

J. Thomas Beckett, USB #5587
Brian M. Rothschild, USB #15316
Darren Neilson, USB #15005
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Telephone: 801.532.1234
Facsimile: 801.536.6111
TBeckett@parsonsbehle.com
BRothschild@parsonsbehle.com
DNeilson@parsonsbehle.com
ecf@parsonsbehle.com

Attorneys for Debtors

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

<p>In re</p> <p>PolarityTE, Inc., a Delaware corporation</p> <p style="text-align: center;">Debtor.</p>	<p>Case No. 23-22358-KRA</p> <p>Case No. 23-22360-KRA</p>
<p>In re</p> <p>PolarityTE, MD Inc., a Nevada corporation</p> <p style="text-align: center;">Debtor</p>	<p>Case No. 23-22361-KRA</p> <p>Chapter 11</p>
<p>In re</p> <p>PolarityTE, Inc., a Nevada corporation</p> <p style="text-align: center;">Debtor</p>	<p>Judge Kevin R. Anderson</p> <p style="text-align: center;">THIS DOCUMENT RELATES TO ALL DEBTORS</p>

**DEBTORS' CHAPTER 11 PLAN OF LIQUIDATION
DATED MAY 24, 2023**



PolarityTE, Inc., a Delaware corporation (“PTE”), PolarityTE, MD Inc., a Nevada corporation (“PTE MD”), and PolarityTE, Inc., a Nevada corporation (“PTE NV” and together with PTE and PTE MD, the “Debtors” and each individually, a “Debtor”), the debtors and debtors in possession in these Bankruptcy Cases, hereby propose the following plan of liquidation.

ARTICLE I DEFINITIONS AND CONSTRUCTION OF TERMS

For purposes of this Plan, the following terms shall have the meanings specified in this Article I. A term used but not defined herein that is defined in the Bankruptcy Code shall have the meaning ascribed to that term in the Bankruptcy Code. Wherever from the context it appears appropriate, each defined term shall include both the singular and the plural, and pronouns shall include the masculine, feminine and neuter, regardless of how stated. The words “herein,” “hereof,” “hereto,” “hereunder” and other words of similar import refer to the Plan as a whole and not to any particular section, sub-section, or clause contained in the Plan. The rules of construction contained in Section 102 of the Bankruptcy Code shall apply to the terms of this Plan. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof.

“Administrative Expense Claim” shall mean a Claim that is Allowed under Section 503(b) of the Bankruptcy Code and that is entitled to priority under Section 507(a)(1) of the Bankruptcy Code, including, without limitation—

- (a) fees and expenses of Professionals Allowed by an Order of the Bankruptcy Court, and
- (b) all fees and charges assessed against the Estate pursuant to 28 U.S.C. § 1930.

“Allowed” shall mean, with reference to any Claim—

- (a) a Claim that is listed in the Schedules and (i) is not listed as disputed, contingent or unliquidated, and (ii) is not a Claim as to which a proof of claim has been filed;
- (b) a Claim as to which a timely proof of claim has been filed by the Bar Date and either (i) no objection thereto or complaint respecting the amount or Allowance of the Claim, or application to estimate, equitably subordinate, or otherwise limit recovery, has been made or filed on or before any applicable deadline, or (ii) if an objection thereto, or application to estimate, equitably subordinate, or otherwise limit recovery has been interposed, the extent to which such Claim has been allowed (whether in whole or in part) by a Final Order;
- (c) a Claim arising from the recovery of property under Section 550 or 553 of the Bankruptcy Code and allowed in accordance with Section 502(h) of the Bankruptcy Code; or

(d) any Claim expressly allowed under this Plan or pursuant to the Confirmation Order.

“Avoidance Actions” shall mean Causes of Action arising or held by the Estate under Sections 502, 510, 541, 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code, or under related state or federal statutes and common law, including voidable transaction or similar laws.

“Bankruptcy Cases” shall mean the Debtors’ bankruptcy cases, Case No. 23-22358-KRA, Case No. 23-22360-KRA, and Case No. 23-22361-KRA, in the Bankruptcy Court.

“Bankruptcy Code” shall mean Title 11 of the United States Code, as amended from time to time, as applicable to the Bankruptcy Case.

“Bankruptcy Court” or “Court” shall mean the United States Bankruptcy Court for the District of Utah in which the Bankruptcy Cases are pending and, to the extent of any reference under 28 U.S.C. § 157, the unit of such District Court specified pursuant to 28 U.S.C. § 151.

“Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure as promulgated under 28 U.S.C. § 2075, and any local rules of the Bankruptcy Court.

“Bar Date” shall mean (i) October 4, 2023, with respect to a Claim against the Estate other than a Claim of a governmental unit; (ii) December 4, 2023, with respect to a Claim of a governmental unit against the Estate unless otherwise ordered by the Court; and (iii) with respect to any executory contract or unexpired lease, 30 days after such rejection as provided under Section 8.2 of the Plan.

“Business Day” shall mean any day other than a Saturday, Sunday, or legal holiday recognized in the State of Utah.

“Cash” shall mean lawful currency of the United States of America (including wire transfers, cashier’s checks drawn on a bank insured by the Federal Deposit Insurance Corporation, certified checks and money orders).

“Causes of Action” shall mean, without limitation, all actions, causes of action, defenses, liabilities, counterclaims, obligations, rights, suits, debts, sums of money, damages, judgments, Claims, Avoidance Actions or other proceedings to recover or obtain money or property and demands of any nature whatsoever, whether known or unknown, in law, equity or otherwise.

“Claim” shall mean a claim against a Person or its property as defined in Section 101(5) of the Bankruptcy Code, including, without limitation, (i) any right to payment, whether or not such right is reduced to judgment, and whether or not such right is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (ii) any right to an equitable remedy for breach of performance, if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, or is fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, and, for the

avoidance of doubt, includes Priority Claims, Rescission Claims, and General Unsecured Claims, but does not include Equity Interests.

“Class” shall mean those classes designated in Article III of the Plan.

“Collateral” shall mean any property or interest in property of the Estate subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable law.

“Confirmation Date” shall mean the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket in the Bankruptcy Case.

“Confirmation Order” shall mean the order of the Bankruptcy Court confirming the Plan pursuant to the provisions of the Bankruptcy Code.

“Disclosure Statement” shall mean the disclosure statement relating to the Plan, including, without limitation, all exhibits and schedules thereto, in the form approved by the Bankruptcy Court under Section 1125 of the Bankruptcy Code.

“Disputed Claim” shall mean a Claim as to which a timely objection, complaint, or request for estimation, or request to subordinate or otherwise limit recovery in accordance with the Bankruptcy Code and the Bankruptcy Rules, has been filed with the Court and has not been withdrawn or determined by Final Order or is not otherwise an Allowed Claim.

“Disputed Claim Amount” shall mean the amount set forth in a proof of claim relating to a Disputed Claim or an amount estimated pursuant to an order of the Bankruptcy Court in respect of a Disputed Claim in accordance with Section 502(c) of the Bankruptcy Code.

“Disputed Claims Reserve” shall have the meaning set forth in Section 6.4 hereof.

“Distribution Account” shall mean a deposit account established and maintained by the Liquidating Trustee to hold the funds of the Debtors that are to be distributed to holders of Allowed Claims in Classes 2 and 3 under the Plan, in accordance with the Liquidating Trust Agreement. Such funds shall include the excess funds of the Debtors as of the Effective Date that are not needed to pay Allowed Administrative Expenses, Allowed Priority Tax Claims, and Liquidating Trust Expenses, plus any additional net liquidation proceeds from the disposition by the Liquidating Trustee of any remaining property of the Estate and/or from the resolution by the Liquidating Trustee of any Causes of Action belonging to the Estate.

“Distribution Record Date” shall mean the Confirmation Date.

“Effective Date” shall mean the date which is thirty (30) days after the Confirmation Date, or if such date is not a Business Day, the next succeeding Business Day; *provided, however*, that if, as of such date, all conditions precedent to the occurrence of the Effective Date set forth in

Section 9.1 of the Plan have not been satisfied or waived, then the first Business Day immediately following the day upon which all such conditions have been satisfied or waived.

“Equity Interest” shall mean the interest of any holder of any ownership interest in the Debtors, any and all options, warrants and rights, contractual or otherwise, to acquire any membership interest in the Debtor, as such interests exist immediately prior to the Effective Date.

“Estate” shall mean the bankruptcy estates created in the Bankruptcy Cases under Section 541 of the Bankruptcy Code.

“Federal Judgment Rate” means the interest rate in effect under 28 U.S.C. § 1961, simple interest, which, for the avoidance of doubt, is 5.18 percent per annum.

