

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>In re:</b>	§	
	§	<b>Chapter 11</b>
	§	
<b>SPEEDCAST INTERNATIONAL LIMITED, et al.,</b>	§	
	§	<b>Case No. 20-32243 (MI)</b>
	§	
<b>Debtors.<sup>1</sup></b>	§	<b>(Jointly Administered)</b>
	§	

**NOTICE OF FILING OF SUPPLEMENT TO PLAN SUPPLEMENT IN  
CONNECTION WITH SECOND AMENDED JOINT CHAPTER 11 PLAN OF  
SPEEDCAST INTERNATIONAL LIMITED AND ITS DEBTOR AFFILIATES**

**PLEASE TAKE NOTICE THAT:**

1. On April 23, 2020 (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under the chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”).

2. On November 2, 2020, the Bankruptcy Court entered the *Order (I) Scheduling Combined Hearing on (A) Adequacy of Disclosure Statement and (B) Confirmation of Plan; (II) Conditionally Approving Disclosure Statement; (III) Approving Solicitation Procedures and Form and Manner of Notice of Combined Hearing and Objection Deadline; (IV) Fixing Deadline to Object to Disclosure Statement and Plan; (V) Approving Notice and Objection Procedures for the Assumption of Executory Contracts and Unexpired Leases;*

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<sup>1</sup> A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kccllc.net/speedcast>. The Debtors’ service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.



(VI) *Authorizing Performance Under the Plan Sponsor Selection Procedures*; and (VII) *Granting Related Relief* (ECF No. 896).

3. On November 25, 2020, the Debtors filed the *Second Amended Joint Chapter 11 Plan of Speedcast International Limited and its Debtor Affiliates* (ECF No. 992) (as may be amended, modified, or supplemented, the “**Plan**”).<sup>2</sup>

4. On December 1, 2020, the Debtors filed the *Plan Supplement in Connection with Second Amended Joint Chapter 11 Plan of Speedcast International Limited and its Debtor Affiliates* (ECF No. 1011) (the “**Plan Supplement**”).

5. The Plan Supplement is hereby amended or supplemented as follows:

<b>Exhibit</b>	<b>Plan Supplement Document</b>	<b>Amendments/Supplements</b>
Exhibit B	Litigation Trust Agreement	Replaced with the revised version attached hereto as <b><u>Exhibit 1</u></b> that incorporates the changes reflected in the changed pages redline attached hereto as <b><u>Exhibit 1-A</u></b>
Exhibit C	Schedule of Retained Causes of Action	Replaced with the revised version attached hereto as <b><u>Exhibit 2</u></b> that incorporates the changes reflected in the changed pages redline attached hereto as <b><u>Exhibit 2-A</u></b>
Exhibit E	Schedule of Assumed and Rejected Contracts	Amended and supplemented as forth in the cover page and schedules attached hereto as <b><u>Exhibit 3-A, 3-B, 3-C, 3-D</u></b>
Exhibit G	Initial Board of Directors, Managers or Officers of New Speedcast Parent	Addition of new exhibit attached hereto as <b><u>Exhibit 4</u></b>

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

6. The revised documents (i) amend, or (ii) replace and supersede all prior-filed versions of such documents.

7. The documents contained in the Plan Supplement are integral to, and are considered part of, the Plan. These documents have not yet been approved by the Bankruptcy Court. If the Plan is approved, the documents contained in this Plan Supplement will be approved by the Bankruptcy Court pursuant to the Confirmation Order. The Debtors reserve all rights with respect to the form of documents filed herewith and such documents remain subject to revision in all respects and in accordance with the Plan.

8. A combined hearing to consider final approval of the *Disclosure Statement for Amended Joint Chapter 11 Plan of Speedcast International Limited and its Debtor Affiliates* (ECF No. 899) and confirmation of the Plan is scheduled to begin on **Thursday, December 17, 2020 at 9:00 a.m. (prevailing Central Time)** before the Bankruptcy Court.

9. Copies of the exhibits contained in the Plan Supplement, and all documents filed in these chapter 11 cases are available free of charge by visiting <http://www.kccllc.net/speedcast>. Parties may also obtain copies of the pleadings by visiting the Bankruptcy Court's website at <https://ecf.txsb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: December 17, 2020  
Houston, Texas

/s/ Alfredo R. Pérez

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*Attorneys for Debtors  
and Debtors in Possession*

**Certificate of Service**

I hereby certify that on December 17, 2020, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Alfredo R. Pérez

Alfredo R. Pérez

**Exhibit 1**

**Litigation Trust Agreement**

Draft 12/17/2020

**LITIGATION TRUST AGREEMENT**

This Litigation Trust Agreement (the “Litigation Trust Agreement”) is made and established this \_\_\_ day of \_\_\_\_\_, 2020, by and among SpeedCast International Limited; CapRock Communications (Australia) Pty Ltd; CapRock Communications Pte. Ltd.; CapRock Comunicações do Brasil Ltda.; CapRock Participações do Brasil Ltda.; CapRock UK Limited; CCI Services Corp.; Evolution Communications Group Limited; Globecomm Europe B.V.; Globecomm Network Services Corporation; Hermes Datacommunications International Limited; Maritime Communication Services, Inc.; NewCom International, Inc.; Oceanic Broadband Solutions Pty Ltd; Satellite Communications Australia Pty Ltd; SpaceLink Systems II, LLC; SpaceLink Systems, LLC; SpeedCast Americas, Inc.; SpeedCast Australia Pty Limited; Speedcast Canada Limited; SpeedCast Communications, Inc.; Speedcast Cyprus Ltd.; SpeedCast France SAS; SpeedCast Group Holdings Pty Ltd; SpeedCast Limited; SpeedCast Managed Services Pty Limited; SpeedCast Netherlands B.V.; SpeedCast Norway AS; SpeedCast Singapore Pte. Ltd.; SpeedCast UK Holdings Limited; and Telaurus Communications LLC (each, a “Debtor”, collectively, the “Debtors” and, as of the Effective Date, including New Speedcast Parent, the “Reorganized Debtors”), and Peter Kravitz, as Litigation Trustee (the “Litigation Trustee”), in connection with the *Second Amended Joint Chapter 11 Plan of Speedcast International Limited and its Debtor Affiliates*, dated November 25, 2020 (as altered, amended, modified, or supplemented from time to time, the “Plan”), filed with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Bankruptcy Court”) in the Chapter 11 Cases (as defined below).<sup>1</sup>

**RECITALS**

**WHEREAS**, the Debtors each filed a voluntary petition in the Bankruptcy Court under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”);

**WHEREAS**, the Chapter 11 Cases are continuing and are jointly administered under case number 20-32243;

**WHEREAS**, on November 25, 2020, the Debtors filed the Plan [Dkt. No. 992];

**WHEREAS**, on December \_\_, 2020, the Bankruptcy Court entered an order confirming the Plan (the “Confirmation Order”) [Dkt. No. [●]];

**WHEREAS**, the Effective Date of the Plan occurred on \_\_\_\_\_, 2021;

**WHEREAS**, the Plan contemplates, on the Effective Date, among other things, (a) the creation of the Litigation Trust (the “Litigation Trust”) to be treated as a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) (the “Trust Regulations”) for the benefit of holders of Allowed Other Unsecured Claims entitled to a Pro Rata share of the Litigation Trust Distributable Proceeds (the “Litigation Trust Beneficiaries”), (b) the Litigation Trust will be funded and vested with a one-time, non-refundable payment of Cash in the amount of \$2,500,000 (the “Litigation Trust Cash Amount”) to be transferred into the Litigation Trust by or at the direction of the Reorganized Debtors, consistent with the terms of the Plan, and (c) the Litigation

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Plan.

