTY, THE RESTRUCTURING OR ANY ALLEGED RESTRUCTURING OR REORGANIZATION OF CLAIMS AND INTERESTS PRIOR TO OR IN THE CHAPTER 11 CASES, THE NEGOTIATION, FORMULATION, OR PREPARATION OF THE PLAN AND ANY OTHER AGREEMENTS OR DOCUMENTS EFFECTUATING THE PLAN, OR RELATED AGREEMENTS, INSTRUMENTS, OR OTHER

DOCUMENTS (INCLUDING, FOR THE AVOIDANCE OF DOUBT, PROVIDING ANY LEGAL OPINION REQUESTED BY ANY ENTITY REGARDING ANY TRANSACTION, CONTRACT, INSTRUMENT, DOCUMENT, OR OTHER AGREEMENT CONTEMPLATED BY THE PLAN OR THE RELIANCE BY ANY RELEASED PARTY ON THE PLAN OR THE CONFIRMATION ORDER IN LIEU OF SUCH LEGAL OPINION), AND ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE RELATING TO THE DEBTORS OR THE ESTATES.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE THIRD PARTY RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED HEREIN, AND, FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE THIRD PARTY RELEASES ARE: (A) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (B) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE RELEASING PARTIES; (C) IN THE BEST INTERESTS OF THE DEBTORS, THE ESTATES AND ALL HOLDERS OF CLAIMS AND INTERESTS; (D) FAIR, EQUITABLE AND REASONABLE; (E) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; (F) CONSENSUAL; AND (G) A BAR TO ANY OF THE RELEASING PARTIES ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE THIRD PARTY RELEASE.

Relevant Definitions

**"Released Parties"** means, individually and collectively, in each case solely in their capacity as such, each and all of: (a) the Debtors' current Professionals; (b) the Debtors' directors and officers who are serving in such capacity as of the Petition Date; and (c) the Committee and members of the Committee in their capacity as members of the Committee. With respect to each of the foregoing identified in subsection (c), each and all of their respective Professionals.

**"Releasing Parties"** means, individually and collectively, each Holder of a Claim or Corporate Interest that affirmatively elects on its Opt In Form to voluntarily provide a release to the Released Parties and returns such Opt In Form by the Opt In Deadline.

Certification

By signing this Opt In Form, the undersigned certifies that it is the Holder of the Claim or Corporate Interest identified below and has full power and authority to opt in to the Third Party Release.

Name of Holder: \_\_\_\_\_

Signature \_\_\_\_\_

Name of Signatory (if different than Holder) \_\_\_\_\_

Title (if applicable): \_\_\_\_\_

Social Security or Federal Tax I.D. No.: \_\_\_\_\_

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

City, State & Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

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

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



**EXHIBIT 2**

**Proposed Liquidating Trust Agreement**

## **LIQUIDATING TRUST AGREEMENT**

THIS LIQUIDATING TRUST AGREEMENT (the “Agreement”) is entered into this \_\_\_\_ day of April, 2019, by and among Curae Health, Inc., and its affiliated debtors and debtors in possession (collectively, the “Debtors”) and \_\_\_\_ in his capacity as the Liquidating Trustee (the “Liquidating Trustee”) of the Liquidating Trust (defined below) (collectively, the “Parties”).

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

WHEREAS, on August 24, 2018 (the “Petition Date”), 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 Middle District of Tennessee (the “Bankruptcy Court”), thereby commencing the Debtors’ chapter 11 cases, which were jointly administered by the Bankruptcy Court under Case No. 18-05665;

WHEREAS, the Debtors filed the Debtors’ Chapter 11 Plan of Liquidation [Docket No. 698] (as amended, modified, or supplemented, the “Plan”) and Disclosure Statement in Support of Chapter 11 Plan of Liquidation [Docket No. 699] (as amended, modified, or supplemented, the “Disclosure Statement”) with the Bankruptcy Court;

WHEREAS, on April \_\_, 2019, the Bankruptcy Court entered an order confirming the Plan (the “Confirmation Order”) [Docket No. \_\_\_\_];

WHEREAS, the Plan provides, among other things, for the establishment of a liquidating trust (the “Liquidating Trust”) for the benefit of its Beneficiaries (defined below) and for the appointment of the Liquidating Trustee as the trustee and manager of the Liquidating Trust;

WHEREAS, the Liquidating Trustee has agreed to act as trustee under this Agreement for purposes herein provided;

WHEREAS, the Liquidating Trust is established for the sole purpose of administering Assets (as defined in the Plan) and implementing the Liquidating Trust Functions (defined below), in accordance with Treasury Regulations Section 301.7701-4(d), with no objective or authority to continue or engage in the conduct of a trade or business;

WHEREAS, the Liquidating Trust is intended to qualify as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d) that is treated as “grantor trust” for federal and applicable state income tax purposes;

NOW, THEREFORE, for and in consideration of the promises and mutual covenants herein contained, pursuant to the Plan, the Parties do hereby covenant and agree as follows:

## ARTICLE I

### **Definitions; Interpretive Rules.**

1.1 Terms Defined in Plan. Any capitalized term used and not defined herein shall have the meaning assigned to it in the Plan.

1.2 Interpretive Rules. For purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires: (a) references to “Articles”, “Sections”, and other subdivisions, without reference to a particular document, are to be designated Articles, Sections, and other subdivisions of this Agreement; (b) the use of the term “including” means “including but not limited to”; and (c) the words “herein”, “hereof”, “hereunder”, and other words of similar import refer to this Agreement as a whole and not to any particular provision (unless otherwise specified). The enumeration and headings contained in this Agreement are for convenience of reference only and are not intended to have any substantive significance in interpreting this Agreement. The singular shall include the plural and the plural the singular, when the context so requires, and the feminine, the masculine, and the neuter genders shall be mutually inclusive. Wherever the conjunctive (*e.g.*, “and”) is used herein, it shall also be read as if phrased in the disjunctive (*e.g.*, “or”), and vice versa.

## ARTICLE II

### **Establishment of the Liquidating Trust, Appointment of the Liquidating Trustee**

2.1 Establishment of the Liquidating Trust. Pursuant to the Plan, the Parties hereby establish the Liquidating Trust, effective as of the Effective Date. \_\_\_\_\_ is hereby appointed as the Liquidating Trustee, effective as of the Effective Date, and hereby accepts such appointment. On the Effective Date, the Liquidating Trust will become effective, in order to carry out the Liquidating Trust Functions (defined below). On the Effective Date or as soon thereafter as practicable, pursuant to the Plan and Bankruptcy Code Sections 1123, 1141 and 1146(a), the Debtors and the Estates will transfer, grant, assign, convey, set over, and deliver to the Liquidating Trustee, for the benefit of the Liquidating Trust, all of the Debtors’ and Estates’ right, title and interest in and to the Assets, including the Liquidating Trust Expense Reserve, free and clear of all Liens, Claims, encumbrances or interests of any kind in such property, except as otherwise provided for in the Plan. On the Effective Date and automatically and without further action, the Liquidating Trustee will have full power and authority as the trustee of the Liquidating Trust in accordance with the Plan and this Agreement. On and after the Effective Date, the Liquidating Trustee, on behalf of the Liquidating Trust, will take any and all actions as he believes may be necessary, desirable or appropriate with respect to the Liquidating Trust, subject to the terms of the Plan and this Agreement. The Liquidating Trust is organized and established as a trust for the benefit of the Beneficiaries and is intended to qualify as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d). In accordance with Treasury Regulation 301.7701-4(d), the sole Beneficiaries of the Liquidating Trust will be the Holders of Allowed Claims in Class 5 (General Unsecured Claims), the Holders of Allowed Claims in Class 6 (ServisFirst Deficiency Claim), and the Holders of Allowed Claims in Class 7 (CHS Deficiency Claim). The Liquidating Trust will not be deemed a successor-in-interest of the Estates for any purpose other than as specifically set forth in the Plan

and this Agreement. This Agreement and the Liquidating Trust created pursuant to the Plan and this Agreement are hereby declared to be irrevocable and the Debtors shall not have any right at any time to withdraw any of the property held hereunder or to revoke, annul, or cancel the Liquidating Trust in whole or in part, or to alter, amend, or modify this Agreement in any respect. In the event of any inconsistency between this Agreement, the Plan, and the Confirmation Order, the Confirmation Order and Plan, in that order, shall govern.

2.2 Vesting of Estate Assets, Free and Clear of Liens. Upon the Effective Date, the Liquidating Trust will be vested with all right, title, and interest in the Assets, and such property will become the property of the Liquidating Trust free and clear of all Claims, Liens, charges, other encumbrances, and Interests, except as set forth in the Plan.

2.3 Trust Name. The trust created hereby shall be known as the “Liquidating Trust of Curae Health, Inc.”, in which name the Liquidating Trustee may, among other things, carry out the Liquidating Trust Functions, conduct the business of the Liquidating Trust, retain counsel and other professionals and pay fees and costs incurred by counsel and other professionals, make and execute contracts on behalf of the Liquidating Trust, sue and be sued on behalf of the Liquidating Trust, and take such other actions as the Liquidating Trustee is authorized to take under the Plan and this Agreement.