“Final Order” shall mean an order or judgment which has not been reversed, stayed, modified or amended and, as to which (i) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for certiorari, review or rehearing is pending, or (ii) if appeal, review, re-argument or certiorari of the order has been sought, the order has been affirmed or the request for review, re-argument or certiorari has been denied and the time to seek a further appeal, review, re-argument or certiorari has expired, and as a result of which such order shall have become final and non-appealable in accordance with applicable law; *provided, however*, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not cause such order not to be a Final Order.

“General Unsecured Claim” shall mean a Claim that is not a Secured Claim and not a Claim entitled to priority of payment under Section 507 of the Bankruptcy Code.

“Initial Distribution Date” shall mean the date that is thirty (30) days after the Effective Date, or the next succeeding Business Day if such thirtieth day is not a Business Day.

“Lien” shall have the meaning set forth in Section 101(37) of the Bankruptcy Code; *except that* a lien that has been avoided in accordance with Sections 544, 545, 546, 547, 548, 549 or 553 of the Bankruptcy Code shall not constitute a Lien.

“Liquidating Trust” shall mean the Liquidating Trust established pursuant to the Liquidating Trust Agreement.

“Liquidating Trust Agreement” shall mean the Liquidating Trust Agreement attached as Exhibit 1 to the Plan.

“Liquidating Trustee” shall mean John H. Curtis, of Rocky Mountain Advisory, LLC, in his capacity as the Liquidating Trustee under the Liquidating Trust, and any successor trustee appointed under this Plan or the Liquidating Trust Agreement.

“Liquidating Trust Expenses” shall mean the expenses of the Liquidating Trustee in accordance with the Liquidating Trust Agreement.

“Person” shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association or organization, governmental unit or political subdivision thereof.

“Petition Date” shall mean June 6, 2023.

“Plan” shall mean this Chapter 11 Plan of Liquidation, including, without limitation, the exhibits, supplements, appendices and schedules hereto, either in their present form or as the same may be altered, amended or modified from time to time.

“Polarity” shall mean, collectively, PolarityTE, Inc., a Delaware corporation, PolarityTE, MD Inc., a Nevada corporation, and Polarity, Inc., a Nevada corporation, the Debtors in the Bankruptcy Cases.

“Priority Claims” shall mean any and all Claims (or portions thereof), if any, entitled to priority under Section 507(a) of the Bankruptcy Code other than Administrative Expense Claims and Priority Tax Claims.

“Priority Tax Claims” shall mean any Claim of a governmental unit entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

“Pro Rata” shall mean a proportionate share of the total distribution made at any particular time under this Plan to the holders of Allowed Claims in a Class, such that the ratio of the consideration distributed on account of an Allowed Claim in a Class to the amount of such Allowed Claim is the same as the ratio of the amount of the consideration distributed on account of all Allowed Claims in such Class to the total of all Allowed Claims in such Class.

“Professionals” shall mean (i) those Persons employed under an order of the Bankruptcy Court in accordance with Sections 327 or 1103 of the Bankruptcy Code and to be compensated for services pursuant to Sections 327, 328, 329, 330 and 331 of the Bankruptcy Code, or (ii) those Persons for which compensation and reimbursement is allowed by the Bankruptcy Court under Section 503(b)(4) of the Bankruptcy Code.

“Rescission Claim” shall mean arising any claim arising from the purchase and sale of any Equity Interests and subordinated under Bankruptcy Code Section 510(b).

“Sale Order” shall mean that certain Order (I) Authorizing and Approving the Sale and Transfer of Acquired Free and Clear of All Encumbrances (II) Authorizing and Approving the Purchased Contracts; (III) Waiving the Fourteen Day Stay of Fed. R. Bankr. P. 6004(h) and 6006(d); and (IV) Granting Related Relief (ECF 107).

“Schedules” shall mean the schedules of assets and liabilities, the list of holders of interests and the statements of financial affairs filed by the Debtors under Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules, lists and statements have been or may be supplemented or amended from time to time.

“Secured Claim” shall mean any Claim that is secured by a Lien on Collateral to the extent of the value of such Collateral, as determined in accordance with Section 506(a) of the Bankruptcy Code, or, in the event that such Claim is a claim of setoff under Section 553 of the Bankruptcy Code, to the extent of such setoff.

“Securities Litigation” shall mean that certain litigation styled *Battams v. Cohen, et al.*, case no 2:21-cv-00632-DBB-DBP pending in the United States District Court for the District of Utah.

“Trust Assets” shall have the meaning ascribed that term in the Liquidating Trust, which includes without limitation, all assets of the Estate as of the Confirmation Date and all Causes of Action.

ARTICLE II TREATMENT OF ALLOWED ADMINISTRATIVE EXPENSE CLAIMS AND ALLOWED PRIORITY TAX CLAIMS

2.1 **Non-Classification**. As provided in Section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims are not classified for the purposes of voting on or receiving distributions under the Plan. All such Claims are instead treated separately in accordance with the terms in this Article II.

2.2 **Administrative Expense Claims**.

(a) **General**. Except as otherwise agreed to by the Debtors and the holder of an Allowed Administrative Expense Claim, each such holder shall be paid in full in Cash on the later of (i) the date such Allowed Administrative Expense Claim becomes due in accordance with its terms, and (ii) the Effective Date. If the Debtors dispute any portion of an Administrative Expense Claim, the Debtors shall pay such Claim within thirty (30) days after the entry of a Final Order with respect to the allowance of such disputed Administrative Expense Claim.

(b) **U.S. Trustee’s Fees**. The United States Trustee’s accrued but unpaid quarterly fees shall be paid in full without prior approval pursuant to 28 U.S.C. § 1930 on or before the Effective Date or, to the extent due after the Effective Date, within thirty (30) days of such U.S. Trustee’s Fees coming due.

(c) **Professional Compensation and Expense Reimbursement Claims**.

(1) Each Professional shall file a final application for the allowance of compensation for services rendered and reimbursement of expenses incurred through and

including the Effective Date within thirty (30) days after the Effective Date. Any award of compensation or reimbursement granted by the Bankruptcy Court shall be paid (i) within fifteen (15) days of the entry of the order of the Bankruptcy Court approving such award, unless a stay is obtained, or (ii) upon such other terms as may be mutually agreed upon between such holder of an Allowed Administrative Expense Claim and the Debtors.

(2) All fees and expenses of Professionals for services rendered after the Effective Date in connection with the Bankruptcy Case and the Plan (including those on behalf of the Liquidating Trustee) shall be paid by the Liquidating Trustee subject to the terms and procedures specified in the Liquidating Trust without the need for further Bankruptcy Court order or authorization.

2.3 **Priority Tax Claims.** At the sole election of the Liquidating Trustee, each holder of an Allowed Priority Tax Claim shall be paid either (i) upon such terms as may be agreed to between the Debtors (prior to the Effective Date) or the Liquidating Trust (on or after the Effective Date) and such holder of an Allowed Priority Tax Claim, (ii) in full in Cash on the later of the Effective Date or the date that such Allowed Priority Tax Claim would have been due if the Bankruptcy Case had not been commenced, or (iii) in regular annual installment payments over a period ending no later than five (5) years after the Petition Date, in accordance with Bankruptcy Code Section 1129(a)(9)(C).

ARTICLE III CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

Claims, other than Administrative Expense Claims and Priority Tax Claims, shall be classified for all purposes, including voting on, confirmation of, and distribution pursuant to the Plan, as follows:

Class 1 - **Priority Claims.** Class 1 shall consist of all Allowed Priority Claims against the Debtors.

Class 2 - **General Unsecured Claims.** Class 2 shall consist of all Allowed General Unsecured Claims against the Debtors.

Class 3 - **Equity Interests and Rescission Claims.** Class 3 shall consist of all Equity Interests in the Debtors and Rescission Claims.

ARTICLE IV TREATMENT OF CLAIMS AND EQUITY INTERESTS

4.1 Class 1 - Priority Claims.

(a) **Impairment and Voting.** Class 1 is unimpaired under the Plan. Holders of Allowed Class 1 Claims are not entitled to vote to accept or reject the Plan and are deemed to have accepted the Plan.

(b) Treatment. The Liquidating Trustee shall pay holders of Allowed Class 1 Claims, in full satisfaction of their Claims, in accordance with Bankruptcy Code Section 1129(a)(9), either (i) deferred cash payments beginning on the effective date of a value equal to the allowed amount of such Priority Claim; or (ii) regular cash annual installment payments over a period ending no later than five (5) years after the Effective Date equal to the allowed amount of such Priority Claim plus interest at the Federal Judgment Rate from the Petition Date through the date of payment.

4.2 Class 2 - General Unsecured Claims.

(a) Impairment and Voting. Class 2 is unimpaired under the Plan. Holders of Allowed Class 2 Claims are not entitled to vote to accept or reject the Plan and are deemed to have accepted the Plan.