Trust Causes of Action, as more fully described on **Schedule 1** hereto and subject to the terms and provisions of the Plan (collectively, as amended from time to time, the “Litigation Trust Causes of Action” and, together with the Litigation Trust Cash Amount, the “Litigation Trust Assets”; following the Effective Date, “Litigation Trust Assets” shall also be deemed to include all Litigation Trust Distributable Proceeds and all other proceeds, products and income thereof) will be transferred into the Litigation Trust, as set forth in the Plan; and

**WHEREAS**, the Plan further contemplates that the Litigation Trust is intended to qualify as a “liquidating trust” within the meaning of the Trust Regulations, and shall be created for the purposes of, among other things, and the Litigation Trustee shall be the sole Entity responsible for, (a) investigating, prosecuting, settling, liquidating, or disposing of the Litigation Trust Causes of Action, (b) distributing the Litigation Trust Distributable Proceeds to the Litigation Trust Beneficiaries as holders of Allowed Other Unsecured Claims entitled to its Pro Rata share of the Litigation Trust Distributable Proceeds, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to and consistent with the purpose of the Litigation Trust and the Plan; and

**WHEREAS**, presuming that the Litigation Trust qualifies as a “liquidating trust” within the meaning of the Trust Regulations, to the extent permitted by law, the parties hereto will elect to treat the Litigation Trust for tax purposes as a “grantor trust” pursuant to the Treasury Regulations for U.S. federal income tax purposes, pursuant to Sections 671-679 of the Internal Revenue Code of 1986, as amended (the “IRC”), with the Litigation Trust Beneficiaries to be treated as the grantors of the Litigation Trust and deemed to be the owners of the Litigation Trust Assets (subject to the rights of creditors of the Litigation Trust), and consequently, for federal income tax purposes the transfer of the Litigation Trust Assets to the Litigation Trust shall be treated as a deemed transfer of those assets from the Reorganized Debtors and their Estates to the Litigation Trust Beneficiaries followed by a deemed transfer by such Litigation Trust Beneficiaries to the Litigation Trust at a valuation determined by the Litigation Trustee to be reported consistently by all parties; provided, however, if any assets are allocable to a disputed claim reserve, the Litigation Trustee may elect to treat any disputed claim reserve as a “disputed ownership fund” governed by Treasury Regulation Section 1.468B-9.

**NOW, THEREFORE**, pursuant to the Plan and the Confirmation Order, in consideration of the promises, the mutual agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the parties hereto hereby agree as follows:

**ARTICLE I.  
DECLARATION OF TRUST**

**1.1 Creation and Purpose of the Litigation Trust.** The Reorganized Debtors and the Litigation Trustee hereby create the Litigation Trust, which is in a form reasonably acceptable to the Creditors’ Committee, for the purpose of (i) evaluating and prosecuting the Litigation Trust Causes of Action, (ii) liquidating the Litigation Trust Assets, and (iii) distributing the Litigation Trust Distributable Proceeds, if any, to the Litigation Trust Beneficiaries 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.



**1.2 Declaration of Trust.** In order to declare the terms and conditions hereof, and in consideration of the confirmation of the Plan, the Reorganized Debtors and the Litigation Trustee have executed this Litigation Trust Agreement and, effective on the Effective Date, the Reorganized Debtors hereby irrevocably transfer and assign to the Litigation Trust, all right, title, and interests of the Reorganized Debtors in the Litigation Trust Assets, to have and to hold unto the Litigation Trust and its successors and assigns, under and subject to the terms of the Plan and the Confirmation Order for the benefit of the Litigation Trust Beneficiaries and their permitted successors and assigns solely to the extent provided for in this Litigation Trust Agreement and in the Plan and Confirmation Order. Notwithstanding the foregoing, subject to Section 5.20 of the Plan and the rights of the Litigation Trustee set forth in Section 7.4 below, all Litigation Trust Proceeds shall be distributed by the Litigation Trustee, to the Litigation Trust Beneficiaries; in accordance with the provisions of the Plan and the Confirmation Order.

**1.3 Transfer and Vesting of Estate Assets.**

(a) On the Effective Date, pursuant to the terms of the Plan, the Litigation Trust Assets, including all Litigation Trust Assets held or controlled by the Debtors, if any, shall be vested in the Litigation Trust, which also shall, without limiting any of the other provisions hereof, own and be authorized to obtain, liquidate, and collect all of the Litigation Trust Assets in the possession of the Debtors, and pursue all of the Litigation Trust Causes of Action. All Litigation Trust Assets shall be transferred and delivered to the Litigation Trust free and clear of all Claims and Liens, and such transfer and delivery shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar tax. The Litigation Trust will be the successor-in-interest to each of the Reorganized Debtors with respect to any action or proceeding that was or could have been commenced by any of the Reorganized Debtors prior to the Effective Date that is a Litigation Trust Asset and shall be deemed and entitled to be substituted for the same as the party in all such actions, litigations, arbitrations or similar proceedings. To the extent any of the foregoing does not automatically occur on the Effective Date or is not effectuated through the Plan, the Confirmation Order or this Litigation Trust Agreement, the Reorganized Debtors shall, reasonably promptly, cause to be executed such other and further documents in form and substance reasonably acceptable to the Litigation Trustee and the Creditors' Committee, as are reasonably necessary to effectuate all of the foregoing and shall cooperate with the Litigation Trustee. All reasonable out-of-pocket costs and expenses incurred, upon prior written request of the Litigation Trustee, by the Debtors or the Reorganized Debtors in connection with actions taken under this subsection 1.3(a) or 5.20(f) of the Plan shall be at the expense of the Litigation Trust. For the avoidance of doubt, notwithstanding anything in the Plan to the contrary, the Debtors or Reorganized Debtors, as applicable, shall not charge the Litigation Trust any amounts on account of such applicable entities' overhead costs or for the time of such entities' employees in assisting the Litigation Trust; provided that the Debtors or Reorganized Debtors, as applicable, may charge the Litigation Trust for reasonable out-of-pocket costs of third party vendors, legal counsel or other professional service providers reasonably necessary or convenient to effectuate the sharing of information and cooperation contemplated herein.