### ARTICLE III

#### **Liquidating Trust, Purpose, Administration**

3.1 Purpose of the Liquidating Trust. The Liquidating Trust shall be established for the purpose of carrying out the Liquidating Trust Functions and liquidating, distributing and resolving claims to the Assets, in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. Accordingly, the Liquidating Trustee shall, in an expeditious but orderly manner, carry out the Liquidating Trust Functions, liquidate and convert the Assets to Cash, make timely Distributions and not unduly prolong the duration of the Liquidating Trust.

3.2 Governance of the Liquidating Trust. The Liquidating Trust will be administered and controlled by the Liquidating Trustee.

3.3 Purpose of this Agreement and Liquidating Trust Functions. The parties hereby enter into this Agreement for the purposes of establishing the Liquidating Trust contemplated by the Plan and authorizing the Liquidating Trustee to, among other things, implement and carry out the Liquidating Trust functions as follows: (a) the power to sell, lease, license, abandon, or otherwise dispose of all remaining Assets of the Liquidating Trust Estate subject to the terms of this Plan; (b) the power to wind down the Debtors and their affairs, including by filing final cost reports and taking such other actions as are necessary after the Effective Date to bring about and orderly wind down of the Debtors’ operations; (c) the power to effect distributions under this Plan to the Holders of Allowed Claims; (d) the authority to pay all costs and expenses of administering the Liquidating Trust Estate after the Effective Date (including the Post-Effective Date Expenses), including the power to employ and compensate Persons to assist the Liquidating Trustee in carrying out the duties hereunder, and to obtain and

pay premiums for insurance and any other powers necessary or incidental thereto; (e) the power to implement this Plan including any other powers necessary or incidental thereto; (f) the authority to settle Claims, applicable Causes of Action, including Chapter 5 Actions, or disputes as to amounts owing to or from the Estates; (g) the authority to participate in any post-Effective Date motions to amend or modify this Plan or the Liquidating Trust Agreement, or appeals from the Confirmation Order; (h) the authority to participate in actions to enforce or interpret this Plan; (i) the power to bind the Liquidating Trust; and (j) such other responsibilities as may be vested in the Liquidating Trustee pursuant to the Plan, this Agreement or Bankruptcy Court order or as may be necessary and proper to carry out the provisions of the Plan (collectively “Liquidating Trust Functions”). Each of the foregoing powers may be exercised by the Liquidating Trustee without further order of the Bankruptcy Court. Notwithstanding any of the foregoing, the Liquidating Trustee may not materially amend or alter the terms and provisions of the Plan.

3.4 Administration of the Assets. From and after the Effective Date, the Liquidating Trustee shall take all steps necessary to liquidate all Assets and distribute the proceeds in accordance with the Plan, Confirmation Order, and this Agreement, including prosecuting, litigating, settling or otherwise liquidating and reducing the Assets to Cash, or abandoning the Assets on such terms and for such consideration as he deems to be reasonable and in the best interests of the Beneficiaries.

3.5 Creation of the POC. On the Effective Date, the Committee shall be dissolved and replaced by the POC that shall consist of not less than three (3) Persons or Entities that are Beneficiaries of the Liquidating Trust. The identities of the Persons and/or Entities that will serve on the POC as of the Effective Date are: \_\_\_\_\_. The POC may also include such other Persons or Entities (including ex officio members) as may be requested by the POC, which Persons or Entities shall have agreed to participate in the performance of the POC’s functions as set forth in this Plan. The POC’s sole function and responsibility shall be to advise the Liquidating Trustee in the performance of the Liquidating Trustee’s duties and obligations under the Plan with respect to the liquidation of Assets for the benefit of the Holders of Allowed Claims. The members of the POC shall serve without compensation but may be reimbursed for reasonable expenses incurred in the performance of their duties as members of the POC. The POC shall adopt by-laws governing all matters concerning participation in the POC, which by-laws shall include one or more mechanisms for individual members of the POC to be recused from consideration or voting upon matters that could pose a conflict of interest.

3.6 Authority of the Liquidating Trustee. The Liquidating Trustee will serve as a fiduciary to the Beneficiaries of the Liquidating Trust and will be empowered to implement the Liquidating Trust Functions, effect all actions, execute, and deliver all agreements, instruments, and other documents, make the distributions contemplated, and perform all of the obligations and agreements of the Liquidating Trust and/or of the Liquidating Trustee necessary to implement the provisions of the Plan and this Agreement (to the extent applicable) and otherwise in furtherance of the purposes of the Liquidating Trust. The Liquidating Trustee shall have absolute discretion to pursue or not to pursue any Estate Claims as it determines is in the best interests of the Liquidating Trust’s Beneficiaries and consistent with the purposes of the Liquidating Trust, and shall have no liability for the outcome of his decision, other than those

decisions constituting liability for bad faith, willful misconduct, reckless disregard of duty, criminal conduct, gross negligence, fraud, or self-dealing.

3.7 Expenses of the Liquidating Trust. Only the Assets will be used to pay all Post-Effective Date Expenses of the Liquidating Trust, including compensation then due and payable to the Liquidating Trustee, his agents, representatives, professionals, and employees, and all Post-Effective Date Expenses incurred by the Liquidating Trustee in connection with the performance of his duties. The reasonable fees and expenses of the Liquidating Trustee and his counsel and agents will be paid from the Assets. The Liquidating Trustee shall not be required to file a fee application to receive compensation.

3.8 Tax Treatment of Liquidating Trust. For United States federal and applicable state income tax purposes, the transfer of the Assets to the Liquidating Trust pursuant to and in accordance with the Plan shall be treated as a disposition of such assets directly to and for the benefit of the Beneficiaries. The Beneficiaries will be treated as the grantors and owners of the Liquidating Trust. All earnings of the Liquidating Trust shall be currently taxable to the Beneficiaries in the year in which such earnings are realized, including earnings retained in any established reserves, in accordance with their respective rights to such earnings. The Liquidating Trust is intended to qualify as a liquidating trust that is treated as a “grantor trust” for federal income tax purposes, and the Liquidating Trustee shall use his best efforts to operate and maintain the Liquidating Trust in compliance with Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation sections 1.671-4(a) and 301.7701-4(d) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue Service.

3.9 Incorporation of Plan. The Plan, as confirmed by the Confirmation Order, is hereby incorporated into this Agreement and made a part hereof by this reference.

#### ARTICLE IV

##### **Corporate Action; Continued Corporate Existence; Winding-Down of Affairs**

4.1 Corporate Action. On and after the Effective Date, the Liquidating Trustee shall have full and complete authority to act on behalf of and bind the Debtors, and to enforce the rights of the Debtors and their Estates with respect to any Postpetition Agreements, including, but not limited to, the MedHost RC Agreements, the Interim Management Services Agreement, and the MSA, without further action or approval of the Bankruptcy Court or the boards of directors and/or trustees of the Debtors.

4.2 The Liquidating Trustee shall, pursuant to Bankruptcy Code section 505(b), have the right to request an expedited determination of any unpaid liability of the Debtors' Estates for any tax incurred during the administration of the Chapter 11 Cases. As of the Effective Date, the Liquidating Trustee will be responsible for preparing and filing any tax forms or returns on behalf of the Debtors' Estates.

4.3 Continued Corporate Existence. Notwithstanding anything to the contrary in the Plan or Confirmation Order, each Debtor shall continue to exist as a separate corporate entity after the Effective Date solely for the purpose of implementing the Plan unless and until

such Debtor is dissolved in accordance with applicable state law pursuant to the terms of the Plan.

4.4 Winding Down of Affairs. The winding down of the Debtors' affairs, filing of any necessary documentation to dissolve the Debtors, and adoption of any and all corporate documents or resolutions necessary or appropriate to implement the Plan are hereby deemed authorized and approved in all respects without further action under any applicable law, regulation, order or rule. Upon completion of the Debtors' final tax return by the Liquidating Trustee and the entry of a final decree closing the Chapter 11 Cases, each of the Debtors shall be deemed dissolved for all purposes in accordance with applicable state law.

## ARTICLE V

### **Duties, Rights and Powers of Liquidating Trustee**

5.1 Status of the Liquidating Trustee. The Liquidating Trustee, acting on behalf of the Liquidating Trust, shall be the "representative of the estate" as that phrase is used in Bankruptcy Code section 1123(b)(3)(B) with respect to the rights and powers granted in this Agreement and in the Plan and Confirmation Order. Except as otherwise set forth in the Plan and Confirmation Order, the Liquidating Trust shall be the successor-in-interest to the Debtors with respect to all Assets, including all Estate Claims that were or could have been commenced by the Debtors or the Estates prior to the Effective Date and shall be deemed substituted for the same as the party in such action. All actions, claims, rights, or interests constituting Assets are preserved and retained and may be enforced by the Liquidating Trust as the representative of the Debtors and/or the Estates pursuant to Bankruptcy Code section 1123(b)(3)(B). The Liquidating Trust shall be a party-in-interest as to all matters over which the Bankruptcy Court has jurisdiction and shall be the only party to have standing to file, prosecute, settle, or compromise all Assets, including all Estate Claims. Further, for the avoidance of any doubt, the Liquidating Trustee may bring or assert Estate Claims under any primary director and officer liability, employment practices liability, or fiduciary liability insurance policies, as insolvency trustees, receivers, examiners, conservators, liquidators, rehabilitators or similar officials, as those terms are used in the policies.