(b) Treatment. In full satisfaction of their Claims, holders of Allowed Class 2 Claims shall be given their pro rata share of distributions as beneficiaries of the Liquidating Trust until they have received payment in full plus interest at the Federal Judgment Rate from the Petition Date through the date of payment. The Liquidating Trustee shall pay holders of Allowed Class 2 Claims their Pro Rata share (subject to the Disputed Claims Reserve) as funds become available in the Distribution Account, subject to the Liquidating Trustee's discretion and required holdbacks for potential for Allowed Claims.

(c) Transferees of Claims. If a Person has become the transferee of an Allowed General Unsecured Claim after the Petition Date and before the date set by the Court for determining the identity of the holders of Claims entitled to vote on the Plan, such transferee shall be entitled to a separate vote pursuant to this Section for each such Allowed General Unsecured Claim. If a Person has become the transferee of an Allowed General Unsecured Claim after the Petition Date and before the Distribution Record Date, such transferee shall be entitled to a distribution pursuant to this Section for each such Allowed General Unsecured Claim.

4.3 Class 3 - Equity Interests and Rescission Claims.

(a) Impairment. Class 3 is impaired under the plan. On the Effective Date, all Equity Interests shall be cancelled. Each holder of an Equity Interest or Rescission Claim is deemed to have rejected the Plan and is not entitled to vote to accept or reject the Plan.

(b) Treatment. Class 3 is impaired under the Plan. On the terms and conditions set forth in the Liquidating Trust (including the establishment of a reserve), holders of Equity Interests in the Debtors shall receive their Pro Rata share of remaining Cash after Class 2 (General Unsecured Claims) have received their distributions and all Equity Interests in the Debtors shall be cancelled. Claims arising from the purchase or rescission of Equity Interests subordinated under Bankruptcy Code Section 510(b) shall be determined by the Bankruptcy Court in shares equivalent to Equity Interests. On the terms and conditions set forth in the Liquidating Trust (including the establishment of a reserve), in full satisfaction of their Rescission Claims, holders of Equity

Interests shall be entitled to their Pro Rata share of remaining Cash after Class 2 (General Unsecured Claims) have received their distributions pro rata with Equity Interests in the Debtors.

ARTICLE V MEANS FOR IMPLEMENTATION OF THE PLAN

5.1 **Substantive Consolidation.** The Plan contemplates, and confirmation of the Plan shall authorize, approve and cause, the substantive consolidation of PTE, PTE MD, and PTE NV such that (i) the assets of each of the Debtors will be aggregated and administered, managed, liquidated and distributed, as provided for in the Plan, for the benefit of holders of Allowed Claims of the Debtors and holders of Equity Interests of the Debtors; (ii) the liabilities of each of the Debtors shall be deemed merged; (iii) every Claim filed or to be filed in the Bankruptcy Cases, against each of the Debtors individually shall be deemed filed against the Debtors collectively; and (iv) all claims between the Debtors shall be cancelled and disallowed.

5.2 **Administration of the Estate.** Under the terms of the Liquidating Trust Agreement, the Liquidating Trustee shall administer the Estate on and after the Effective Date. As of the Effective Date, all officers of the Debtors will be deemed terminated. The Liquidating Trustee shall hold all rights, powers, and duties of a trustee of the Estate under Chapter 11 of the Bankruptcy Code and the sole officer of the Debtors vested with all corporate authority. The Liquidating Trustee shall jointly reduce all property of the Estate and Causes of Action to Cash and distribute such Cash pursuant to the provisions of this Plan. The Liquidating Trustee shall use such Cash to pay the holders of Allowed Claims until such Cash is exhausted.

5.3 **Vesting of Property.** On the Effective Date, the Trust Assets, without any further act or deed of the Liquidating Trustee or of the Bankruptcy Court, shall be transferred from the Debtors to the Liquidating Trust, free and clear of all liens, Claims, and interests (except to the extent the Plan specifically provides otherwise), and shall become the corpus of the Liquidating Trust. On and after the Effective Date, the Debtors shall execute and deliver such instruments and other documents as are necessary, appropriate or deemed advisable by the Liquidating Trustee, to transfer title to and ownership of the Trust Assets to the Liquidating Trust.

5.4 **Vesting of Claims and Standing.** From and after the Effective Date, Claims and Causes of Action belonging to the Debtors, whether pending on the Effective Date or otherwise, without any further act or deed of the Liquidating Trustee or of the Bankruptcy Court, shall be transferred from the Debtors to the Liquidating Trust, free and clear of all liens, Claims, and interests (except to the extent the Plan specifically provides otherwise), and shall become the corpus of the Liquidating Trust. Thereafter, the Liquidating Trustee will have standing to initiate, pursue, abandon, or settle all Claims and Causes of Action formerly belonging to the Debtors, including Avoidance Actions, as if the Debtors.

5.5 **Liquidation of Remaining Property of Estate.** Following the Effective Date, the Liquidating Trustee shall conduct an orderly liquidation of the remaining property of the Estate consistent with the terms of the Plan and the Liquidating Trust.

5.6 **Successor Trustee.** If the Liquidating Trustee resigns, becomes incapacitated, is disqualified, dies, or becomes otherwise unable or unwilling to continue to serve in such capacity, then a successor shall be appointed according to the terms of the Liquidating Trust. In the event no successor is available under the terms of the Liquidating Trust, the Court shall appoint a successor Liquidating Trustee either *sua sponte* or upon motion of any interested party and notice to all creditors on the Debtors' mailing matrix.

5.7 **Liquidating Trust Agreement.** The Liquidating Trust Agreement is incorporated herein by reference. The Liquidating Trust shall be established for and on behalf of holders of General Unsecured Claims and Equity Interests and shall be treated for federal income tax purposes as a grantor trust with the Debtors being the grantors.

5.8 **Employment of Professionals.** The Liquidating Trustee will be John H. Curtis of Rocky Mountain Advisory, LLC who will be compensated for his post-confirmation services at his customary hourly rate, which is currently \$365 per hour, subject to yearly increase, for and in the range of \$110 to \$365 per hour for other employees and staff of Rocky Mountain Advisory, LLC. The Liquidating Trustee may employ attorneys, accountants, or other professionals as he may deem appropriate and pay such professionals reasonable fees and expenses as Liquidating Trust Expenses. Professionals employed by the Liquidating Trustee shall not be subject to Bankruptcy Court approval, and their compensation shall not be subject to Bankruptcy Court approval. The Debtors anticipates that the Liquidating Trustee will engage other professionals at Rocky Mountain Advisory, LLC and Parsons Behle & Latimer as professionals to assist him based on their expertise and familiarity with and prior experience in the Bankruptcy Case.

5.9 **Termination of Liquidating Trust.** Upon liquidation of all Trust Assets, payment of all fees, expenses, taxes of the Liquidating Trust, and final distributions to holders of Allowed Class 2 (General Unsecured Claims) and Class 3 (Equity Interests and Rescission Claims), the Liquidating Trust and the responsibilities of the Liquidating Trustee shall terminate.

5.10 **Destruction of Books and Records.** Upon termination of the Liquidating Trust, the Liquidating Trustee may, without further order of the Bankruptcy Court, but subject to any applicable non-bankruptcy law relating to the retention of books and records, may destroy any books and records that the Liquidating Trustee determines are no longer necessary for the implementation of the Plan.

5.11 **Dismissal of Securities Litigation.** Upon the Effective Date, the Securities Litigation will be and is hereby deemed to be dismissed as to the Debtors and all plaintiffs therein will be directed by the notice of dismissal to file a proof of claim for any Claim they assert against any of the Debtors, which proofs of claim shall be treated under this Plan, whether as Claims, Rescission Claims, or Equity Interests.

5.12 **Filing Final Tax Returns.** After the Effective Date, the Liquidating Trustee will prepare and timely file final tax returns for the Debtors. The Liquidating Trustee may employ professionals without further orders of the Court to assist him.

**ARTICLE VI
IMPLEMENTATION OF THE PLAN**

6.1 Method of Distributions Under the Plan.

(a) In General. Subject to Bankruptcy Rule 9010, all distributions under the Plan to be made by the Liquidating Trustee to the holder of each Allowed Claim and Equity Interests shall be mailed by United States First-Class mail, postage prepaid, to the address of such holder as listed on the Schedules as of the Distribution Record Date, unless the Liquidating Trustee has been notified in writing of a change of address, including, without limitation, by the filing of a proof of claim or notice of transfer of claim filed by such holder that provides an address for such holder different from the address reflected on the Schedules. The Liquidating Trustee shall have no obligation to locate such holders whose distributions or notices are properly mailed but nevertheless returned.