(b) Any attorney-client privilege, work-product privilege, joint interest privilege or other privilege or immunity (collectively, the "Privileges") belonging to any of the Reorganized Debtors and attaching to any documents information or communications (whether written or oral) in connection with Litigation Trust Assets shall be transferred to the Litigation

Trust for the purpose of allowing the Litigation Trustee to carry out its obligations under this Litigation Trust Agreement. The Reorganized Debtors and the Litigation Trust agree that, in the case of disclosures made pursuant this Litigation Trust Agreement: (i) the documents, information or communications are privileged; (ii) the disclosure is made to the Litigation Trust solely for the specific purpose of enabling the Litigation Trustee to carry out its duties under the Litigation Trust Agreement; and (iii) the Reorganized Debtors do not intend, by the disclosure, to waive any privileges or immunities as against any other person or entity. Further, the Litigation Trust agrees: (x) to keep the documents, information and communications (and their contents) strictly confidential, not disclose them to any other party, and preserve and protect all applicable privileges attaching to them; (y) to return to the Reorganized Debtors on reasonable demand any documents, information or communications or copies of them (or records of their contents); and (z) to inform the Reorganized Debtors immediately if it receives any voluntary or compulsory request for production to a third party of the documents, information or communications (or their contents) to enable the Reorganized Debtors to assert their privilege. The Litigation Trust's receipt of the Privileges associated with the Litigation Trust Assets shall not operate as a waiver of other privileges possessed or retained by the Reorganized Debtors. For avoidance of doubt, the foregoing provision does not waive, limit, or dispose of any Privileges of any of the Reorganized Debtors.

(c) Not later than five (5) Business Days following the Effective Date, at the reasonable cost of the Litigation Trust, the Reorganized Debtors and the Creditors' Committee (notwithstanding the Creditors' Committee's dissolution on the Effective Date), shall deliver or cause to be delivered to the Litigation Trust, with the exception of documents that cannot be provided under applicable local law after reasonable effort by the Reorganized Debtors to provide such documents in compliance with applicable local law, copies of any and all books and records and all other documents and communications related to the Litigation Trust Assets, including those maintained in electronic format and original documents, whether held by the Reorganized Debtors, the Creditors' Committee, or their respective current officers, directors, employees, agents, advisors, attorneys, accountants, or any other professionals. After the Effective Date, during ordinary business hours and with written notice by the Litigation Trustee, the Reorganized Debtors shall provide reasonable and continuing access to officers, directors and employees of the Reorganized Debtors and their agents, advisors, attorneys, accountants or any other professionals with knowledge of matters relevant to the Litigation Trust Assets (including any former officers, directors, employees, agents, advisors, attorneys, accountants, or other professionals who owe a continuing duty of cooperation to the Reorganized Debtors).

(d) Without limiting any other provision of this Litigation Trust Agreement, the Plan or the Confirmation Order, the Reorganized Debtors shall, subject to Section 1.3(e) below, reasonably promptly following receipt of a reasonable request from the Litigation Trustee, (i) take, or cause to be taken, all such further actions, and execute and/or deliver all such additional instruments, agreements or documents, as the Litigation Trustee may reasonably request in order to evidence or effectuate the transfer of the Litigation Trust Assets and the Privileges to the Litigation Trustee by the Plan; (ii) reasonably cooperate with the Litigation Trustee in the prosecution of the Litigation Trust Causes of Action; and (iii) otherwise take any action reasonably necessary to carry out the intent of the parties hereunder and under the Plan. Notwithstanding anything contained herein, without the express written consent of the Litigation Trustee, no Entity or creditor of the Reorganized Debtors shall be permitted to assert, bring, institute, commence or

continue any Litigation Trust Cause of Action that is transferred to the Litigation Trust pursuant to the Plan or take any other action in the name of the Litigation Trust.

(e) Notwithstanding anything to the contrary, in no event shall anything contained in this Litigation Trust Agreement be deemed or construed to require the Reorganized Debtors or any other Persons to, and such Persons shall not be required, to provide such cooperation to the extent it would (A) interfere substantially with the business or operations of the Reorganized Debtors or their affiliates or (B) require the Reorganized Debtors or their affiliates to take any action that could reasonably be expected to conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time, or both) under, their respective organizational documents, any applicable laws or any material contract.

(f) The Creditors' Committee and its advisors, notwithstanding the Creditor Committee's dissolution on the Effective Date (subject to certain exceptions), shall be permitted to share any discovery, communications, or analyses obtained relating to the Reorganized Debtors and/or Litigation Trust Assets with the Litigation Trustee without waiver of any Privileges. In addition, all rights of the Creditors' Committee in connection with any Rule 2004 examinations, orders, and agreements related thereto concerning the Reorganized Debtors or their Affiliates shall be transferred to the Litigation Trust for the purpose of allowing the Litigation Trustee to carry out its obligations under this Litigation Trust Agreement.

(g) The transfer of the Litigation Trust Assets to the Litigation Trust shall be made, as provided in the Plan and this Litigation Trust Agreement, for the benefit of the Litigation Trust Beneficiaries. In accordance with the Plan and this Litigation Trust Agreement, the Reorganized Debtors shall transfer, on behalf of the Litigation Trust Beneficiaries, the Litigation Trust Assets to the Litigation Trust for the benefit of the Litigation Trust Beneficiaries. Upon the transfer of the Litigation Trust Assets, the Reorganized Debtors shall have no interest in or claim to the Litigation Trust Assets or the Litigation Trust, and the Litigation Trust shall succeed to all of the Reorganized Debtors' right, title and interest in and to the Litigation Trust Assets. The Litigation Trustee shall have no authority to bind the Reorganized Debtors in any manner except with respect to a Litigation Trust Cause of Action. Notwithstanding the foregoing, for purposes of section 553 of the Bankruptcy Code, the transfer of the Litigation Trust Assets to the Litigation Trust shall not affect the mutuality of obligations which otherwise may have existed prior to the effectuation of such transfer. Notwithstanding anything in this Litigation Trust Agreement to the contrary, the transfer of the Litigation Trust Assets to the Litigation Trust does not diminish, and fully preserves, any defenses a defendant would have if such Litigation Trust Assets had been retained by the Reorganized Debtors. To the extent that any Litigation Trust Assets cannot be transferred to the Litigation Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such Litigation Trust Assets shall be deemed to have been retained by the Reorganized Debtors and the Litigation Trustee shall be deemed to have been designated as a representative of the Reorganized Debtors pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Litigation Trust Assets on behalf of the Reorganized Debtors, and all proceeds, income and recoveries on account of any such Litigation Trust Assets shall be assets of the Litigation Trust and paid over thereto immediately upon receipt by the Reorganized Debtors, or any other Entity.