5.2 Duties of the Liquidating Trustee. The Liquidating Trustee shall have the exclusive right and duty to administer and liquidate the Assets, file, prosecute, litigate, compromise, settle, and abandon Estate Claims assigned and delivered to the Liquidating Trust, pursue and, subject to Section 7.4 hereof, oversee the objections to and resolution of Claims and related processes, collect all income, make Distributions to the Beneficiaries from the Assets, and make payments to other parties, all as provided in this Agreement, the Plan, and the Confirmation Order.

5.3 Standard of Care. The Liquidating Trustee shall exercise his rights and powers vested in him by this Agreement and use reasonable business judgment in his exercise of his duties. Subject to applicable law, the Liquidating Trustee shall not be liable to the Liquidating Trust or any Beneficiary for any act he may do or omit to do as a Liquidating Trustee while acting in good faith and in the exercise of his reasonable business judgment. The foregoing limitation on liability will apply equally to the agents, professionals, accountants,

attorneys, and/or employees of the Liquidating Trustee acting on behalf of the Liquidating Trustee in the fulfillment of the Liquidating Trustee's duties hereunder.

5.4 Bond. The Liquidating Trustee shall not be required to post a bond.

5.5 Liquidating Trustee's Rights and Powers. The Liquidating Trustee shall act on behalf of the Liquidating Trust and, except as otherwise provided for under the Plan and this Agreement, shall be vested with all rights, powers, privileges, and benefits afforded to the Debtors' Estates and/or a "trustee" under Bankruptcy Code sections 704 and 1106, including, without limitation, the attorney-client and work product privilege, and he shall be vested with any such rights, powers, privileges and benefits of the Debtors and their Estates, including the right to assert the attorney-client privilege or any other privilege of and on behalf of the Debtors and Estates, and the right to enforce contracts, and assert claims, defenses, offsets and privileges. The Liquidating Trustee shall have all the powers and authority set forth herein and in the Plan and Confirmation Order necessary to effect the disposition, orderly liquidation, and/or distribution of all Assets and proceeds thereof. As of the Effective Date, the rights and powers of the Liquidating Trustee shall include, subject to the limitations set forth in the Plan, Confirmation Order and this Agreement, the right and power, without further Bankruptcy Court approval, to:

(a) Liquidate or otherwise reduce to Cash the Assets in accordance with the Plan and this Agreement;

(b) Settle, resolve and object to Claims, and file, prosecute, compromise and settle Estate Claims assigned and delivered to the Liquidating Trust, whether or not the Estate Claims or objections to Claims have been commenced prior to the Effective Date, and the Liquidating Trustee shall be substituted as the real party in interest in any such action or objection by or against the Debtors;

(c) Make the payments provided for in the Plan and Section 7.1 hereof, including Distributions to the Liquidating Trust's Beneficiaries;

(d) Seek an estimation of contingent or unliquidated Claims under Bankruptcy Code section 502(c);

(e) Determine, satisfy, object to, and estimate any and all claims or liabilities created, incurred or assumed by the Liquidating Trust;

(f) Invest the Assets as set forth in Section 5.13 herein;

(g) Establish, maintain and administer a reserve for payment of the expenses of the Liquidating Trust;

(h) Maintain and administer the Cash in the Liquidating Trust;

(i) Pay and satisfy from the Assets all Allowed Claims and Liquidating Trust expenses, including professional fees and expenses, and all fees due pursuant to Section 1930 of



Chapter 123 of Title 28 of the United States Code until such time as the Bankruptcy Court enters a final decree closing the Chapter 11 Cases;

(j) Enforce, carry out, and comply with the terms of the Plan, Confirmation Order, and this Agreement;

(k) Enforce, carry out, and perform the Liquidating Trustee's duties and Liquidating Trust Functions under this Agreement and the Plan;

(l) Retain counsel or special counsel, financial advisors or accountants, and employ other individuals in connection with the administration of the Liquidating Trust or the liquidation of the Assets, and pay all reasonable and necessary costs of any litigation directly or indirectly involving the Debtors, the Estates, or the Assets;

(m) Prepare and deliver written statements or notices, quarterly or otherwise, required by law or by the terms of this Agreement to be delivered to Beneficiaries;

(n) When all Disputed Claims filed against the Debtors have become Allowed Claims or have been disallowed by Final Order, and all of the Assets have been liquidated and distributed in accordance with the Plan and this Agreement, seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules;

(o) If at any time the Liquidating Trustee determines, in reliance upon such professionals as the Liquidating Trustee may retain, that the expense of administering the Liquidating Trust so as to make a final distribution to the Beneficiaries is likely to exceed the value of the assets remaining in the Liquidating Trust, the Liquidating Trustee shall apply to the Bankruptcy Court for authority to (i) reserve any amounts necessary to close the Chapter 11 Cases, and (ii) close the Chapter 11 Cases in accordance with the Bankruptcy Code and Bankruptcy Rules;

(p) Hold legal title to any and all rights of the Beneficiaries in or arising from the Liquidating Trust or Assets;

(q) Execute and file any and all documents, regulatory filings, and transfer applications and take any and all other actions related to, or in connection with, the liquidation of the Liquidating Trust, the exercise of the Liquidating Trustee's powers granted herein, and the enforcement of any and all instruments, contracts, agreements, claims, or causes of action relating to the Liquidating Trust or the Assets;

(r) Open and maintain bank accounts and deposit funds, draw checks and make disbursements in accordance with this Agreement and the Plan;

(s) If necessary, prepare and file, or have prepared and filed, any and all tax and information returns with respect to the Liquidating Trust treating the Liquidating Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and pay taxes properly payable by the Liquidating Trust, if any, and make distributions to Beneficiaries net of any such taxes;

(t) In the event the Liquidating Trustee determines that any of the Beneficiaries of the Liquidating Trust may, will, or has become subject to adverse tax consequences, take such actions that in his reasonable discretion will, or are intended to, alleviate such adverse tax consequences, such as dividing the Assets into several trusts or other structures and/or paying certain Beneficiaries in a manner different than that originally contemplated hereunder (but not otherwise inconsistent with the provisions of this Agreement or the Plan), provided, however, the Liquidating Trustee shall be under no obligation to take any such actions;

(u) Withhold from the amount allocable, payable or distributable to any Entity such amount as may be sufficient or required to pay any tax or other charge which the Liquidating Trust has determined, in his reasonable discretion, is required to be withheld therefrom under the income tax laws of the United States or of any state or political subdivision thereof, and to pay or deposit such withheld tax with the appropriate governmental authority. In the exercise of his discretion and judgment, the Liquidating Trustee may enter into agreements with taxing or other governmental authorities for the payment of such amounts as may be withheld in accordance with the provisions hereof;

(v) Seek any relief from or resolution of any disputes concerning the Plan, the Liquidating Trust, or the Assets by the Bankruptcy Court or any other court with proper jurisdiction;

(w) Appear and participate in any proceeding before the Bankruptcy Court or any other court with proper jurisdiction with respect to any matter regarding or relating to this Agreement, the Plan, Confirmation Order, Liquidating Trust, or the Assets;

(x) Review and object to professional fee claims; and

(y) Take such other actions as shall be necessary to implement the Plan, Confirmation Order, and the terms of this Agreement, wind down the affairs of the Liquidating Trust and effect the closing of the Chapter 11 Cases, carry out the Liquidating Trust Functions and related obligations, exercise his and the Liquidating Trust's rights in accordance with and subject to the Plan and Confirmation Order, and perform all of the duties, responsibilities and obligations as set forth in this Agreement.

5.6 Limitations on Liquidating Trustee. For U.S. federal income tax purposes, the Liquidating Trustee shall not be authorized to engage in any trade or business with respect to the Assets or any proceeds therefrom except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. The Liquidating Trustee shall take such actions consistent with the prompt orderly liquidation of the Assets as required by applicable law and consistent with the treatment of the Liquidating Trust as a liquidating trust under Treasury Regulations Section 301.7701-4(d), to the extent such actions are permitted by this Trust Agreement. The Liquidating Trustee shall, on behalf of the Liquidating Trust, hold the Liquidating Trust out as a trust in the process of liquidation and not as an investment company. The Liquidating Trustee shall not become a market-maker for the Beneficial Interests (defined below) or otherwise attempt to create a secondary market for the Beneficial Interests. The Liquidating Trustee shall be restricted to the liquidation of the Assets on behalf, and for the benefit, of the Holders of Allowed Claims and the distribution and application of Assets for the

purposes set forth in, and the conservation and protection of the Assets and the administration thereof in accordance with, the provisions of this Agreement, the Plan and the Confirmation Order.