(b) Form of Distributions. Any payment of Cash made by the Liquidating Trustee pursuant to the Plan shall be made by check; provided, however, that after the occurrence of the Effective Date, the Liquidating Trustee is not obligated to make any Cash payment under the Plan unless the payment exceeds fifty dollars (\$50); provided, further, that Cash equal to 100% of the distributions to which the holder of a Claim would be entitled under the Plan if the payment to such holder was less than or equal to fifty dollars (\$50) shall be maintained in a reserve for the benefit of such holder until an aggregate of at least fifty (\$50) dollars is payable to such holder and at such time the holder shall receive a payment equal to 100% of the distributions to which it would otherwise be entitled. The foregoing shall apply to interim distributions made by the Liquidating Trustee. At the time of final distribution, the Liquidating Trustee shall make cash payments to the holder of a Claim if the amount is less than fifty dollars (\$50) but greater than ten dollars (\$10).

(c) Distributions to be on Business Days. Any payment or distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day.

(d) Distributions to Holders as of the Distribution Record Date. As of the close of business on the Distribution Record Date, the claims register shall be closed. The Liquidating Trustee shall have no obligation to recognize any transfer of any Claims occurring after the close of business on the Distribution Record Date and shall instead be entitled to recognize and deal for all purposes under the Plan with only those holders of record as of the close of business on the Distribution Record Date.

(e) Withholding Taxes on Distributions. The Liquidating Trustee may, but is not obligated to, withhold from any Cash or property distributed under the Plan such amounts as the Liquidating Trustee is obligated under non-bankruptcy law to withhold and transmit to taxing authorities.

(f) Donation of De Minimus Amounts. In the event that the Liquidating Trust has been fully administered other than having Cash on hand in an amount such that the cost to

make a distribution to creditors would equal or exceed the amount on hand for distribution, the Liquidating Trustee may donate the Liquidating Trust's remaining Cash to a charitable organization that is a qualified tax exempt entity under Internal Revenue Code § 501(c)(3).

6.2 **Objections to Disputed Claims.** Any objections to (including motions to subordinate) Claims may be prosecuted by the Liquidating Trustee, or any other party in interest. Except as otherwise provided by order of the Bankruptcy Court, the Liquidating Trustee, or any other party in interest may file an objection to any Claim until 180 days after the Effective Date.

6.3 **Estimation of Claims.** The Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate any Disputed Claim pursuant to Section 502(c) of the Bankruptcy Code, and the Bankruptcy Court shall have jurisdiction to estimate such Claim at any time, including, without limitation, during litigation concerning such Claim or an objection to such Claim. The Liquidating Trustee shall be entitled to request that the Bankruptcy Court determine either the Allowed amount of such Claim or a maximum limitation on such Claim. If the Bankruptcy Court determines the maximum limitation of such Claim, such determination shall not preclude the Liquidating Trustee from pursuing any additional proceedings to object to any ultimate payment of such Claim. If the Bankruptcy Court determines the Allowed amount of such Claim, the amount so determined shall be deemed the amount of the Disputed Claim for all purposes under this Plan. All such proceedings are cumulative and not exclusive remedies.

6.4 **Disputed Claims Reserve.**

(a) **Establishment and Maintenance of Disputed Claims Reserve.** The Liquidating Trustee shall maintain a reserve (the "Disputed Claims Reserve") equal to 100% of the distributions to which holders of Disputed Claims would be entitled under the Plan if such Disputed Claims were Allowed Claims or such lesser amount as determined by a Final Order.

(b) **Distributions Upon Allowance of Disputed Claims.** The holder of a Disputed Claim that becomes an Allowed Claim subsequent to the Initial Distribution Date shall receive distributions of Cash from the Disputed Claims Reserve as soon as practical following the date on which such Disputed Claim becomes an Allowed Claim pursuant to a Final Order. Such distributions shall be made in accordance with the Plan based upon the distributions that would have been made to such holder under the Plan if the Disputed Claim had been an Allowed Claim on or prior to the Initial Distribution Date. No holder of a Disputed Claim shall have any claim against the Disputed Claims Reserve, the Distribution Account, or the Liquidating Trustee with respect to such Claim until such Disputed Claim shall become an Allowed Claim, and no holder of a Disputed Claim shall have any right to interest on such Disputed Claim.

6.5 **Reversion of Unclaimed Checks and Disputed Claims Reserve.** The following amounts shall revert and be vested in the Estate free and clear of any claim or interest of any holder of a Claim under the Plan: (i) the amount of any checks issued for distributions under the Plan that

remain uncashed for a period of ninety (90) days after the date of such distribution,¹ and (ii) to the extent that a Disputed Claim is not Allowed or becomes an Allowed Claim in an amount less than the Disputed Claim Amount, the excess of the amount of Cash in the Disputed Claims Reserve attributable to such Disputed Claim over the amount of Cash actually distributed on account of such Disputed Claim.

6.6 Retention and Preservation of Claim Objections and Causes of Action.

Pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code, upon occurrence of the Effective Date, the Liquidating Trustee's rights to object to all Claims asserted against the Estate and all of the Debtors' or Estate's Causes of Action, including without limitation (1) preference actions under Section 547 of the Bankruptcy Code against all persons that received transfers from the Debtors in the one (1) year prior to the Petition Date; (2) Causes of Action asserted in any adversary proceeding that is pending as of the Confirmation Date; (3) all Claims and Causes of Action disclosed in the Schedules, which are incorporated herein by reference; and (4) any and all other Claims and Causes of Action that the Debtors hold preconfirmation, including, without limitation, Claims for unpaid accounts receivable and fraudulent transfer, shall vest in the Liquidating Trust. Thereafter, the Liquidating Trustee shall have standing to bring all Claims and Causes of Action for the benefit of and in accordance with the terms of the Liquidating Trust.

Unless a Claim or Cause of Action against any Person is expressly waived or released in the Plan or any Final Order of the Bankruptcy Court, the Estate and the Liquidating Trust expressly reserve such Claim or Cause of Action for later adjudication (including without limitation, Claims and Causes of Action not specifically identified or which the Liquidating Trustee may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Liquidating Trustee at this time or facts and circumstances which may change or be different from those which the Liquidating Trustee now believe to exist) and, therefore, no preclusion doctrine, including without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claims preclusion, waiver, estoppel (judicial, equitable, or otherwise) or laches shall apply to such Claims or Causes of Action upon or after the confirmation or consummation of the Plan based on the Disclosure Statement, the Plan, or the Confirmation Order, except where such Claims or Causes of Action have been expressly released in the Plan or any other Final Order of the Bankruptcy Court.

**ARTICLE VII
VOTING ON THE PLAN**

7.1 Voting of Claims. Each member of an impaired Class that retains or receives property under the Plan shall be entitled to vote separately to accept or reject the Plan and indicate such vote on a duly executed and delivered ballot as provided in such order as is entered by the

¹ Any person or entity that (i) receives a check issued for a distribution under the Plan and (ii) fails to cash such check for a period of ninety (90) days after the date of such distribution forfeits any rights to receive future distributions under the Plan and will not receive further distributions.

Bankruptcy Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan.

7.2 **Nonconsensual Confirmation.** If any impaired Class entitled to vote shall not accept the Plan by the requisite statutory majorities provided in Sections 1126(c) or 1126(d) of the Bankruptcy Code, as applicable, or if any impaired class is deemed to have rejected the Plan, the Debtors reserve the right (i) to confirm the Plan under Section 1129(b) of the Bankruptcy Code, and (ii) to amend the Plan in accordance with Section 11.6 hereof to the extent necessary to obtain Confirmation.

ARTICLE VIII EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1 **Executory Contracts and Unexpired Leases.** To the extent not already rejected by Order of the Court, on the Effective Date, all executory contracts and unexpired leases to which a Debtor is a party shall be deemed rejected except for any executory contract or unexpired lease that (i) has been assumed pursuant to a Final Order of the Bankruptcy Court entered before the Effective Date or (ii) is the subject of a separate motion to assume and assign, or to reject, filed under Section 365 of the Bankruptcy Code by the Debtors before the Effective Date.

8.2 **Rejection Damage Claims.** If the rejection of an executory contract or unexpired lease by the Debtors pursuant to this Article VIII results in a Claim for damages to the other party or parties to such contract or lease, any Claim for such damages, if not heretofore evidenced by a filed proof of claim, shall be forever barred and shall not be enforceable against the Estate, or their respective properties or agents, successors, or assigns, unless a proof of claim is filed with the Bankruptcy Court and served on the Liquidating Trustee on or before thirty (30) days following the Confirmation Date. Unless otherwise ordered by the Bankruptcy Court or provided in the Plan, all such Claims for which proofs of claim are timely filed will be treated as General Unsecured Claims under the Plan. The Liquidating Trustee shall have the right to object to any such rejection damage claims filed.