**1.4 Funding of the Trust.** The Litigation Trust shall be initially funded with the Litigation Trust Cash Amount and other Litigation Trust Assets as provided for in the Plan and in the Confirmation Order. The Debtors and Reorganized Debtors have no obligation to further fund the Litigation Trust.

**1.5 Acceptance by Litigation Trustee.** The Litigation Trustee hereby accepts the trust imposed upon it by this Litigation Trust Agreement and agrees to observe and perform that trust on and subject to the terms and conditions set forth in this Litigation Trust Agreement, the Plan, and the Confirmation Order. In connection with and in furtherance of the purposes of the Litigation Trust, the Litigation Trustee hereby accepts the transfer of the Litigation Trust Assets.

**1.6 Name of the Litigation Trust.** The Litigation Trust established hereby shall be known as the “Speedcast Creditor Litigation Trust”.

**1.7 Capacity of Trust.**

(a) Notwithstanding any state or federal law to the contrary or anything herein, the Litigation Trust shall itself have the capacity to act or refrain from acting on its own behalf, including the capacity to sue and be sued. The Litigation Trust may alone be the named movant, respondent, party plaintiff or defendant, or the like in all adversary proceedings, contested matters, and other cases or proceedings brought by or against it, and may settle and compromise all such matters in its own name, and the Litigation Trust shall be deemed to be a party in interest for all purposes concerning the Litigation Trust Causes of Action. The Litigation Trust shall be vested with all the powers and authority set forth in the Plan and this Litigation Trust Agreement. Without limitation on the Litigation Trust’s rights and powers with respect to other means of discovery, the Litigation Trust shall be authorized to use Bankruptcy Rule 2004 and any other bankruptcy or other tools of discovery available to the Reorganized Debtors or their Estates until the Chapter 11 Cases of the Reorganized Debtors are closed.

(b) This Litigation Trust Agreement is intended to create a trust and a trust relationship, and the Litigation Trust is to be governed and construed in all respects as a trust. The Litigation Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Litigation Trustee, or the Litigation Trust Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Litigation Trust Beneficiaries, on the one hand, to the Litigation Trust and the Litigation Trustee, on the other, shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Litigation Trust Agreement and the Plan.

(c) In accordance with section 1123(d) of the Bankruptcy Code, the Litigation Trustee may enforce all rights to commence and pursue, as appropriate, any and all Litigation Trust Causes of Action after the Effective Date. No Entity may rely on the absence of a specific reference in the Plan to any Litigation Trust Cause of Action against such Entity as any indication that the Litigation Trustee will not pursue any and all available Litigation Trust Causes of Action against such Entity. Unless any Litigation Trust Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order,

including the Confirmation Order, the Litigation Trustee expressly reserves all Litigation Trust Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise) or laches, shall apply to such Litigation Trust Causes of Action upon, after, or as a consequence of the Confirmation Order. Any objections of the Reorganized Debtors to the allowance of any Claims or Equity Interests filed with the Bankruptcy Court with respect to which they dispute liability, priority, and/or amount (or any objections, affirmative defenses and/or counterclaims, whether or not litigated to Final Order) shall not in any way limit the ability or the right of the Litigation Trustee to assert, commence or prosecute any Litigation Trust Cause of Action against the holder of such Claim or Equity Interest. Nothing contained in the Plan, the Confirmation Order or this Litigation Trust Agreement shall be deemed to be a waiver, release, or relinquishment of any Litigation Trust Cause of Action, right of setoff, or other legal or equitable defense which the Debtors had immediately prior to the Petition Date, against or with respect to any Claim against the Debtors. Without limiting the rights of the Litigation Trust or the Litigation Trustee, the Litigation Trustee shall have, retain, reserve, and be entitled to assert all Litigation Trust Causes of Action,; provided, however, that the Litigation Trustee shall not pursue any such actions or claims against any of the Released Parties.

(d) The Litigation Trust and the Litigation Trustee shall have all of the other rights, powers, duties and obligations set forth in the Plan and Confirmation Order, whether or not they are expressly set forth in this Litigation Trust Agreement.

## **ARTICLE II. THE LITIGATION TRUSTEE**

**2.1 Appointment.** The Litigation Trustee has been selected by the Creditors' Committee with the consent of the Debtors, pursuant to the provisions of the Plan and this Litigation Trust Agreement, and has been appointed as of the Effective Date. The Litigation Trustee's appointment shall continue until the earlier of (a) the termination of the Litigation Trust as set forth below, or (b) the Litigation Trustee's resignation, death, dissolution, removal or liquidation, in each case in accordance with the provisions of this Litigation Trust Agreement and the Plan.

**2.2 Authority of Litigation Trustee.** Except as otherwise provided in this Litigation Trust Agreement, the Plan, or the Confirmation Order, the Litigation Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Litigation Trust Assets, which includes, without limitation, pursuing recovery on the Litigation Trust Causes of Action, and making distributions of Litigation Trust Proceeds to the Litigation Trust Beneficiaries as set forth herein and in the Plan, and not unduly prolonging the duration of the Litigation Trust. The Litigation Trustee shall have the absolute right to pursue, settle and compromise or not pursue any and all Litigation Trust Causes of Action as it determines is in the best interests of the Litigation Trust Beneficiaries, and consistent with the purposes of the Litigation Trust and the Plan. The Litigation Trustee shall have no liability for the outcome of any such decision except for any damages caused by intentional fraud, willful misconduct, or gross negligence. Nothing in this Litigation Trust Agreement shall be deemed to prevent the Litigation Trustee from taking, or failing to take, any action that, based upon the advice of counsel or other professionals, it determines it is obligated to take (or refrain from taking) in the performance of any fiduciary or

similar duty which the Litigation Trustee owes to the Litigation Trust Beneficiaries. No Entity dealing with the Litigation Trust shall be obligated to inquire into the Litigation Trustee's authority in connection with the acquisition, management, or disposition of Litigation Trust Assets or general administration of the Litigation Trust. Without limiting the foregoing, but subject to the Plan, the Confirmation Order, and other provisions of this Litigation Trust Agreement, the Litigation Trustee shall be expressly authorized to, with respect to the Litigation Trust and the Litigation Trust Assets, and may cause the Litigation Trust to:

(a) Subject to the terms of this Litigation Trust Agreement, exercise power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced, and take all actions that may be or could have been taken, by any officer, director, shareholder or other party acting in the name of the Reorganized Debtors or their Estates with like effect as if duly authorized, exercised and taken by unanimous action of such officers, directors and shareholders or other party that are reasonably necessary to maximize the value of the Litigation Trust Assets;