5.7 Estimation of Claims. The Liquidating Trustee, may (but is not required to) at any time request that the Bankruptcy Court estimate any contingent Claim or Disputed Claim pursuant to Bankruptcy Code section 502(c) for any reason, regardless of whether an objection was previously filed with the Bankruptcy Court with respect to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to such objection. In the event that the Bankruptcy Court estimates any contingent Claim or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Liquidating Trustee may pursue supplementary proceedings to object to the allowance of such Claim. The Liquidating Trustee, is further authorized to file a Proof of Claim or Interest as provided under Bankruptcy Code section 501(c).

5.8 Selection of Agents. The Liquidating Trustee may select and employ, and determine compensation for, any professionals, including accountants, financial advisors, legal advisors, brokers, consultants, custodians, investment advisors, asset services, auditors, and other agents, as the Liquidating Trustee deems necessary (collectively, the “Trustee Professionals”) to assist it in carrying out his duties, with the reasonable fees and expenses of such professionals to be paid by the Liquidating Trust. Subject to the Plan and this Agreement, the Liquidating Trustee may pay the salaries, fees, and expenses of such persons or firms out of the Assets. The Liquidating Trustee shall not be liable for any loss to the Debtors, the Estates, or the Liquidating Trust or any person interested therein, including Beneficiaries, by reason of any mistake or default of any such agent or consultant.

5.9 Signature. As of the Effective Date of the Plan, the Liquidating Trustee shall have the signature power and authority on behalf of the Liquidating Trust to (a) open and close accounts with any banking, financial or investment institution; (b) make deposits and withdrawals of cash and other property into or from any such account; (c) make or endorse checks with respect to any such account; and (d) effectuate purchases and sales of securities and give security purchase and sale orders to brokers or any other third parties, and the exercise of such power and authority shall be deemed to be authorized by and to represent the decision of the Liquidating Trustee then entitled to make such decision.

5.10 Maintenance of Register. The Liquidating Trustee shall at all times maintain or cause to be maintained a register of the Liquidating Trust’s Beneficiaries, which shall include the names and addresses of each Beneficiary, the amount of each Beneficiary’s Allowed Claim(s), and the amounts paid to each Beneficiary by the Liquidating Trust.

5.11 Liability of Liquidating Trustee.

(a) Liability. The Liquidating Trustee, the Trustee Professionals, and the Liquidating Trustee's agents and servants, shall not in any way be liable for any acts or omissions to act except by reason of their bad faith, willful misconduct, reckless disregard of duty, criminal conduct, gross negligence, fraud, or self-dealing.

(b) Indemnification. The Liquidating Trust shall indemnify the Liquidating Trustee, the Trustee Professionals, and the Liquidating Trustee's agents and servants and hold them harmless from and against any and all liabilities, expenses, claims, damages and losses incurred by them as a direct result of actions taken or omissions to act by them in such capacity or otherwise related to this Agreement or the Liquidating Trust. The Liquidating Trust shall indemnify and hold harmless any Entity who was, or is, a party, or is threatened to be made a party, to any pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such Entity is or was the Liquidating Trustee, a Trustee Professional, or the Liquidating Trustee's agent or servant, against all costs, expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such Entity in connection with such action, suit or proceeding, or the defense or settlement of any claim, issue or matter therein, to the fullest extent permitted by applicable law, unless such costs and expenses, judgments, fines or amounts paid in settlement are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Entity's bad faith, willful misconduct, reckless disregard of duty, criminal conduct, gross negligence, fraud, or self-dealing. Costs or expenses incurred by any Entity entitled to the benefit of the provisions of this Section 5.11 in defending any such action, suit or proceeding may be paid by the Liquidating Trust in advance of the institution or final disposition of such action, suit or proceeding, if authorized by the Liquidating Trustee, subject to providing an undertaking to repay all such advanced amounts if it is subsequently determined that such Entity is not entitled to indemnification under this Section 5.11. Any dispute regarding such indemnification of the Liquidating Trustee shall be resolved only by the Bankruptcy Court, which shall retain jurisdiction over matters relating to the indemnification provided under this Section 5.11. The Liquidating Trustee may in his discretion purchase and maintain insurance on behalf of any Entity who is or was a beneficiary of this provision. Promptly after receipt by an indemnified party or parties (the "Indemnified Party") of notice of any claim, or notice of commencement of any action, suit, or proceeding by an Entity other than the Liquidating Trustee, in respect of which the Indemnified Party may seek indemnification from the Liquidating Trust pursuant to this Section 5.11, the Indemnified Party, if not the Liquidating Trust, shall notify the Liquidating Trustee of such claim, action, suit or proceeding and shall thereafter promptly convey all further communications and information in respect thereof to the Liquidating Trustee. If the Indemnified Party is the Liquidating Trustee, the Liquidating Trustee shall notify the Bankruptcy Court of such claim, action, suit, or proceeding and shall thereafter promptly convey all further communications and information in respect thereof to the Bankruptcy Court. The Liquidating Trustee shall, if it so elects, have sole control at the expense of the Liquidating Trust over the contest, settlement, adjustment, or compromise of any claim, action, suit, or proceeding in respect of which this Section 5.11 requires that the Liquidating Trust indemnify the Indemnified Party. If the Liquidating Trustee is the Indemnified Party, he shall obtain the written approval of Bankruptcy Court before settling, adjusting, or compromising any claim, action suit, or proceeding in respect of which this Section 5.11 requires that the Liquidating Trust indemnify

the Indemnified Party. The Indemnified Party shall cooperate with the reasonable requests of the Liquidating Trustee in connection with such contest, settlement, adjustment, or compromises, provided that (i) the Indemnified Party may, if it so elects, employ counsel at its own expense to assist in (but not control) the handling of such claim, action, suit, or proceeding, (ii) the Liquidating Trustee shall obtain the prior written approval of the Indemnified Party before entering into any settlement, adjustment, or compromise of such claim, action, suit, or proceeding, or ceasing to defend against such claim, action, suit, or proceeding, if pursuant thereto or as a result thereof injunction or other relief would be imposed upon the Indemnified Party, and (iii) the Indemnified Party shall obtain the prior written approval of the Liquidating Trustee, or, if the Liquidating Trustee is the Indemnified Party, the prior written approval of the Bankruptcy Court, before entering into any settlement, adjustment or compromise of such claim, action, suit, or proceeding, or ceasing to defend against such claim, action, suit, or proceeding, and no such settlement, adjustment, or compromise shall be binding on the Liquidating Trust without such approval.

(c) Exculpation Relating to the Liquidating Trust. No Holder of a Claim or Interest or any other party in interest will have, or otherwise pursue, any claim or cause of action against the Liquidating Trustee, the Liquidating Trust or the employees or professionals thereof (solely in the performance of their duties), for making payments and Distributions in accordance with this Plan or for fulfilling any functions incidental to implementing the provisions of the Plan or this Agreement, except for any acts or omissions to act that are the result of bad faith, willful misconduct, reckless disregard of duty, criminal conduct, gross negligence, fraud, or self-dealing.

(d) No Liability for Acts of Predecessor. No successor Liquidating Trustee shall be in any way responsible for the acts or omissions of any Liquidating Trustee in office prior to the date on which such person becomes a Liquidating Trustee, nor shall he be obligated to inquire into the validity or propriety of any such act or omission, unless such successor Liquidating Trustee expressly assumes such responsibility. Any successor Liquidating Trustee shall be entitled to accept as conclusive any final accounting and statement of the Assets furnished to such successor Liquidating Trustee by such predecessor Liquidating Trustee and shall further be responsible only for those Assets included in such statement.

(e) No Implied Obligations. The Liquidating Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, in the Plan and Confirmation Order, and no other or further covenants or obligations shall be implied into this Agreement. The Liquidating Trustee shall not be responsible in any manner whatsoever for the correctness of any recitals, statements, representations, or warranties herein or in any documents or instrument evidencing or otherwise constituting a part of the Assets. The Liquidating Trustee makes no representations as to the value of the Assets or any part thereof, nor as to the validity, execution, enforceability, legality, or sufficiency of this Agreement; and the Liquidating Trustee shall incur no liability or responsibility with respect to any such matters.

(f) Reliance by Liquidating Trustee on Documents or Advice of Counsel or Other Entities. Except as otherwise provided herein, the Liquidating Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, and other paper or document reasonably believed to be genuine

and to have been signed or presented by the proper party or parties, and shall have no liability or responsibility with respect to the form, execution, or validity thereof. None of the provisions hereof shall require the Liquidating Trustee to expend or risk his own funds or otherwise incur financial liability or expense in the performance of any duties hereunder.

(g) No Personal Obligation for Debtors' Liabilities. Beneficiaries, Holders of Claims, Holders of Corporate Interests, or other persons dealing with the Liquidating Trustee in his capacity as Liquidating Trustee within the scope of this Agreement shall look solely to the Assets to satisfy any liability incurred by the Liquidating Trustee to such person in carrying out the terms of this Agreement, and the Liquidating Trustee shall have no personal or individual obligation to satisfy any such liability.

5.12 Establishment of Trust Accounts. The Liquidating Trustee may establish or cause to be established and maintained any accounts needed in connection with the purposes of the Liquidating Trust (the "Trust Account"). Such accounts shall be maintained only at FDIC insured financial institutions and shall bear a designation clearly indicating that the funds deposited therein are held for the benefit of the Liquidating Trust.