8.3 **Continued Effectiveness of Certain Settlement Agreements and Orders.** Notwithstanding anything else in this Article or the Plan, the following agreements and Court orders will remain effective following the Effective Date:

- (a) The Sale Order; and
- (b) All orders approving payment of Professional Compensation and Expense Reimbursement.

**ARTICLE IX
CONDITIONS PRECEDENT TO EFFECTIVE DATE**

9.1 **Conditions Precedent to Effectiveness.** The Plan shall not become effective, and the Effective Date shall not occur unless and until the following conditions shall have been satisfied or waived:

(a) the Confirmation Order, in form and substance reasonably acceptable to the Debtors, shall have been entered by the Bankruptcy Court and shall have become a Final Order;

(b) all actions, other documents, and agreements necessary to implement the Plan shall have been executed, delivered and, if necessary, properly recorded, and shall have become effective;

(c) the Estate shall have sufficient Cash to meet all Cash funding obligations under the Plan required to be made on the Effective Date and the Initial Distribution Date.

9.2 **Waiver of Conditions.** The Debtors may waive one or more of the conditions precedent to the effectiveness of the Plan set forth in Section 9.1 above, except that the Debtors may not waive the condition that the Estate will have sufficient Cash to meet all payment and funding obligations under the Plan on the Effective Date and the Initial Distribution Date.

**ARTICLE X
RETENTION OF JURISDICTION**

10.1 **Retention of Jurisdiction.** After the Effective Date, the Bankruptcy Court shall have exclusive jurisdiction of the following specified matters arising out of, and related to, the Bankruptcy Cases and the Plan pursuant to, and for the purposes of, Sections 105(a) and 1142 of the Bankruptcy Code:

(a) to hear and determine any objections to the allowance of any Claims or any controversies as to the classification of any Claims or estimate any Disputed Claim;

(b) to hear and determine any and all applications by Professionals for compensation and reimbursement of expenses;

(c) to hear and determine any and all pending applications for the rejection or assumption of executory contracts and unexpired leases, and fix and allow any Claims resulting therefrom;

(d) to enforce the provisions of the Plan subject to the terms hereof;

(e) to correct any defect, cure any omission, approve permitted modifications, or reconcile any inconsistency in the Plan or in the Confirmation Order as may be necessary to carry out the purpose and the intent of the Plan;

- (f) to determine any Claim or liability to a governmental unit that may be asserted as a result of the transactions contemplated herein;
- (g) to hear and determine matters concerning state, local, and federal taxes in accordance with Sections 346, 505 and 1146 of the Bankruptcy Code; and
- (h) to determine such other matters as may be provided for in the Confirmation Order.

ARTICLE XI MISCELLANEOUS

11.1 **Continuation of Injunctions or Stays Until Effective Date.** All injunctions or stays provided for in the Bankruptcy Case under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

11.2 **Injunction Relating to the Plan.** As of the Effective Date, all Persons are hereby permanently enjoined from commencing or continuing, in any manner or in any place, any action or other proceeding, whether directly, indirectly, derivatively or otherwise against the Debtors or their Estate, on account of, or respecting any Claims, debts, rights, Causes of Action or liabilities treated pursuant to the Plan, except to the extent expressly permitted under the Plan. Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective present, future, or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

11.3 **Bar Date for Administrative Claims.** All applications for allowance of Administrative Claims other than (a) fees and expenses of Professionals Allowed pursuant to an Order of the Bankruptcy Court (which are governed by Section 2.2(c) of the Plan), and (b) fees and charges assessed against the Estate pursuant to 28 U.S.C. § 1930, shall be filed not later than thirty (30) days after the Effective Date. All Administrative Claims not filed within thirty (30) days after the Effective Date shall be and hereby are forever barred. The deadline in the preceding sentence shall be construed and have the same force and effect as a statute of limitations. The Liquidating Trustee shall provide notice to all creditors listed on the Bankruptcy Court mailing matrix of this bar date within sixty (60) days after the Effective Date. The Bankruptcy Court shall determine all Administrative Claims.

11.4 **Default of Plan.** In the event of any default of the provisions of this Plan, a creditor or party in interest aggrieved by such default may provide written notice to the Liquidating Trustee. The notice of default must describe with specificity the nature of the default alleged and the steps required to cure such default. The Liquidating Trustee shall have thirty (30) days after receipt of notice of default to cure such default. If the default is not cured within thirty (30) days after receipt of a notice of default, then a creditor or party in interest aggrieved by such default may apply to the Bankruptcy Court to compel compliance with the applicable provisions of the Plan. The

Bankruptcy Court, after notice and a hearing, shall determine whether a default occurred, and if a default occurred, whether such default has been cured. Upon finding a material default, the Bankruptcy Court may issue such orders as may be appropriate, including an order compelling compliance with the pertinent provisions of the Plan.

11.5 **Setoffs.** Except as otherwise provided in this Plan, nothing contained in this Plan shall constitute a waiver or release by the Estate of any rights or setoff the Estate may have against any Person.

11.6 **Amendment or Modification of the Plan.** Alterations, amendments or modifications of the Plan may be proposed in writing by the Debtors at any time prior to the Confirmation Date, provided that the Plan, as altered, amended or modified, satisfies the conditions of Sections 1122, 1123, and/or 1127 of the Bankruptcy Code, and the Debtors shall have complied with Section 1125 of the Bankruptcy Code. The Plan may be altered, amended or modified at any time before or after the Confirmation Date and before substantial consummation, provided that the Plan, as altered, amended or modified, satisfies the requirements of Sections 1122, 1123, and/or 1127 of the Bankruptcy Code, and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as altered, amended or modified, under Section 1129 of the Bankruptcy Code. A holder of a Claim or Equity Interests that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim or Equity Interests of such holder. The Debtors may, without notice to holders of Claims insofar as it does not materially and adversely affect the interests of any such holders, correct any defect or omission in this Plan and any exhibit hereto.

11.7 **Severability.** If, prior to the Confirmation Date, any term or provision of the Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court may, upon the request of the Debtors, alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alternation or interpretation. The Confirmation Order shall constitute a judicial determination that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable according to its terms.

11.8 **Revocation or Withdrawal of the Plan.** The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan prior to the Confirmation Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall constitute or be deemed a waiver or release of any Claims by or against the Estate or any other Person or to prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Estate.

11.9 **Binding Effect.** The rights, duties and obligations of any Person named or referred to in this Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such Person.

11.10 **Notices.** All notices, requests and demand to or upon the Liquidating Trustee shall only be effective if in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and confirmed, addressed as follows:

If to the Liquidating Trustee:

with a Copy to:

John H. Curtis
ROCKY MOUNTAIN ADVISORY, LLC
15 W. South Temple, Suite 500
Salt Lake City, 84101

Darren Neilson
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111

11.11 **Governing Law.** Except to the extent the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Utah, without giving effect to the principles of conflicts of law of such jurisdiction.

11.12 **Post-Confirmation Fees, Reports, Closing and Reopening the Case, and Final Decree.**

(a) **Post-Confirmation Payments to United States Trustee and Report.** Until entry of an Order closing, dismissing, or converting the Bankruptcy Case, any quarterly payments due to the office of the United States Trustee shall be paid in accordance with 28 U.S.C. § 1930(a)(6) by the Liquidating Trustee. The Liquidating Trustee shall be responsible for the filing of post-confirmation reports until the closure of the Bankruptcy Case and/or a final decree is entered.

(b) **Closing the Bankruptcy Case.** As soon as the Liquidating Trustee determines that there is no further need for administration of the Bankruptcy Cases by the Bankruptcy Court, the Bankruptcy Cases shall be closed pursuant to 11 U.S.C. § 350 upon (i) the filing of a report and recommendation to close the Bankruptcy Cases, (ii) after twenty-eight (28) days' notice to parties in interest, and (iii) the entry of an appropriate final decree and/or Order by the Court closing the Bankruptcy Cases. Absent an order extending the time for entry of a final decree entered after notice hearing and opportunity for hearing, a final decree closing the Bankruptcy Case shall be entered not later than one (1) year after the Confirmation Date and is anticipated to be entered as soon as the Effective Date. The Liquidating Trustee will comply with Local Rule 3022-1 in seeking entry of a final decree. Subject to the Bankruptcy Court's discretion, the Bankruptcy Case may be closed notwithstanding that (i) the Liquidating Trustee is still pursuing or contemplating pursuing the Causes of Action and (ii) distributions remain to be paid under the Plan. Notwithstanding the closing of the Bankruptcy Case, the Court will retain

jurisdiction over all Causes of Action and Claims of the Debtors, the Estate, or the Liquidating Trustee whether commenced before or after the closing of the Bankruptcy Case.