(b) Open and maintain bank accounts on behalf of or in the name of the Litigation Trust, incur debt to fund and finance the Litigation Trust, calculate and make distributions of Litigation Trust Proceeds to the Litigation Trust Beneficiaries, and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment, and maintenance of appropriate reserves, in the name of the Litigation Trust, provided that the Litigation Trustee need not maintain the Litigation Trust's reserves in segregated bank accounts, if more than one is required in the discretion of the Litigation Trustee, and may pool funds in the reserves with each other and other funds of the Litigation Trust; provided, however, that the Litigation Trust shall treat all such reserved funds as being held in segregated accounts in its books and records;

(c) Receive, manage (including, for the avoidance of doubt, use the proceeds, products and income of the Litigation Trust to fund on-going fees, costs and expenses of the Litigation Trust), invest (in any manner permitted to be made by a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings, or other controlling authorities), supervise, protect, collect, liquidate and distribute the Litigation Trust Assets;

(d) Hold legal title to any and all Litigation Trust Assets;

(e) Commence, prosecute, compromise, adjust, settle, sue on or defend, withdraw, abandon, resolve any or all Litigation Trust Causes of Action, or otherwise protect and enforce the rights to the Litigation Trust Assets by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

(f) Assume the right to prosecute or otherwise adjudicate or settle particular objections to Other Unsecured Claims in the event the Reorganized Debtors and Litigation Trustee disagree with respect to the treatment of any Other Unsecured Claim, as provided for and subject to Section 7.2(c) of the Plan;

(g) Engage in, intervene in, join, compromise, adjust, release, mediate, arbitrate, sue on or defend, counterclaim, setoff, recoup, pursue, prosecute, abandon, or otherwise deal with and settle any actions, suits, proceedings, disputes, claims, controversies, demands, causes of action, or other litigation in favor of or against the Litigation Trust, to enter into agreements relating to the foregoing, whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding arbitration, adjudication or settlement thereof, all in the name of the Litigation Trust if necessary or appropriate, and institute or continue actions that were or could have been commenced by any of the Debtors prior to the Effective Date that is a Litigation Trust Asset, and prosecute or defend all related litigation or appeals, and, when appropriate, settle such actions and claims;

(h) Enforce, waive, assign or release rights, privileges or immunities of any kind;

(i) Seek any relief from, or resolution of, any disputes by the Bankruptcy Court or other court of competent jurisdiction;

(j) Seek a determination of tax liability or refund under section 505 of the Bankruptcy Code; (2) file, if necessary, any and all tax and information returns required with respect to the Litigation Trust; (3) make tax elections for and on behalf of the Litigation Trust; (4) pay taxes, if any, payable for and on behalf of the Litigation Trust; and (5) file and prosecute claims for tax refunds to which the Reorganized Debtors or the Litigation Trust may be entitled; provided, however, that notwithstanding any other provision of this Litigation Trust Agreement, the Litigation Trustee shall have no personal responsibility for the signing or accuracy of the Reorganized Debtors' income tax returns that are due to be filed after the Effective Date or for any tax liability related thereto;

(k) Pay all valid and lawful expenses, debts, charges, taxes and liabilities of the Litigation Trust;

(l) Take all other actions not inconsistent with the provisions of the Plan that the Litigation Trustee deems reasonably necessary or desirable to administer the Litigation Trust;

(m) Enter into any agreement or execute any document or instrument required by or consistent with the Plan, the Confirmation Order or this Litigation Trust Agreement and perform all duties and obligations thereunder;

(n) If any of the Litigation Trust Assets are situated in any state or other jurisdiction in which the Litigation Trustee is not qualified to act as trustee, nominate and appoint an Entity duly qualified to act as trustee in such state or jurisdiction and require from each such trustee such security as may be designated by the Litigation Trustee in its reasonable discretion; confer upon such trustee all the rights, powers, privileges, and duties of the Litigation Trustee hereunder, subject to the conditions and limitations of this Litigation Trust Agreement, except as modified or limited by the Litigation Trustee and except where the conditions and limitations may be modified by the laws of such state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such trustee is acting shall prevail to the extent necessary); require such trustee to be answerable to the Litigation Trustee for all monies, assets and other property that may

be received in connection with the administration of all property; and, remove such trustee, with or without cause, and appoint a successor trustee at any time by the execution by the Litigation Trustee of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal, which notice shall be promptly served on the Litigation Trust Beneficiaries;

(o) Purchase and carry all insurance policies and pay all insurance premiums and costs the Litigation Trustee deems reasonably necessary or advisable;

(p) Implement, enforce, or discharge all of the terms, conditions, and all other provisions of, and all duties and obligations under, the Plan, the Confirmation Order, and this Litigation Trust Agreement; and

(q) Employ and compensate Litigation Trustee Representatives. Nothing in this Litigation Trust Agreement shall limit the Litigation Trustee from engaging counsel or other professionals (at the sole expense of the Litigation Trust), including the Litigation Trustee itself or former counsel to Creditors' Committee, to do work for or represent the Litigation Trust.

**2.3 Limitations on the Litigation Trustee.** Notwithstanding anything to the contrary under applicable law, this Litigation Trust Agreement or the Plan to the contrary, the Litigation Trustee shall not undertake any of the following, and any of the following actions by the Litigation Trustee shall be null and void:

(a) Take or commence any actions against any Released Parties on account of any Released Claims;

(b) Take, or fail to take, any action that would jeopardize treatment of the Litigation Trust as a "liquidating trust" under the Trust Regulations;

(c) Take any action in contravention of the Plan, the Confirmation Order or this Agreement without express Bankruptcy Court approval;

(d) Possess the Litigation Trust Assets for purposes other than the purposes of the Litigation Trust as expressly provided in the Plan and this Litigation Trust Agreement;

(e) Receive transfers of any listed stocks or securities, any readily-marketable assets or any operating assets of a going business, except as is necessary or required under the Plan and the Confirmation Order; provided, however, that in no event shall the Litigation Trustee receive or invest in any such investment that would jeopardize treatment of the Litigation Trust as a "liquidating trust" under the Trust Regulations; or

(f) Receive or retain any operating assets of a going business, a partnership interest in a partnership that holds operating assets, or fifty percent (50%) or more of the stock of a corporation with operating assets, except as is necessary or required under the Plan and the Confirmation Order; provided, however, that in no event shall the Litigation Trustee receive or retain any such asset or interest that would jeopardize treatment of the Litigation Trust as a "liquidation trust" under the Trust Regulations.



Notwithstanding any of the foregoing, the Litigation Trustee shall not be prohibited from engaging in any trade or business on its own account, provided that such activity does not interfere with the Litigation Trustee's administration of the Litigation Trust or its duties as Litigation Trustee, or jeopardize treatment of the Litigation Trust as a "liquidating trust" under the Trust Regulations.