5.13 Investment of Cash. Cash in the Trust Account(s) and any other amounts contemplated by this Agreement shall be maintained in United States dollars or shall be invested by the Liquidating Trustee in (i) direct obligations of, or obligations guaranteed by, the United States of America, (ii) obligations of any agency or corporation that is or may hereafter be created by or pursuant to an act of Congress of the United States of America as an agency or instrumentality thereof, or (iii) such other obligations or instruments as may from time to time be permitted under Bankruptcy Code section 345; provided that the Liquidating Trustee may, to the extent necessary to implement the provisions of the Plan and this Agreement, deposit moneys in demand deposits, time accounts or checking accounts at any banking institution or trust company having combined capital stock and surplus in excess of \$100,000,000 based upon its most recently available audited financial statements, regardless of whether such investments and deposits are insured or as otherwise provided in Section 5.12 above; provided further, that in all cases, investments by the Liquidating Trustee in accordance with this Section 5.13 shall be made only in such investments that a liquidating trust, within the meaning of Treasury Regulation section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise. Such investments shall mature in such amounts and at such times as the Liquidating Trustee, in his discretion, shall deem appropriate to provide funds when needed to transfer funds in accordance with the Plan and Confirmation Order, make payments to the Trust Accounts or make Distributions in accordance with this Agreement and the Plan and Confirmation Order. The Liquidating Trust may not retain cash or cash equivalents in excess of a reasonable amount to meet claims and contingent liabilities or to maintain the value of the Assets in liquidation or maintain or fund on adequate and sufficient reserve.

5.14 Tax Returns. From and after the Effective Date, to the extent required, the Liquidating Trustee shall be responsible for the preparation and filing of any and all federal and state tax returns or other filings as required by law to be filed on behalf of the Liquidating Trust. Such returns shall be consistent with the treatment of the Liquidating Trust as a liquidating trust

within the meaning of Treasury Regulations Section 301.7701-4(d) that is a grantor trust pursuant to Section 1.671-4(a) of the Treasury Regulations.

5.15 Compensation for Liquidating Trustee. The Liquidating Trustee shall be paid fair and reasonable compensation, in an amount equal to [\_\_\_\_\_]. The Liquidating Trustee shall be entitled to reasonable and actual out-of-pocket expenses, to be paid monthly from the Assets, pursuant to Section 5.16 and related provisions of this Agreement.

5.16 Reimbursement of the Liquidating Trustee's and Trustee Professionals' Fees and Expenses. Pursuant to the terms of the Plan, Confirmation Order, and this Agreement, the Liquidating Trustee may pay from the Assets all reasonable fees and expenses incurred in connection with the duties and actions of the Liquidating Trustee, including, but not limited to, fees and expenses of any agents or consultants employed pursuant to this Agreement and Trustee Professionals retained under this Agreement and fees and expenses to pay insurance, taxes and other expenses arising in the ordinary course of business in maintaining, liquidating, disposing of, and distributing the Assets and compensation to the Liquidating Trustee.

## ARTICLE VI

### Beneficiaries

6.1 Identification of Beneficiaries. The Liquidating Trust is created for the benefit the Holders of Allowed Claims in Class 5 (General Unsecured Claims), the Holders of Allowed Claims in Class 6 (ServisFirst Deficiency Claim), and the Holders of Allowed Claims in Class 7 (CHS Deficiency Claim). (the "Beneficiaries"). The Beneficiaries shall each have an undivided beneficial interest in the assets of the Liquidating Trust ("Beneficial Interest").

6.2 Rights of Beneficiaries. Each Beneficiary shall be entitled to participate in the rights due to a Beneficiary hereunder and in the Plan. Each Beneficiary shall take and hold its Beneficial Interest subject to all in the terms and provisions of this Agreement and the Plan. The Beneficial Interests shall not be certificated. No Beneficiary shall have legal title to any part of the Assets. The interest of a Beneficiary of the Liquidating Trust is in all respects personal property, and upon the death, insolvency or incapacity of an individual Beneficiary, such Beneficiary's Beneficial Interest shall pass to the legal representative of such Beneficiary. A Beneficiary shall have no title to, or any right to possess, manage or control, the Assets, or any portion thereof or interest therein, except as expressly provided herein. No surviving spouse, heir, or devisee of any deceased Beneficiary shall have any right of dower, homestead or inheritance, or of partition, or any other right, statutory or otherwise, in the Assets, but the whole title to all the Assets shall be vested in the Liquidating Trustee and the sole interest of the Beneficiaries shall be the rights and benefits provided to such persons under this Agreement and the Plan.

## ARTICLE VII

### Distributions

7.1 Distributions under the Plan. Subject to the terms of the Plan and the Confirmation Order, distributions by the Liquidating Trust under the Plan shall be made as follows:

(a) The Liquidating Trustee will make Distributions to Holders of Administrative Expense Claims Allowed after the Effective Date, Professional Fee Claims Allowed after the Effective Date, Priority Tax Claims Allowed after the Effective Date, Secured Tax Claims Allowed after the Effective Date, Other Secured Claims Allowed after the Effective Date, and Priority Claims Allowed after the Effective Date.

(b) The Liquidating Trust will make Distributions from the Assets to holders of Beneficial Interests of the Liquidating Trust in accordance with the terms of the Plan, Confirmation Order and this Agreement.

(c) Distributions to be made by the Liquidating Trust may be made by any Person(s) designated or retained to serve as the disbursing agent(s) without the need for any further order of the Bankruptcy Court.

(d) The Liquidating Trustee shall be authorized, in his discretion, to delay Distributions to holders of Beneficial Interests or otherwise determine reasonable distribution dates for such holders, including, without limitation, based upon the status and progress of the liquidation of Assets, the total number of and/or asserted claim amounts of Disputed Claims, and any other relevant factors.

7.2 Distributions on Account of Disputed Claims. Except as otherwise provided in the Plan, by Final Order or as agreed by the relevant parties, Distributions on account of Disputed Claims that become Allowed after the Effective Date will be made by the Liquidating Trustee at such periodic intervals as the Liquidating Trust determine to be reasonably prudent.

7.3 No Distributions Pending Allowance. Notwithstanding anything herein to the contrary: (a) no Distribution will be made with respect to any Disputed Claim until such Claim becomes an Allowed Claim, and (b) unless determined otherwise by the Liquidating Trustee, no Distribution will be made to any Person that holds both (i) an Allowed Claim and (ii) a Disputed Claim until such Person's Disputed Claim has been resolved by settlement or Final Order.

7.4 Objection Deadline. On and after the Effective Date, the Liquidating Trustee shall have the exclusive right and standing to (i) object to and contest the allowance of all Claims, (ii) compromise and settle any Disputed Claim or Claim that has not otherwise been Allowed, without further Order or approval of the Bankruptcy Court, subject to the notice procedure set forth in section VII(M)(2) of the Plan; and (iii) litigate to final resolution objections to Claims. All objections to Claims shall be filed with the Bankruptcy Court, and served upon the Holders of such Claims, on or before the one hundred eightieth (180th) day after the Effective Date. The time period for filing objections to Claims shall automatically renew for successive periods of one hundred eighty (180) days each until the earlier of (i) the date upon



which all Claims have been Allowed or Disallowed or (ii) the date fixed by the Bankruptcy Court upon motion of the Liquidating Trustee or a holder of a Claim.

7.5 Distribution Reserve.

(a) Prior to making a distribution to any Holders of Allowed Claims under the Plan, the Liquidating Trustee may place in reserve and/or in a separate account any funds that may be needed to pay Claims that are Disputed and Claims that have otherwise not been Allowed in the event that all or a portion of such Claims become Allowed (the **“Distribution Reserve”**). When a Claim is Allowed or Disallowed (and thus becomes an Allowed Claim or a Disallowed Claim, in whole or in part), the funds set aside on account of such Claim shall be released from the Distribution Reserve and shall be available for distribution in accordance with the terms of the Plan to either (i) the Holder of the Claim that has become an Allowed Claim, or (ii) if Disallowed, the Holders of Allowed Claims. The Liquidating Trustee, in his or her sole discretion, on and after the Effective Date, shall have authority to increase or decrease the Distribution Reserve, as reasonably necessary and appropriate, and upon satisfaction of all Allowed Claims required to be paid from the Distribution Reserve, to transfer amounts held therein for distribution pursuant to the Plan.

(b) The Liquidating Trustee may, in the Liquidating Trustee’s sole discretion, determine the best way to report for tax purposes with respect to any reserve for Disputed Claims Reserve, including (i) filing a tax election to treat any and all reserves for Disputed General Unsecured Claims as a Disputed Ownership Fund (“DOF”) within the meaning of Treasury Income Tax Regulation section 1.468B-9 for federal income tax purposes rather than to tax such reserve as a part of the Liquidating Trust or (ii) electing to report as a separate trust or sub-trust or other entity. If an election is made to report any reserve for disputed claims as a DOF, the Liquidating Trust shall comply with all federal and state tax reporting and tax compliance requirements of the DOF, including but not limited to the filing of a separate federal tax return for the DOF and the payment of federal and/or state income tax due.