(c) **Reopening Case.** At any time, the Liquidating Trustee may obtain entry of an order reopening the Bankruptcy Cases to obtain any relief or order from the Bankruptcy Court consistent with Section 10.1. Although the Liquidating Trustee may seek such relief on an ex parte basis, the Liquidating Trustee, as the case may be, shall give notice of its motion or other request to the United States Trustee. Except as expressly provided in Section 11.4 of this Plan, the Liquidating Trustee shall not be required to reopen the Bankruptcy Case to exercise any of the Default Remedies set forth in Section 11.4 of the Plan.

11.13 **Headings.** Headings are used in the Plan for convenience and reference only and shall not constitute a part of the Plan for any other purpose.

11.14 **Filing of Additional Documents.** On or before substantial consummation of the Plan, the Debtors or the Liquidating Trustee shall file with the Bankruptcy Court any agreements or other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

11.15 **Inconsistency.** In the event of any inconsistency between the Plan and the Disclosure Statement, or any other instrument or document created or executed pursuant to the Plan, the terms of the Plan shall govern.

Dated this 24th day of May, 2024.

PARSONS BEHLE & LATIMER

/s/ Darren Neilson
DARREN NEILSON
Attorneys for Debtors

EXHIBIT 1

Liquidating Trust Agreement

LIQUIDATING TRUST AGREEMENT

THIS LIQUIDATING TRUST AGREEMENT (this “Agreement”) is established pursuant to the Debtors’ Chapter 11 Plan of Liquidation Plan (the “Plan”) filed by PolarityTE, Inc., a Delaware corporation, PolarityTE, MD Inc., a Nevada corporation, and Polarity, Inc., a Nevada corporation (collectively, the “Debtors”) and is accepted by the Trustee for the benefit of the Beneficiaries and shall be effective upon entry of the Confirmation Order.

WHEREAS, on _____, 2024, the Plan was confirmed by the United States Bankruptcy Court for the District of Utah (the “Bankruptcy Court”) under Title 11 of the United States Code (the “Bankruptcy Code”);

WHEREAS, the Plan provides for, among other things, the creation of a liquidating trust for the sole and exclusive benefit of the Beneficiaries;

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

WHEREAS, the Plan provides for and requires the appointment of the Trustee to carry out this Agreement as set forth in Section 5.2 of the Plan;

WHEREAS, the Trust is established for the purpose of collecting, holding, administering, distributing, and liquidating the Trust Assets for the Beneficiaries and to object to and liquidate claim amounts and priorities in accordance with the terms of this Agreement and the Plan and with no objective to continue or engage in the conduct of a trade or business, except to the extent necessary to, and consistent with, the Plan and the liquidating purpose of the Trust; and

WHEREAS, pursuant to the Plan, the Trust is intended to be treated as a grantor trust for federal income tax purposes within the meaning of Sections 671-677 of the Internal Revenue Code of 1986, as amended (the “IRC” or “Tax Code” and applicable Treasury Regulations “Tax Regulations”);

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

1. Definitions. For purposes of this agreement, all capitalized terms shall have the meanings ascribed to them in the Plan, and in addition thereto, the following terms shall have the following meanings:

1.1 Beneficiaries. “Beneficiary” or “Beneficiaries,” as used herein, shall mean the holders of Allowed Claims and Equity Interests under the Plan.

1.2 Cash Available for Distribution. “Cash Available for Distribution,” as used herein, shall mean all proceeds of collections, sale or settlement with respect to the Trust Assets following payment of (i) expenses of administration of the Trust Assets as appropriate or as required by the

Plan, including the establishment of the Disputed Claims Reserve as required by the Plan; (ii) expenses associated with the disposition, collection, sale, or liquidation of the Trust Assets; (iii) all taxes, fees, levies, assessments, or other governmental charges incurred by the Trust and not otherwise paid out of a reserve; (iv) fees, expenses, and other compensation of the Trustee or Trustee's assistants or professionals engaged by the Trust in connection with the administration of the Trust Assets or as permitted in the Plan; and (v) a reserve, if and to the extent deemed necessary by the Trustee to pay future expenses of the Trust, the Trustee and professionals engaged by the Trust.

1.3 Permitted Investment. "Permitted Investment," as used herein, shall mean any of the following: (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency thereof maturing within ninety (90) days from the date of acquisition thereof; (ii) certificates of deposit, maturing no more than ninety (90) days from the date of creation thereof, issued by commercial banks incorporated under the laws of the United States of America, each having combined capital, surplus and undivided profits of not less than \$200,000,000 and having a rating of "A" or better by a nationally recognized rating agency; (iii) time deposits, maturing no more than thirty (30) days from the date of creation thereof with commercial banks or savings banks each having membership in the Federal Deposit Insurance Corporation; and (iv) revenue and tax anticipation bonds and notes issued by states of the United States of America.

1.4 Trust. "Trust," as used herein, shall mean the Liquidating Trust established pursuant to the terms of this Agreement and the Plan.

1.5 Trust Assets. "Trust Assets," as used herein, shall mean all of the following assets conveyed by the Debtors and the Estate to the Trust on the Effective Date of the Plan, including the proceeds and/or income related thereto:

- (a) All Cash of the Debtors or the Estate;
- (b) All Causes of Action of the Debtors or the Estate;
- (c) All books and records of the Debtors or the Estate;
- (d) All bank accounts, merchant accounts, and other accounts of the Debtors or the Estate;
- (e) All rights of the Debtors or the Estate under any agreements, settlement agreements, Court orders, or other documents to the extent still in effect immediately prior to the Effective Date; and
- (f) All other property of the Debtors and the Estate of any nature and kind whatsoever wherever situated.

1.6 Trustee. “Trustee,” as used herein, shall mean (a) initially, John H. Curtis of Rocky Mountain Advisory, LLC, and (b) any successor or replacement Liquidating Trustee, as that term is defined under the Plan and pursuant to Section 5.6 of the Plan.

2. Creation of the Trust.

2.1 Purpose of the Trust. The Debtors and the Trustee hereby constitute and create the Trust for the sole purpose of (i) administering the Trust Assets of the Trust in an orderly fashion, including liquidating and reducing to cash the Trust Assets, litigating in an orderly fashion the Causes of Action and distributing the proceeds therefrom and any other Cash Available for Distribution pursuant to the Plan; (ii) resolving Disputed Claims; and (iii) distributing cash from the Disputed Claims Reserve, pursuant to the Plan.

2.2 Acceptance by Trustee. The Trustee is willing, and does hereby accept the appointment, to serve as Trustee, and to hold and administer the Trust Assets in trust for the sole benefit of the Beneficiaries pursuant to the terms of this Agreement. In accepting the trust hereby created, the Trustee acts solely as trustee hereunder, not in his individual capacity, and will serve without bond.

2.3 Name of the Trust. The Trust established hereby shall bear the name Polarity Liquidating Trust. In connection with the exercise of the powers as Trustee, the Trustee shall use this name, or such variation thereon, as he sees fit.

2.4 Vesting of Trust Assets. Upon the Confirmation Date, without further order of the Bankruptcy Court, the Trust Assets shall automatically be deemed transferred to the Trust for and on behalf of the Beneficiaries. Upon transfer to the Liquidating Trust, all property of the Estate of the Debtors shall be consolidated into one corpus, and all Allowed Claims against the Debtors shall be deemed to be Claims against the Liquidating Trust. On and after the Effective Date, the Debtors shall execute and deliver to the Trustee any assignment and/or other instruments that may be necessary to convey the Trust Assets to the Trust pursuant to the terms of the Plan. The Trust Assets shall be deemed vested in the Trust free and clear of all Claims and Equity Interests, except as specifically provided in the Plan.

3. Rights, Powers and Duties of Trustee.

3.1 Declaration Acknowledging Beneficial Interest. The Trustee hereby acknowledges that, upon creation of the Trust, the Beneficiaries and their successors and assigns, as their interests may appear, shall have the beneficial interest in all Trust Assets as described in the Plan.

3.2 Trustee’s Rights and Powers. The Trustee shall have such powers and authority as set forth in this Agreement and in the Plan. Without limiting the foregoing, the Trustee shall have the power (but not the obligation) to take the following actions in addition to the powers granted in the Plan, and any powers reasonably incidental thereto, that the Trustee in his reasonable discretion deems necessary or appropriate to fulfill the liquidating purpose of the Trust, unless otherwise specifically limited or restricted by the Plan or this Agreement:

- (a) hold legal title to any and all rights of the Debtors and the Beneficiaries in or arising from the Trust Assets;
- (b) maintain on the Trustee's books and records a register evidencing the beneficial interest herein held by each Beneficiary;
- (c) protect and enforce the rights to the Trust Assets (including any Causes of Action) vested in the Trustee by this Agreement by any method deemed appropriate, including, without limitation, by judicial proceedings, settlement, or otherwise;
- (d) make all distributions to the Beneficiaries provided for in, or contemplated by, the Plan and this Agreement;
- (e) establish the Disputed Claims Reserve and open and maintain bank or other accounts for holding Permitted Investments on behalf of or in the name of the Trust;
- (f) make all tax withholdings, file tax information returns, make tax elections by and on behalf of the Trust and file tax returns for the Trust as a grantor trust under IRC Section 671 and Treasury Income Tax Regulation Section 1.671-4 pursuant to and in accordance with the Plan;
- (g) establish such reserves for taxes, assessments, and other expenses of administration of the Trust as may be necessary and appropriate for the proper operation of matters incident to the Trust;
- (h) pay all expenses and make all other payments relating to the Trust Assets;
- (i) make distributions permitted or required by the Plan;
- (j) carry insurance coverage and obtain any bond required under the Plan as an expense of the Trust; and
- (k) exercise all powers provided under the Plan, including the right to pursue and settle Causes of Action and object to and settle objections to Claims.