#### **2.4 Compensation of Litigation Trustee and Litigation Trustee Representatives.**

(a) The Litigation Trustee shall be entitled to receive from the Litigation Trust reasonable compensation and reimbursement of its reasonable out-of-pocket expenses for the performance of its duties after the Effective Date on terms and conditions to be agreed upon between the Creditors' Committee and Litigation Trustee prior to the Effective Date and filed with the Bankruptcy Court. Any successor to the Litigation Trustee shall also be entitled to reasonable compensation in connection with the performance of its duties, which compensation may be different from the terms provided herein, plus the reimbursement of reasonable out-of-pocket expenses. Any material modification in the compensation and/or terms of employment of the Litigation Trustee shall be made upon prior written notice to Litigation Trust Beneficiaries holding Allowed Other Unsecured Claims against the Reorganized Debtors. If acceptance of such modification is received by more than fifty (50%) in number of the Voting Beneficiaries (as defined below) by the deadline provided in such notice, such modification(s) shall become effective. As used herein, "Voting Beneficiaries" are (i) the twenty (20) unaffiliated holders of the largest Allowed Other Unsecured Claims measured at the time of such vote plus (ii) any other holder of Allowed Other Unsecured Claims holding individually at least five percent (5%) of the then current aggregate amount of all Allowed Other Unsecured Claims against the Reorganized Debtors as evidenced by the Claims Registry (as defined below). The Bankruptcy Court shall resolve any disputes arising under this Section. For the avoidance of doubt, all compensation, reimbursements or other amounts paid to the Litigation Trustee shall be at the sole cost of the Litigation Trust.

(b) The Litigation Trustee Representatives (unless the Litigation Trustee Representatives and the Litigation Trustee agree to different treatment) seeking compensation or reimbursement shall submit written statements to the Litigation Trustee on a periodic basis. The Litigation Trustee shall have ten (10) days from the date such statement is received to review the statement and object to any portion of such statement by serving a written objection on the party seeking compensation setting forth the precise nature of the objection and the amount at issue. At the expiration of the ten (10) day period, and without further order of the Bankruptcy Court (except as provided herein), the Litigation Trustee shall pay from the Litigation Trust Assets 100% of the amounts requested, except for any portion of such fees and expenses to which objection has been made, if any. The Litigation Trustee and the party seeking compensation shall attempt to consensually resolve objections, if any, to any statement. If the Litigation Trustee and the party seeking compensation are unable to reach a consensual resolution of any such objection, the party seeking compensation who received an objection to its fees and expenses may seek payment of such fees and expenses by filing a motion with the Bankruptcy Court, providing notice of such motion to the Litigation Trustee and the Litigation Trust Beneficiaries, and obtaining an order from the Bankruptcy Court. If any agent or professional of the Litigation Trustee fails to submit a written statement as set forth above, it shall be ineligible to receive payment of the fees and expenses that would be the subject of such written statement as provided in this Litigation Trust Agreement until such written statement is submitted.

**2.5 General Duties, Obligations, Rights, and Benefits of the Litigation Trustee.**

The Litigation Trustee shall have all duties, obligations, rights, and benefits assumed by, assigned to or vested in the Litigation Trust, or reasonably necessary to accomplish the purpose of the Litigation Trust, under the Plan, the Confirmation Order, this Litigation Trust Agreement and any other agreement entered into pursuant to or in connection with the Plan. Such duties, obligations, rights and benefits include, without limitation, all duties, obligations, rights and benefits relating to (a) administering the Litigation Trust Assets; and (b) all of the other powers set forth in Section 2.2 hereof. No Implied Obligations. The Litigation Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be read into this Litigation Trust Agreement against the Litigation Trustee.

**2.6 Replacement of the Litigation Trustee.**

(a) The Litigation Trustee may resign at any time upon thirty (30) days' prior written notice filed with the Bankruptcy Court and served upon the Litigation Trust Beneficiaries (a "Resignation Notice"), provided that such resignation shall only become effective upon the appointment of a successor Litigation Trustee, who shall be identified and recommended by the resigning Litigation Trustee in its Resignation Notice, which notice shall also include the proposed terms of engagement of the successor Litigation Trustee; provided, however, that if any group of five (5) Voting Beneficiaries, acting together, files an alternative successor Litigation Trustee recommendation (an "Alternative Recommendation Notice") with the Bankruptcy Court within ten (10) days after the date the Resignation Notice was filed with the Bankruptcy Court, the Bankruptcy Court shall determine and appoint the successor Litigation Trustee from those candidates recommended by the resigning Litigation Trustee and in the Alternative Recommendation Notices (or such other successor Litigation Trustee that the Bankruptcy Court may determine in its discretion). If an Alternative Recommendation Notice is not timely filed, the successor Litigation Trustee identified in the Resignation Notice shall be appointed by the Bankruptcy Court on the terms of engagement disclosed therein, subject to the requirements set forth in the next sentence. Any successor Litigation Trustee appointed under this clause (a) shall execute an instrument accepting its appointment and shall file a copy of such instrument with the Bankruptcy Court. Thereupon, the successor Litigation Trustee, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor, except as provided in Section 2.4(a) above, and all responsibilities of the predecessor Litigation Trustee relating to the Litigation Trust shall be terminated.

(b) In addition, two-thirds (2/3) in number of Voting Beneficiaries may remove the Litigation Trustee with or without cause. The Litigation Trustee may also be removed by the Bankruptcy Court for cause upon motion and after notice and a hearing, which motion may only be brought by any group of five (5) Voting Beneficiaries, acting together. In the event of the removal of the Litigation Trustee as set forth in the preceding two sentences, or in the event of the death, disability, dissolution, or liquidation of the Litigation Trustee, a majority in number of Voting Beneficiaries shall select a successor Litigation Trustee; provided, however, if a successor Litigation Trustee is not selected within thirty (30) days of the date of the Litigation Trustee's death, disability, dissolution, liquidation, or removal as set forth in this clause (b), any group of five (5) Voting Beneficiaries, acting together, may file a successor Litigation Trustee recommendation with the Bankruptcy Court within ten (10) days following the expiration of such

thirty (30) day period, and the Bankruptcy Court shall determine and appoint the successor Litigation Trustee from those candidates recommended (or such other successor Litigation Trustee that the Bankruptcy Court may determine in its discretion). Any successor Litigation Trustee appointed under this clause (b) shall execute an instrument accepting its appointment and shall file a copy of such instrument with the Bankruptcy Court. Thereupon, the successor Litigation Trustee, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor, except as provided in Section 2.4(a) above, and all responsibilities of the predecessor Litigation Trustee relating to the Litigation Trust shall be terminated.

(c) In the event the Litigation Trustee's appointment terminates for any of the reasons set forth in clauses (a) or (b) above, such Litigation Trustee shall be promptly compensated for all reasonable fees and expenses accrued through the effective date of termination, whether or not previously invoiced. The provisions of Article IV of this Litigation Trust Agreement shall survive the resignation or removal of any Litigation Trustee, in accordance with Section 4.8 of this Litigation Trust Agreement.