7.6 Settling Disputed Claims (or Interests). The Liquidating Trustee will be authorized to settle, or withdraw any objections to, any Disputed Claims following the Effective Date without need for approval of the Bankruptcy Court.

7.7 Distributions in Cash. The Liquidating Trustee will make any required Cash payments to the Holders of Allowed Claims by checks drawn on accounts maintained by the Liquidating Trustee, or by wire transfer if the circumstances justify, at the option of the Liquidating Trustee.

7.8 Unclaimed Distributions. Distributions to Holders of Allowed Claims shall be made at the address of the Holder of such Claim as indicated on the records of the Debtor, or a filed proof of Claim, as applicable. If any Allowed Claim Holder’s distribution is returned as undeliverable, no further distributions shall be made to such Holder unless and until the Liquidating Trustee is notified in writing of such Holder’s then-current address. Undeliverable distributions shall remain in the possession of the Liquidating Trustee until such time as a distribution becomes deliverable. Undeliverable Cash shall not be entitled to any interest, dividends or other accruals of any kind. Within twenty one (21) days after the end of

each calendar quarter following the Effective Date, the Liquidating Trustee shall make all distributions that become deliverable during the preceding calendar quarter, except as otherwise provided herein. Any check that is not cashed or otherwise deposited within three months after the check's date shall be deemed an undeliverable distribution under this Plan. In an effort to ensure that all Holders of Allowed Claims receive their allocated distributions, the Liquidating Trustee will file with the Bankruptcy Court a listing of unclaimed distribution Holders. This list will be maintained and updated as needed for as long as the Chapter 11 Cases stay open. Any Holder of an Allowed Claim that does not assert a Claim pursuant to the Plan for an undeliverable distribution within three (3) months after the first attempted delivery shall have its Claim for such undeliverable distribution discharged and shall be forever barred from asserting any such Claim against the Debtor, the Liquidating Trust Estate, the Liquidating Trustee, or their respective property. In such cases, any Cash held for distribution on account of such Claims shall be property of the Liquidating Trust Estate, free of any restrictions thereon, and shall revert to the account from which such payment was originally issued to be distributed pursuant to the Plan. Nothing contained in the Plan shall require the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim.

7.9 Setoff. The Liquidating Trustee may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, exercise the right of setoff or recoupment against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before distribution is made on account of such Claim), the Claims, rights, and Causes of Action of any nature that the Debtors, Estates, or Liquidating Trust may hold against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by the Liquidating Trustee of any such Claims, rights, or Causes of Action that the Debtors, Estates, or Liquidating Trust may possess against such Holder.

7.10 Taxes. In connection with the Plan, the Liquidating Trustee shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. For tax purposes, distributions received in respect of Allowed Claims will be allocated first to the principal amount of Allowed Claims with any excess allocated, if applicable, to unpaid interest that accrued on such Claims. Notwithstanding any other provision of this Plan, (a) each Holder of an Allowed Claim that is to receive a distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding, and other tax obligations, on account of such distribution, and (b) no distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Liquidating Trustee for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon any disbursing agent in connection with such distribution. Any property to be distributed pursuant to the Plan shall, pending the implementation of such arrangements, be treated as an undeliverable distribution under this Plan.

7.11 Legal Proceedings. If any Estate Claims, including Avoidance Actions, are asserted and if such claims or any other legal proceedings are initiated or prosecuted against any Creditor pursuant to the Plan, Confirmation Order, or this Agreement, or asserted as an objection

to any Claim, then notwithstanding anything to the contrary contained in the Plan or Confirmation Order, until such proceeding or contested matter is finally resolved and all payments to the Debtors' Estates required by such resolution have been made, such Creditor shall only receive Distributions under the Plan or Confirmation Order to the extent that the distributions to which such Creditor is otherwise entitled exceed the maximum liability of such Creditor to the Debtors' Estates asserted in such proceedings.

7.12 De Minimis Distributions. If the amount of Cash to be distributed to the Holder of an Allowed Claim is less than fifty dollars (\$50) on a particular Distribution Date, the Trustee may hold the Cash distributions to be made to such Holder until the aggregate amount of Cash to be distributed to such Holder is in an amount equal to or greater than fifty dollars (\$50). Notwithstanding the preceding sentence, if the aggregate amount of Cash distribution owed to any Holder of an Allowed Claim never equals or exceeds fifty dollars (\$50), then the Liquidating Trustee shall not be required to distribute Cash to any such Holder.

7.13 Abandonment. Notwithstanding anything to the contrary in the Plan, if in the Liquidating Trustee's reasonable judgment, any Assets cannot be sold or distributed in a commercially reasonable manner or the Liquidating Trustee believes in good faith that such property has inconsequential value to the Liquidating Trust or its Beneficiaries or determines to be too impractical to distribute to Beneficiaries, the Liquidating Trustee shall have the right to cause the Liquidating Trust to abandon or otherwise dispose of such property, including by donation of such property to a charity

## ARTICLE VIII

### **Removal or Resignation of the Liquidating Trustee**

8.1 Removal of the Liquidating Trustee. The Liquidating Trustee appointed pursuant to the Plan, Confirmation Order and this Agreement may be removed for "cause" upon order of the Bankruptcy Court after notice and opportunity for a hearing. For purposes of this Agreement, the term "cause" shall mean (a) the Liquidating Trustee's gross negligence, willful misconduct or willful failure to perform his duties under the Plan, the Confirmation Order and this Agreement, or (b) the Liquidating Trustee's misappropriation or embezzlement of any Assets or the proceeds thereof. If a Liquidating Trustee is removed for cause, such Liquidating Trustee shall not be entitled to any accrued but unpaid fees, reimbursements or other compensation under this Agreement or otherwise. If the Liquidating Trustee is removed by the Bankruptcy Court other than for "cause", or is unwilling or unable to serve (a) by virtue of his inability to perform his duties under this Agreement due to death, illness, or other physical or mental disability, or (b) for any other reason whatsoever other than for "cause," subject to a final accounting, the Liquidating Trustee shall be entitled to all accrued and unpaid fees, reimbursement, and other compensation, to the extent incurred or arising or relating to events occurring before such removal, and to any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties and all rights to any successor Liquidating Trustee.

8.2 Resignation of the Liquidating Trustee. The Liquidating Trustee may resign as Liquidating Trustee at any time by giving prior written notice thereof to the Bankruptcy

Court (the “Notice”); provided, however, that such resignation shall not be effective earlier than thirty (30) days after the date of such Notice, unless an earlier effective date is allowed by the Bankruptcy Court. If the Liquidating Trustee resigns from his position hereunder, subject to a final accounting, he shall be entitled to all accrued unpaid fees, reimbursement, and other compensation to the extent incurred or arising or relating to events occurring before such resignation, and any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties to the successor Liquidating Trustee.

8.3 Successor to the Liquidating Trustee. In the event of the resignation, removal or death of the Liquidating Trustee, the Bankruptcy Court or the undersigned Chairperson of the POC may designate a disinterested person to serve as the successor Liquidating Trustee. A notice identifying any proposed successor Liquidating Trustee with an affidavit of disinterestedness from such proposed successor Liquidating Trustee will be filed with the Bankruptcy Court and served on any post-Confirmation service list. The successor Liquidating Trustee, without any further act, will become fully vested with all of the rights, powers, duties, and obligations of his predecessor.

## ARTICLE IX

### **Effect of the Agreement on Third Parties**

9.1 There is no obligation on the part of any person dealing with the Debtors’ Estates, the Debtors, the Liquidating Trustee, or the Trustee Professionals, to see to the application of the money or other consideration paid or delivered to the Liquidating Trustee, or any agent of the Liquidating Trustee, or to inquire into the validity, expediency, or propriety of any such transaction, or the authority of the Liquidating Trustee, or any agent of the Liquidating Trustee, to enter into or consummate the same, except upon such terms as the Liquidating Trustee may deem advisable.

## ARTICLE X

### **Waiver**

10.1 No failure or delay of any party to exercise any right or remedy pursuant to this Agreement shall affect such right or remedy or constitute a waiver by such party of any right or remedy pursuant thereto. Resort to one form of remedy shall not constitute a waiver of alternative remedies.

## ARTICLE XI

### **Termination of the Agreement and Amendment**

11.1 Termination of the Agreement. This Agreement (other than Sections 5.11, 5.16 and related provisions) shall terminate and the Liquidating Trust shall dissolve and terminate and be of no further force or effect upon the earlier to occur of (a) the date on which all of the Assets are liquidated in accordance with the Plan, the funds in the Liquidating Trust have been completely distributed in accordance with the Plan, all tax returns and any other filings or

reports have been filed with the appropriate state or federal regulatory authorities, and the Order closing the Chapter 11 Cases is a Final Order or (b) five (5) years after the date of creation of the Liquidating Trust, unless extended by the Bankruptcy Court as provided in the Liquidating Trust Agreement. At such time as the Liquidating Trust has been fully administered (*i.e.*, when all things requiring action by the Liquidating Trustee have been done, and the Plan has been substantially consummated) and in all events within sixty (60) days after the Final Distribution Date, the Liquidating Trustee will file an application for approval of his final report and the entry of the final decree by the Bankruptcy Court.