3.3 Exercise of Power. Except as otherwise specifically set forth herein or in the Plan, the Trustee shall not be required to procure authorization from the Bankruptcy Court in the exercise of any power conferred upon him by this Agreement.

3.4 Management of Trust. Subject to the terms hereof and the Plan, the Trustee shall take charge of the Trust Assets and shall endeavor to collect, conserve, protect, and administer all Causes of Action and other assets which constitute the Trust Assets and all such other property incidental thereto as may hereafter be acquired from time to time under this Trust. The Trustee shall manage the affairs of the Trust and execute, acknowledge and deliver any and all instruments which are necessary, required or deemed by the Trustee to be advisable in connection with the

performance of the Trustee's duties hereunder and shall have full power and authority to take any action consistent with the purpose and provisions of the Plan. Except as otherwise provided in this Agreement and in the Plan, without prior or further authorization of the Bankruptcy Court, the Trustee may control and exercise authority over the Trust Assets, the acquisition, management, and disposition thereof, and the management and conduct of the business of the Trust to the same extent as if the Trustee were the sole legal and beneficial owner thereof in his own right. No person dealing with the Trust shall be obligated to inquire into the authority of the Trustee in connection with the acquisition, management, or disposition of Trust Assets. In connection with the management and use of the Trust Assets, and subject to the Plan and this Agreement, the Trustee may do the following:

- (a) Accept the assets vested, transferred and provided to the Trust pursuant to this Agreement and the Plan;
- (b) Distribute Cash Available for Distribution and other assets to the Beneficiaries in accordance with the terms of this Agreement and the Plan;
- (c) Endorse the payment of notes or other obligations of any person or make contracts with respect thereto;
- (d) Engage in all acts that would constitute ordinary course of business in performing the obligations of a trustee under a trust of this type;
- (e) Invest Trust Assets in Permitted Investments;
- (f) Execute deeds, bills of sale and other instruments of transfer in connection with the sale, assignment or transfer of Trust Assets; and
- (g) Establish and maintain such bank accounts as the Trustee may deem necessary or appropriate, draw checks on such bank accounts and perform such other necessary and appropriate duties with respect to such accounts, or designate individuals as signatories to draw checks on such bank accounts and to perform such other duties as the Trustee may direct and authorize.

3.5 Limitations on Investment. The Trustee may invest and reinvest all Cash held by the Trust (subject to the distribution requirements set forth in this Agreement), including cash held in any reserve maintained for the Trust, in any Permitted Investment.

3.6 Distributions. The Trustee shall distribute the Cash Available for Distribution, as specifically provided for herein or pursuant to the Plan.

3.7 Delivery of Distributions. Distributions shall be made to Beneficiaries pursuant to Section 6.1 of the Plan.

3.8 Unclaimed Distributions and Uncashed Checks. Unclaimed distributions and uncashed checks shall be treated pursuant to Section 6.5 of the Plan.

3.9 Disputed Claims Reserve. The Trustee shall establish the Disputed Claims Reserve as provided in Section 6.4 of the Plan. Each such reserve established by the Trustee pursuant to the terms of the Plan shall be contributed to as provided for in the Plan. Each reserve may be established by an accounting entry on the books of the Trust. The Trustee shall not be required to establish or maintain separate bank accounts for each reserve. Distributions from the Disputed Claims Reserve shall be made in accordance with Section 6.4 of the Plan.

3.10 Prosecution of Objections. In accordance with Section 6.2 of the Plan, the Trustee may litigate to judgment, settle, or withdraw objections to Disputed Claims.

3.11 Liability of Trustee.

(a) Standard of Care. Except in the case of willful misconduct, gross negligence, knowing violations of the law or the terms of this Agreement, or transactions from which the Trustee directly or indirectly derived improper personal benefit, the Trustee shall not be personally liable for any loss or damage by reason of action or inaction pursuant to the discretion, powers, and authority conferred on such person or persons by this Agreement.

(b) No liability for Acts of Predecessor. No successor Trustee shall be in any way responsible for the acts or omissions of any Trustee in office prior to the date on which any such person becomes a Trustee unless a successor Trustee expressly assumes such responsibility.

(c) Reliance by Trustee on Documents or Advice of Professionals. Except as otherwise provided herein, the Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, other, or other paper or document believed by him to be genuine and to have been signed or presented by the proper party or parties. The Trustee may also engage and consult with legal and accounting professionals to be selected by the Trustee in accordance with the terms hereof and shall not be liable for any action taken or suffered by the Trustee in reliance upon the advice of such professionals.

(d) No Personal Obligation for Trust Liabilities. Except as to Beneficiaries in the case of a breach of the standard of care set forth above in Section 3.11(a), persons dealing with the Trustee shall look only to the Trust Assets to satisfy any liability incurred by the Trustee to such person in carrying out the terms of this Trust, and the Trustee shall not have any personal, individual obligation to satisfy any such liability.

3.12 Agents and Professionals. The Trustee may, but shall not be required to, consult with and retain attorneys, accountants, appraisers, or other parties deemed by the Trustee to have qualifications necessary to assist in the proper administration of the Trust, including professionals previously retained by the Debtors. The Trustee may pay the reasonable salaries, fees and expenses of such persons out of the Trust Assets in the ordinary course of business.

3.13 Action by Trust in Case of Conflict. In the case of any conflict of interest possessed by the Trustee with respect to the exercise of any rights, powers, duties and privileges under this Agreement, the Trustee shall seek Bankruptcy Court approval for another Person to be authorized to take any such action in his place and stead, including without limitation the retention of professionals (which may include professionals retained by the Trustee) for the purpose of taking such actions.

3.14 Compensation of Trustee. The Trustee shall receive compensation for his post-confirmation services at his customary hourly rate as provided in the Plan, plus reimbursement for any actual and necessary expenses incurred in performing his duties under this Agreement.

3.15 Removal of Trustee. A Trustee appointed pursuant to this Agreement may be removed upon notice and hearing in the Bankruptcy Court.

3.16 Successor Trustee. In the event that the Trustee is removed, resigns or otherwise ceases to serve as Trustee, which may be appointed by the Trustee in their reasonable discretion, provided that, in the event of any dispute or failure of the foregoing to appoint a Successor Trustee, the Bankruptcy Court may appoint a Successor Trustee who shall become the Trustee.

3.17 Indemnification of Trustee. The Trustee shall be indemnified by and receive reimbursement from the Trust Assets against and from any and all loss, liability, claim, expense or damage (including, without limitation, legal fees) which he may incur or sustain, in good faith and without gross negligence or willful misconduct in the exercise and performance of any of his or her powers and duties under this Agreement or in connection with any matter arising out of or related to the Plan, this Agreement or the affairs of the Trust.

4. Tax and Income Allocation Provisions of the Trust.

4.1 Treatment of Trust. Unless the Trustee determines in his reasonable discretion that such treatment is not appropriate, (i) the Trust shall be treated as a grantor trust for all federal income tax purposes, all of the assets of which are owned by the holders of vested beneficial interests therein pursuant to Section 671 of the Tax Code and Treasury Regulations issued thereunder and (ii) all federal, state and local income tax returns required on behalf of the Trust shall be prepared and filed by the Trustee in a manner that is consistent with the grantor trust.

4.2 Treatment of Disputed Claims Reserve. Unless the Trustee determines, in his reasonable discretion, that such treatment is not appropriate, for example, if otherwise taxed, pursuant to Section 468B of the Tax Code, each reserve established pursuant to the Plan may be treated as a trust, separate and distinct from the Trust and all other reserves, which is subject to taxation under Section 641 of the Tax Code for each calendar year during which such reserve is maintained. Any federal, state or local income tax required to be paid with respect to the taxable income of any reserve, shall be paid exclusively out of the Cash credited to such reserve.