**2.7 Litigation Trust Continuance.** The death, disability, dissolution, liquidation, resignation, or removal of the Litigation Trustee shall not terminate the Litigation Trust or revoke any existing agency created by the Litigation Trustee pursuant to this Litigation Trust Agreement or invalidate any action theretofore taken by the Litigation Trustee, and the provisions of this Litigation Trust Agreement shall be binding upon and inure to the benefit of the successor Litigation Trustee and all its successors or assigns

### **ARTICLE III. PROSECUTION AND RESOLUTION OF ACTIONS**

**3.1 Exclusive Authority; Representative.** Without limiting the authority of the Litigation Trust or the Litigation Trustee set forth in this Litigation Trust Agreement herein, the Plan or the Confirmation Order, the Litigation Trust shall be deemed to be a party in interest, and shall have the exclusive right, power, and interest to pursue, settle, defend, or abandon, as the case may be, all Litigation Trust Causes of Action, as the representative of the Reorganized Debtors and their Estates pursuant to section 1123(b)(3) of the Bankruptcy Code.

**3.2 Litigation Trust Proceeds.** Any and all Litigation Trust Proceeds, plus all income earned on Litigation Trust Assets, after payment of any and all expenses of the Litigation Trust and subject to holdbacks for the Litigation Trust Reserve (as defined below), shall be added to the Litigation Trust Assets, held as a part thereof (and title therein shall be vested in the Litigation Trustee), and distributed to the Litigation Trust Beneficiaries, in accordance with the terms of this Litigation Trust Agreement.

### **ARTICLE IV. LIABILITY OF LITIGATION TRUSTEE**

**4.1 Standard of Care; Exculpation.** Neither the Litigation Trustee, nor any director, officer, member, affiliate, employee, employer, professional, successors, assigns, agent, or representative of the Litigation Trustee (each, an "Exculpated Party" and collectively, the "Exculpated Parties") shall be liable for any losses, claims, damages, liabilities, obligations,

settlements, proceedings, suits, judgments, causes of action, litigation, actions, or investigations (whether civil or administrative and whether sounding in tort, contract or otherwise), penalties, costs, and expenses, including reasonable fees and disbursements (collectively referred to herein as “Losses”), whether or not in connection with litigation in which any Exculpated Party is a party, or administering or enforcing this Litigation Trust Agreement (including these exculpation provisions), as and when imposed on the Litigation Trustee, incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Litigation Trustee’s execution, delivery, and acceptance of or the performance or nonperformance of its powers, duties and obligations under this Litigation Trust Agreement, the Plan, or the Confirmation Order, or as may arise by reason of any action, omission or error of an Exculpated Party; provided, however, that the foregoing limitation shall not apply to any Losses suffered or incurred by any holder of a Claim or Interest or Beneficiary that are determined by a Final Order of the Bankruptcy Court to have been caused by the intentional fraud, willful misconduct or gross negligence of such Exculpated Party. Every act taken or omitted, power exercised or obligation assumed by the Litigation Trust or any other Exculpated Party pursuant to the provisions of this Litigation Trust Agreement, the Plan, or the Confirmation Order shall be held to be taken or omitted, exercised, or assumed, as the case may be, by the Litigation Trust or any Exculpated Party acting for and on behalf of the Litigation Trust and not otherwise; provided, however, that none of the foregoing Entities are deemed to be responsible for any other such Entities’ actions or inactions. Except as provided in the first proviso of the first sentence of this Section, every Entity contracting or otherwise dealing with or having any relationship with the Litigation Trust or any Exculpated Party shall have recourse only to the Litigation Trust Assets for payment of any liabilities or other obligations arising in connection with such contracts, dealings or relationships, and the Litigation Trust and the Exculpated Parties shall not be individually liable therefor. In no event shall the Litigation Trustee or any other Exculpated Party be liable for indirect, punitive, special, incidental, or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Litigation Trustee has been informed of the likelihood of such loss or damages and regardless of the form of action. Any liability of the Litigation Trustee or any other Exculpated Party under this Litigation Trust Agreement shall be limited to an amount equal to the fees actually paid to the Litigation Trustee as of the date of any determination.

#### **4.2 Indemnification.**

(a) The Litigation Trustee and any director, officer, member, affiliate, employee, employer, professional, successor, assign, agent, or representative of the Litigation Trustee (each, an “Indemnified Party” and collectively, the “Indemnified Parties”) shall be defended, held harmless, and indemnified from time to time by the Litigation Trust against any and all Losses, including, without limitation, the costs for counsel or others in investigating, preparing, defending, or settling any action or claim, whether or not in connection with litigation in which any Indemnified Party is a party, or administering or enforcing this Litigation Trust Agreement (including these indemnity provisions), as and when imposed on the Litigation Trustee, incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Litigation Trustee’s execution, delivery, and acceptance of or the performance, implementation or administration, or nonperformance of its powers, duties, and obligations under this Litigation Trust Agreement, the Plan, or the Confirmation Order, or as may arise by reason of any action, omission, or error of an Indemnified Party; provided, however, such indemnity shall not apply to any such Losses that are determined by a Final Order of the Bankruptcy Court to have been caused by the

intentional fraud, willful misconduct, or gross negligence of such Indemnified Party. Satisfaction of any obligation of the Litigation Trust arising pursuant to the terms of this Section shall be, in the first instance, satisfied from any applicable insurance coverage, and any remaining amounts shall be payable from the Litigation Trust Assets, and in either case shall be advanced prior to the conclusion of such matter (to the greatest extent possible) and such right to payment shall be prior and superior to the rights of the Litigation Trust Beneficiaries to receive a distribution of the Litigation Trust Assets.

(b) The Litigation Trust shall promptly pay to the Indemnified Party the expenses set forth in subparagraph (a) above upon submission of invoices therefore on a current basis. Each Indemnified Party hereby undertakes, and the Litigation Trust hereby accepts its undertaking, to repay any and all such amounts so paid by the Litigation Trust if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified therefore under this Litigation Trust Agreement.

**4.3 No Liability for Acts of Successor/Predecessor Litigation Trustees.** Upon the appointment of a successor Litigation Trustee and the delivery of the Litigation Trust Assets to the successor Litigation Trustee, the predecessor Litigation Trustee and any director, officer, affiliate, employee, employer, professional, agent, or representative of the predecessor Litigation Trustee shall have no further liability or responsibility with respect to the Litigation Trust, the Litigation Trust Assets or this Litigation Trust Agreement. A successor Litigation Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor and no successor Litigation Trustee shall be in any way liable for the acts or omissions of any predecessor Litigation Trustee unless a successor Litigation Trustee expressly assumes such responsibility. A predecessor Litigation Trustee shall have no liability for the acts or omissions of any immediate or subsequent successor Litigation Trustee for any events or occurrences subsequent to the cessation of its role as Litigation Trustee.