11.2 Amendment of the Agreement. Except as otherwise set forth herein, any provisions of this Agreement may be amended, modified, terminated, revoked, or altered only in writing by the Liquidating Trustee and pursuant to an Order of the Bankruptcy Court. Notwithstanding this Section 11.2, any amendments to this Agreement shall not be inconsistent with the purpose and intention of the Liquidating Trust to liquidate in an expeditious but orderly manner the Assets in accordance with Treasury Regulations Section 301.7701-4(d) and this Agreement.

## ARTICLE XII

### Miscellaneous

12.1 Intention of Parties to Establish the Liquidating Trust. This Agreement is not intended to create, and shall not be interpreted as creating, an association, partnership or joint venture of any kind. It is intended as a trust to be governed and construed in all respects as a trust.

12.2 Filing Documents. A copy of this Agreement and all amendments thereof shall be maintained in an office or residence of the Liquidating Trustee and shall be available for inspection.

12.3 Books and Records.

(a) The Liquidating Trustee, in his or her sole discretion, may after receipt of notice and prior to a Debtor's dissolution, seek to retain those documents maintained by such Debtor in the ordinary course of business. The Liquidating Trustee shall be authorized to destroy any documents he or she deems necessary or appropriate in his or her reasonable judgment; provided, however, that the Liquidating Trustee shall not destroy any documents, including but not limited to tax documents, that the Liquidating Trust is required to retain under applicable law. The Liquidating Trustee shall be authorized to abandon all originals and/or copies of documents and business records that the Liquidating Trust does not seek to retain.

12.4 Tax Identification Numbers. The Liquidating Trustee may require any Beneficiary to furnish to the Liquidating Trustee, (i) its employer or taxpayer identification number as assigned by the Internal Revenue Service, and (ii) such other information, records or documents necessary to satisfy the Liquidating Trustee's tax reporting obligations (including certificates of non-foreign status). The Liquidating Trustee may condition the payment of any Distribution to any Beneficiary upon receipt of such identification number and requested

documents. If a Beneficiary does not timely provide the Liquidating Trustee with its taxpayer identification number in the manner and by the deadline established by the Liquidating Trustee, then the Distribution to such Beneficiary shall be administered as an unclaimed distribution in accordance with Section 7.8 of this Agreement and Section VII.C of the Plan.

12.5 U.S. Trustee Fees and Post-Confirmation Reports. After the Effective Date, the Liquidating Trust shall pay any statutory fees due for the post-Effective Date period pursuant to 28 U.S.C. § 1930(a)(6) and such fees shall be paid until entry of a final decree or an order converting or dismissing the Chapter 11 Cases. After the Effective Date, the Liquidating Trustee will file post-confirmation status reports on a quarterly basis up to the entry of a final decree closing the Chapter 11 Cases or as otherwise ordered by the Court.

12.6 Privilege.

(a) Other than the Retained Privileges (defined below), on and subject to the terms of the Plan, all of the Debtors' privileges (the "Privileges"), including, but not limited to, corporate privileges, confidential information, work product protections, attorney-client privileges, and other immunities or protections solely relating to the Estate Claims, in each instance arising on or after the earlier of (i) two (2) years prior to the Petition Date, and (ii) the applicable statute of limitations governing any such Estate Claim (but in no event more than six (6) years prior to the Petition Date) (the "Transferred Privileges"), shall be transferred, assigned and delivered to the Liquidating Trust, without waiver, limitation or release, and shall vest with the Liquidating Trust on the Effective Date and be jointly held by the Debtors and the Liquidating Trust on and after the Effective Date.

(b) The Liquidating Trust and Debtors shall each hold and each be the beneficiary of all Transferred Privileges and entitled to assert all Transferred Privileges. No Privilege shall be waived by disclosures to the Liquidating Trustee of the Debtors' documents, information or communications subject to any privilege, protection or immunity or protections from disclosure jointly held by the Reorganized Debtors and the Liquidating Trust.

(c) Notwithstanding the foregoing or anything else in the Plan or otherwise to the contrary, no Privileges other than the Transferred Privileges (all Privileges other than the Transferred Privileges being the "Retained Privileges") shall be transferred, assigned or delivered to the Liquidating Trust and such Retained Privileges shall not vest with the Liquidating Trust. The Liquidating Trust shall not hold nor be the beneficiary of any Retained Privileges or entitled in any way to assert any Retained Privileges, which shall be held solely by the Debtors and/or the Reorganized Debtors.

(d) The Liquidating Trustee shall have until two (2) years after the Effective Date to request documents or information subject to the Transferred Privileges (each an "Information Request"); provided, however, that with respect to any action involving Transferred Privileges filed on or before two (2) years after the Effective Date, the Liquidating Trustee may make an Information Request subject to the Transferred Privileges involved in such action until the final resolution of such action, including any appeals.

(e) To the extent of any conflict between this Section 12.6 of the Agreement and any other provision of the Agreement relating to Privileges, this Section 12.6 shall control.

12.7 Valuation of the Assets. After the Effective Date, the Liquidating Trustee, in its discretion, and in reliance upon such professionals as the Liquidating Trustee may retain, may make a good faith valuation of the Assets. Such valuation shall be made available from time to time, to the extent relevant, as reasonably determined by the Liquidating Trustee in reliance on his professionals, and used consistently by all parties, including, without limitation, the Liquidating Trust, and Beneficiaries, for all purposes, including federal income tax purposes.

12.8 Governing Law. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TENNESSEE, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

12.9 Severability. If any one or more of the provisions herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect, and of the remaining provisions, shall not be in any way impaired or affected. In such event, there shall be added as part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable. The effective date of the added provision shall be the date upon which the prior provision was held to be invalid, illegal or unenforceable.

12.10 Entire Agreement. This Agreement (including the recitals), the Plan and the Confirmation Order constitute the entire agreement of the parties and there are no representations, warranties, covenants, or obligations except as set forth herein or therein. This Agreement, the Plan, and the Confirmation Order supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. In the event of any inconsistency between this Agreement, the Plan, and the Confirmation Order, the Confirmation Order and Plan, in that order, shall govern; provided, however, that the Liquidating Trustee may amend, modify and/or correct the terms hereof to supersede the Plan and/or the Confirmation Order, with the approval of the Bankruptcy Court. Except as otherwise specifically provided herein, nothing in this Agreement is intended or shall be construed to confer upon or to give any person other than the parties hereto and their respective heirs, administrators, executors, successors, and assigns any rights or remedies under or by reason of this Agreement.

12.11 Jurisdiction; Venue. Each party hereto irrevocably agrees that any suit, action or proceeding with respect to this Agreement shall be brought in the United States Bankruptcy Court for the Middle District of Tennessee, and by execution and delivery of this Agreement, each party (a) irrevocably submits to each such jurisdiction and venue, (b) waives, to the fullest extent permitted by law, any objection that it may have to the laying of the venue of any such suit, action or proceeding brought in such court has been brought in an inconvenient forum, and (c) agrees that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon it and may be enforced in any court to the jurisdiction

of which such party is subject by a suit upon such judgment, provided that service of process is effected as otherwise permitted by law.

12.12 Notices. Unless otherwise expressly specified or permitted by the terms hereof, any notice, request, submission, instruction or other document to be given hereunder by a party shall be in writing and shall be deemed to have been given, (a) when received if given in person, (b) upon delivery or refusal of delivery, if delivered by a nationally known commercial courier service providing next day delivery service (such as Federal Express), or (c) upon delivery or refusal of delivery, if deposited in the U.S. mail, certified or registered mail, return receipt requested, postage prepaid:

**If to the Liquidating Trustee, addressed as follows:**

[       ]

With a copy to:

[       ]

**If to the Debtors, addressed as follows:**

[       ]

With a copy to counsel:

Polsinelli P.C.  
Attn: David E. Gordon  
Caryn Wang  
1201 West Peachtree Street NW  
Suite 1100  
Atlanta, GA 30309

or to such other individual or address as a party hereto may designate for itself by notice given as herein provided.

12.13 WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY.



12.14 Further Assurances. Each Party hereto (and his respective successors and assigns) shall, upon the Liquidating Trustee's reasonable request, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments, and do or cause to be done, such further acts, as may be necessary to carry out the purposes of this Agreement and to vest in the Liquidating Trustee the powers and duties contemplated hereunder.

12.15 Exculpatory Provisions and Survival Thereof. Whether or not expressly therein so provided, any and all exculpatory provisions, immunities and indemnities, and any limitations and negations of liability contained in this Agreement, in each case inuring to the benefit of the Liquidating Trustee, shall survive (i) the termination or revocation of this Agreement, and (ii) as to any person who has served as Liquidating Trustee, the resignation or removal of such person as Liquidating Trustee.

12.16 Conflicts. In the event of any inconsistency between the Plan or Confirmation Order, on the one hand, and this Agreement, on the other, the terms and provisions of the Plan or Confirmation Order shall govern.