4.3 Allocation of Income or Loss. Unless the Trustee determines in his reasonable discretion that such assumptions are not appropriate, the Trustee shall assume that (i) the adjusted

basis of each asset held by the Trust equals the initial basis (fair market value) of such asset on the Effective Date, subject to any adjustments to such initial basis required to be made under the Tax Code to reflect allowable depreciation, amortization or depletion deductions; and (ii) the calendar year is the taxable year of each record holder of vested beneficial interests in the Trust. On the basis of such assumptions, (i) the Trustee shall compute the gross income and net income or loss of the Trust for each taxable year; (ii) the Trustee shall assume that such gross income and net income or loss is recognized for tax purposes by the Beneficiaries based on their period of ownership of vested beneficial interests in the Trust during the calendar year; and (iii) the Trustee shall provide each Beneficiary receiving an allocation of income or loss, and shall file with the appropriate taxing authorities, a K-1 or other income tax return or report containing sufficient data to enable the holder to complete his income tax return(s).

(a) Allocation on Change in Beneficial Interests. If, during a calendar year, the ownership of beneficial interests in the Trust changes, the assets and income or loss for the entire calendar year shall be prorated and allocated among the Beneficiaries therein.

(b) Delivery of Statements to Beneficiary of Record. To the extent required by law, written statements or notices reflecting a Beneficiary's share of the income or loss, if any, of the Trust shall be delivered by the Trustee to the Beneficiary. The Trustee shall have no obligation to deliver any such statements to a transferee of a Beneficiary unless, thirty (30) days prior to the date on which the statement is required to be delivered, a written request executed by the Beneficiary of record and the transferee is received by the Trustee.

4.4 Tax Treatment and Obligation to File Returns. The Trust shall be considered a "grantor" trust, and the Beneficiaries shall be treated as the grantors and deemed owners of the Trust. The Trustee shall file tax returns for the Trust as a grantor trust pursuant to Section 1.671-4(a) of the Tax Regulations. All earnings of the Trust, including earnings or income retained in reserve accounts or as reserves to the extent consistent with Section 4.2 above, shall be allocated to the Beneficiaries on an annual basis, and each Beneficiary shall be responsible to report and pay the taxes due on its proportionate share of the Trust's income whether or not amounts are actually distributed by the Trustee to the Beneficiaries to pay the tax. As a grantor trust, the Trust shall not have any separate liability for federal income taxes relating to or arising from, the conveyance, preservation or administration of Trust Assets. However, if it is later determined that a tax liability of the Trust arises, the Trustee shall be responsible for withholding all taxes required by law, and shall timely file all required federal, state or local tax returns, including information reporting returns, and shall promptly pay all taxes determined to be due. If it is determined that any taxes are owed by the Trust, the Trustee may pay from the Trust Assets any such tax liability arising out of the operations of the Trust or ownership of Trust Assets. The Trustee may establish a reserve sufficient to pay any accrued or potential tax liability arising out of the operations of the Trust or ownership of Trust Assets. Notwithstanding anything herein to the contrary, in calculating and making the payments due to Allowed Claims under the Plan, the Trustee shall be authorized to deduct from such payments any necessary withholding amount. The Trustee may in his discretion make any elections available under the Tax Code. The Trustee may also prepare and file a final tax return for the Debtors.

4.5 Tax Treatment of Vesting of Assets in the Trust. For federal income tax purposes, the vesting of Trust Assets to the Trust will be treated as a vesting in the Beneficiaries for all purposes of the Tax Code (*e.g.*, Sections 61(a), 483, 1001, 1012, and 1274) followed by a deemed vesting of the Trust Assets in the Trust.

4.6 Valuation of Trust Assets. The Trustee or Bankruptcy Court, upon motion filed, may value the property vested in the Trust and notify in writing the Beneficiaries of such valuations. The Trust Assets shall be valued consistently by the Trustee and the Beneficiaries and these valuations will be used for all federal income tax purposes.

5. Rights, Powers and Duties of Beneficiaries.

5.1 Interests of Beneficiaries. The Beneficiaries shall have a beneficial interest in the Trust Assets as specified herein. The ownership of a beneficial interest hereunder shall not entitle any Beneficiary to any title in or to the Trust Assets as such or to any right to call for a partition or division of the same or to require an accounting except as specifically required by the terms hereof.

5.2 Effect of Death, Incapacity, Insolvency, or Bankruptcy of Beneficiary. The death, incapacity, insolvency or bankruptcy of a Beneficiary during the term of this Agreement shall not operate to terminate the Trust, nor shall it entitle the representatives or creditors of the deceased, incapacitated, insolvent, or bankrupt Beneficiary to an accounting, or to take any action in the courts or elsewhere for the distribution of the Trust Assets or for a partition thereof, nor shall it otherwise affect the rights and obligations of any Beneficiary.

6. Amendment of Agreement. This Agreement may be amended, modified, or altered only upon approval of the Bankruptcy Court.

7. Conflicting Claims. In the event the Trustee becomes aware of any disagreement or conflicting claims with respect to the Trust Assets, or if the Trustee in good faith is in doubt as to any action which should be taken under this Agreement, the Trustee shall have the option to do any or all of the following:

(a) File a suit in interpleader or in the nature to interpleader in the Bankruptcy Court and obtain an order requiring all persons and parties involved to litigate their respective claims arising out of or in connection with this Agreement; or

(b) File any other appropriate motion for relief in the Bankruptcy Court.

8. Effect of Trust on Third Parties. There is no obligation on the part of any Person dealing with the Trustee or any agent of the Trustee to see the application of any consideration passing to the Trustee or any agent of the Trustee, or to inquire into the validity, expediency or propriety of any such transaction by the Trustee or any agent of the Trustee.

9. Waiver. 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.

10. Termination of This Trust. Upon (i) the Bankruptcy Court's entry of a Final Order closing the Debtors' Bankruptcy Cases pursuant to Bankruptcy Code § 350(a) and (ii) the payment of all costs, expenses, and obligations incurred in connection with administering the Trust, and the distribution of all Trust Assets in accordance with the provisions of the Plan, the Confirmation Order and this Agreement, the Trust shall terminate and the Trustee shall have no further responsibility in connection therewith except as may be required to effectuate such termination under relevant law.

11. Construction of This Instrument.

11.1 Applicable Law. The Trust shall be construed, regulated and administered under the internal laws of the State of Utah and the United States of America.

11.2 Relationship Created. The only relationship created by this Agreement is the relationship between the Trustee and the Beneficiaries. No other relationship or liability is created. Nothing contained herein shall be construed so as to constitute the Beneficiaries or their successors in interest as creating an association, partnership or joint venture of any kind.

11.3 Interpretation. 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 the same. Unless the context otherwise requires, whenever used in this Agreement the singular shall include the plural and the plural shall include the singular.

11.4 Partial Invalidity. If any provision of this Agreement shall for any reason be held invalid or unenforceable by any court, governmental agency or arbitrator of competent jurisdiction, such invalidly or unenforceability shall not affect any other provision hereof, but this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

11.5 The Plan. If any inconsistencies exist between the Plan and this Agreement, the terms of the Plan shall control.

11.6 Notices. All notices, requests, consents and other communications which may be or is required to be given, served, or sent to the Trustee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or facsimile (if receipt is confirmed) or sent by electronic mail, as follows:

John H. Curtis
ROCKY MOUNTAIN ADVISORY, LLC
15 W. South Temple, Suite 500
Salt Lake City, 84101

with a copy to:

Darren Neilson
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111

or to such other address as may from time to time be provided in written notice on the docket of the Bankruptcy Case by the Trustee.

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

11.8 Tax Identification Numbers. The Trustee may require any Beneficiary to furnish to the Trustee its employer or taxpayer identification number as assigned by the Internal Revenue Service and the Trustee may condition any distribution to the Beneficiary upon receipt of such identification number.

11.9 Compliance with All Applicable Laws. If notified by any governmental authority that the Trust is in violation of any applicable law, rule, regulation or order of such governmental authority relating to its businesses, the Trustee shall comply with such law, rule, regulation or order; provided that nothing contained herein shall require such compliance if the legality or applicability of any such requirement is being contested in good faith in appropriate proceedings and, if appropriate, for which an adequate reserve has been set aside on the books of the Trust.

11.10 Jurisdiction. Subject to Section 10.1 of the Plan, the Bankruptcy Court shall retain jurisdiction over this Agreement and the Trust.

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

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the day and year first above written to evidence their consent and agreement with the terms and provisions of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE

POLARITYTE, INC
a Delaware corporation

JOHN H. CURTIS, TRUSTEE

By: Richard Hague
Its: Chief Executive Officer

John H. Curtis

POLARITYTE MD, INC.
a Nevada corporation

By: Richard Hague
Its: Chief Executive Officer

POLARITYTE, INC.
a Nevada Corporation

By: Richard Hague
Its: Chief Executive Officer