12.17 Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

12.18 Successors and Assigns. All covenants and agreements contained herein shall, as applicable, be binding upon, and inure to the benefit of the POC, the Liquidating Trustee and his successors, the Estates and the Debtors and their successors all as herein provided.

12.19 Separate Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

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

LIQUIDATING TRUSTEE:

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

DEBTORS AND DEBTORS IN POSSESSION:

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

**EXHIBIT 3**

**Cooperation Agreement**

## COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT (“**Cooperation Agreement**” or “**Agreement**”) is made this \_\_\_\_ day of April, 2019, by and between \_\_\_\_\_ (the “**Cooperating Party**”) and the Liquidating Trustee (the “**Trustee**”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Debtors’ Chapter 11 Plan of Liquidation dated as of January 22, 2019, as the same may from time to time be amended or modified (the “**Plan**”).

### RECITALS

WHEREAS, the Trustee is the trustee of the Liquidating Trust (the “**Trust**”) established under the Liquidating Trust Agreement dated April \_\_\_, 2019 pursuant to the Plan (the “**Trust Agreement**”);

WHEREAS, the Plan and Confirmation Order contemplate that a Cooperation Agreement will be executed between the Cooperating Party and the Trustee so that the Cooperating Party may assist the Trustee in pursuing the Claims (as defined herein) and otherwise performing the Trustee’s duties under the Plan, Confirmation Order, and Trust Agreement; and

NOW THEREFORE, in consideration of the above-stated premises, the mutual covenants contained herein, and for other good and valuable consideration, the parties agree as follows:

### AGREEMENT

1.1 Cooperation. On and after the Effective Date, Cooperating Party agrees to the reasonable cooperation with the Trustee in connection with the Assets, Claims (as defined in the Plan), D&O Claims, Tort Claims, Causes of Action, Chapter 5 Actions (the “**Claims**”) as follows:

1.1.1 Providing the Trustee (or its professionals) upon written request (including E-mail) of the Trustee (or its professionals) reasonable access to information and cooperation regarding the Claims, including but not limited to delivery of documents in the possession of, or witnesses under the control of, the Cooperating Party, to the extent that the Trustee could obtain the same by subpoena, notice of deposition or other permissible discovery request (a “**Discovery Request**”);

1.1.2 Appearing at any trial of the Causes of Action asserted in the Claims, without the need for the Trustee to serve a trial subpoena upon such witness;

1.1.3 At the reasonable request of the Trustee, take, or cause to be taken, all such further action as the Trustee may request in order to evidence or effectuate the transfer of the Claims to the Liquidating Trust;

1.1.4 Retaining all books, records and other documents supporting the Claims and not destroying any such records until after the termination of the Trust in accordance with the Plan and Trust Agreement. To the extent a formal or informal document request, subpoena or other demand for production of documents related to a Claim is served upon the Cooperating

Party by a defendant in an action pursued by or on behalf of the Trust and the Trustee is in possession, custody or control of all or part of the responsive documents, the Cooperating Party may demand that the Trustee be responsible for producing such responsive documents in the Trust's possession, custody or control and the Trust shall undertake such production; and

1.1.5 Assisting the Trustee in the claims reconciliation process pursuant to the Plan.

1.2 Trustee's Agents & Representatives. All references in Section 1.1 (and elsewhere in this Agreement) to cooperation and similar obligations running in favor of the Trustee shall be deemed also to run in favor of the Trustee's agents and representatives retained by the Trustee to pursue the Claims (including, for example, counsel, accountants and financial advisors) provided that the Trustee and its agents and representatives shall endeavor to use commercially reasonable efforts to coordinate between and among themselves with respect to requests made to the Cooperating Party in order to minimize burdens on the Cooperating Party.

1.3 Access.

1.3.1 Access with respect to individuals shall include, without limitation, reasonable access by telephone, periodic meetings, interviews, and appearance of such employees as witnesses (by affidavits, ad depositions and at trials, as necessary) and availability for preparation as a witness during normal business hours.

1.3.2 Subject to Sections 1.3.3 and 1.3.4 below, access to documents shall include, without limitation, making reasonably available for inspection during normal business hours and, at the request of the Trustee, delivering all documents (except for privileged documents as set forth below), instruments, books and records held by the Cooperating Party or their professionals (including those maintained in electronic format and original documents) reasonably related to the Claims, which documents shall include without limitation, accounting and financial records, customer and vendor lists and records including payment/billing histories, e-mail records, contracts, reports, documents and other instruments relating to payments for goods and services (e.g., invoices, purchase orders, checks, requisitions, correspondence, etc.).

1.3.3 Access to documents shall include making reasonably available privileged documents related to the Claims created by the Debtors. For purposes of this Section 1.3.3, "privileged" means either attorney-client privilege or work product protection (or both as the case may be) as those terms are defined in Federal Rule of Evidence 502(g).

1.3.4 For purposes of the transfer of documents, the Trustee is the assignee and successor to the Debtors in respect of the Claims and shall be treated as such in any review of confidentiality restrictions in the requested documents,

1.4 Cooperation Coordinators. Each Cooperating Party who is a signatory to this Agreement hereby designates the following two parties to serve as contacts for the Trustee, facilitating the Trustee's access to information provided for in this Agreement (each a "Cooperation Coordinator"): Steve Clapp and Tim Brown. The Cooperation Coordinators shall designate an alternate to deal with requests for access and information when neither Cooperation Coordinator is available. To the extent practicable, all requests for information, documentation or access to the Debtors' employees will be made to a Cooperation Coordinator, or if not available,

the alternate. Nothing herein shall preclude the Trustee from making requests to counsel to the Debtors, or from seeking information from sources other than the Cooperation Coordinators or the alternate, if such persons are not available or do not otherwise provide the information or access requested in a timely manner.

1.5 No Limitation on Access. Notwithstanding anything in this Agreement to the contrary, the parties acknowledge and agree that nothing herein shall limit the full exercise of the rights under applicable law of the Trustee to seek and obtain information, documents or to take depositions of any person by subpoena or otherwise pursuant to legal process, regardless of whether or not an obligation of cooperation is owed hereunder with respect to such information, documents or depositions or any demands made under this Agreement shall have been complied with in full or in part or any remedy with respect to any actual or purported breach or noncompliance with this Agreement has been sought; *provided, however*, that in connection with any exercise of rights by the Trustee to seek and obtain information, documents or to take depositions of any person by subpoena or otherwise pursuant to legal process, the Reorganized Debtors shall retain any objections or defenses to such exercise of rights that they may have under applicable law.

1.6 Preservation of Privilege and Defenses. Any attorney-client privilege, word-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) provided to the Trustee shall vest in the Trustee and its representatives, and the Trustee is authorized to take all necessary actions to effectuate the transfer of such privileges and available defenses.

1.7 General. This Agreement shall terminate automatically upon the termination of the Trust in accordance with the Trust Agreement.

1.8 Effectiveness. This Agreement shall become effective upon the Effective Date of the Plan.

1.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. This Agreement shall become effective when each party hereto shall have received counterparts thereof signed by all the other parties hereto.

1.10 Specific Performance. It is and agreed by the parties to this Agreement that money damages would be an insufficient remedy for any breach of this Agreement by any party and each non-breaching party shall be entitled to specific performance and injunctive or other equitable relief as a remedy of any such breach, including, without limitation, an order of the Bankruptcy Court or other court of competent jurisdiction requiring any party to comply promptly with any of its obligations hereunder.

1.11 Governing Law, Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee without regard to the rules of conflict of laws of the State of Tennessee or any other jurisdiction. Notwithstanding the foregoing consent to Tennessee jurisdiction, the parties agree that the Bankruptcy Court will have exclusive jurisdiction of all matters arising out of or in connection with this Agreement until the closing of the Chapter 11 Cases, and thereafter the parties agree that the United States

District Court for the Middle District of Tennessee shall have exclusive jurisdiction of all matters arising out of or in connection with this Agreement.

1.12 Severability; Validity. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but to the extent that any provision of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other persons or circumstances, shall not be affected thereby, unless doing so would alter the fundamental agreements expressed in this Agreement, and to such end, the provisions of this Agreement are agreed to be severable.

1.13 No Waiver. The Cooperating Party and Trustee agree that no failure or delay by either party in exercising any right, power or privilege hereunder will operate as a waiver thereof, and that no single or partial exercise thereof will preclude any other or further exercise thereof or the exercise of any right, power and privilege hereunder.

1.14 Entire Agreement. This Cooperation Agreement contains the entire agreement of the parties concerning the subject matter hereof, and no modification of this Cooperation Agreement or waiver of the terms and conditions hereof will be binding upon the parties unless approved in writing by the parties.

1.15 Authorization. Each of the undersigned individuals represents and warrants that he/she has the power and authority to enter into this Cooperation Agreement and bind their respective companies or trust as its authorized representatives.

1.16 Titles. The section titles used herein are for convenience only and shall not be considered in construing or interpreting any of the provisions of this Cooperation Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Cooperation Agreement or caused this Cooperation Agreement to be duly executed by their respective representatives thereunto duly authorized as of the day and year first above written.

**LIQUIDATING TRUSTEE**

[ENTITY]

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

Its:

**COOPERATING PARTY**

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