**4.4 Reliance by Litigation Trustee on Documents or Advice of Counsel or Other Professionals.** Except as otherwise provided in this Litigation Trust Agreement, the Litigation Trustee and any director, officer, member, affiliate, employee, employer, professional, agent, or representative of the Litigation Trustee, may rely, and shall be protected from liability for acting or failing to act, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by the Litigation Trustee to be genuine and to have been presented by an authorized party. The Litigation Trustee shall not be liable for any action taken or omitted or suffered by the Litigation Trustee in reasonable reliance upon the advice of counsel or other professionals engaged by the Litigation Trustee in accordance with this Litigation Trust Agreement. The Litigation Trustee shall be fully indemnified by the Litigation Trust for or in respect of any action taken, suffered or omitted by it and in accordance with such advice or opinion.

**4.5 Conflicts of Interest.** Conflicts of interest of the Litigation Trustee will be addressed by the Litigation Trustee appointing a disinterested person to handle any matter where the Litigation Trustee has identified a conflict of interest or the Bankruptcy Court, on motion of a party in interest, determines one exists. In the event the Litigation Trustee is unwilling or unable to appoint a disinterested person to handle any such matter, or a Voting Beneficiary objects to a disinterested person appointed by the Litigation Trustee, such Voting Beneficiary may file an

objection with the Bankruptcy Court, on notice to the Litigation Trustee and the Litigation Trust Beneficiaries, setting forth such objection and seeking entry of an order appointing a disinterested person recommended in such objection.

**4.6 Insurance.** The Litigation Trustee may purchase, using the Litigation Trust Assets, and carry, all insurance policies and pay all insurance premiums and costs the Litigation Trustee deem reasonably necessary or advisable, including, without limitation, purchasing any errors and omissions insurance with regard to any Losses it may incur, arising out of or due to its actions or omissions, or consequences of such actions or omissions, other than as a result of its fraud or willful misconduct, with respect to the implementation and administration of the Plan or this Litigation Trust Agreement.

**4.7 No Liability for Good Faith Error of Judgment.** The Litigation Trustee shall not be liable for any error of judgment made in good faith, unless it shall be finally determined by a Final Order that the Litigation Trustee was grossly negligent in ascertaining the pertinent facts.

**4.8 Survival.** The provisions of this Article IV shall survive the termination of this Litigation Trust Agreement and the death, resignation, removal, liquidation, dissolution, or replacement of the Litigation Trustee.

**ARTICLE V.  
GENERAL PROVISIONS CONCERNING  
ADMINISTRATION OF THE LITIGATION TRUST**

**5.1 Litigation Trust Reserve.** The Litigation Trustee shall establish the Litigation Trust Reserve in accordance with Section 8.2 of this Litigation Trust Agreement.

**5.2 Books and Records.**

(a) The Litigation Trust shall have the responsibility of physically taking possession of (with the Reorganized Debtors' reasonable cooperation), storing and maintaining copies of the Reorganized Debtors' books and records and all other information and materials referred to in Section 1.3(c) above, subject to clause (c) below.

(b) The Litigation Trustee also shall maintain in respect of the Litigation Trust and the Litigation Trust Beneficiaries books and records relating to the Litigation Trust Assets and the payment of expenses of and claims against or assumed by the Litigation Trust in such detail and for such period of time as may be necessary to enable it to make full and proper reports in respect thereof as required under the Plan, Confirmation Order or this Litigation Trust Agreement. Except as expressly provided in this Litigation Trust Agreement, the Plan, or the Confirmation Order, or as may be required by applicable law (including securities law), nothing in this Litigation Trust Agreement is intended to require the Litigation Trust to file any accounting or seek approval of any court with respect to the administration of the Litigation Trust, or as a condition for making any payment or transfer out of the Litigation Trust Assets. Litigation Trust Beneficiaries shall have the right upon ten (10) days' prior written notice delivered to the Litigation Trustee to inspect the Reorganized Debtors' books and records and the Litigation Trust's books and records, provided such Beneficiary shall have entered into a confidentiality agreement in form and substance reasonably satisfactory to the Litigation Trustee and the

Reorganized Debtors. Satisfaction of the foregoing condition notwithstanding, if (a) the Litigation Trustee determines in good faith that the inspection of the Reorganized Debtors' books and records or the Litigation Trust's books and records by any Beneficiary would be detrimental to the Litigation Trust or (b) such Beneficiary is a defendant (or potential defendant) in a pending (or potential) action brought by the Litigation Trust, the Litigation Trust may deny such request for inspection. The Bankruptcy Court shall resolve any dispute between any Beneficiary and the Litigation Trustee under this Section.

(c) The Litigation Trustee may destroy or return to the Reorganized Debtors, in its discretion after consultation with the Reorganized Debtors, any copies of the Reorganized Debtors' books and records on or after one hundred and twenty (120) days from the Effective Date. If reasonably requested by the Reorganized Debtors, the Litigation Trustee shall provide the Reorganized Debtors a written certification of the destruction of all copies of the Reorganized Debtors' applicable books and records within 30 days of the destruction thereof.

**5.3 Final Accounting of Litigation Trustee.** The Litigation Trustee (or any such successor Litigation Trustee) shall within thirty (30) days after the termination of the Litigation Trust or the death, dissolution, liquidation, resignation, or removal of the Litigation Trustee, render an accounting containing the following information:

- (a) A description of the Litigation Trust Assets.
- (b) A summarized accounting in sufficient detail of all gains, losses, receipts, disbursements and other transactions in connection with the Litigation Trust and the Litigation Trust Assets during the Litigation Trustee's term of service, including their source and nature.
- (c) Separate entries for all receipts of principal and income.
- (d) The ending balance of all Litigation Trust Assets as of the date of the accounting, including the Cash balance on hand and the name(s) and location(s) of the depository or depositories where the Cash is kept.
- (e) All known liabilities of the Litigation Trust.
- (f) A description of all Litigation Trust Causes of Action and the status thereof.

**5.4 Filing of Accounting.** The final accounting described in the above Section shall be filed with the Bankruptcy Court and the Reorganized Debtors and all Litigation Trust Interests shall have notice that the final accounting has been filed and an opportunity to have a hearing on the approval of the accounting and the discharge and release of the Litigation Trustee.

**5.5 Other Reporting.** In addition to the other reporting requirements in this Litigation Trust Agreement, as soon as practicable after the end of each fiscal year (and such additional reports as may be reasonably requested by the Reorganized Debtors after the end of each fiscal quarter), the Litigation Trustee shall provide to the Reorganized Debtors and each holder of Litigation Trust Interests a detailed, written report describing the financial condition of the Litigation Trust for such period, including, (a) a description of any action taken by the Litigation Trustee in the performance of its duties that materially affects the Litigation Trust and of which notice has not previously been

given to the holders of Litigation Trust Interests; (b) a description of the progress of the Litigation Trust Causes of Action and any other material information relating to the Litigation Trust Assets and the administration of the Litigation Trust; and (c) a statement of the fees and expenses of the Litigation Trustee and the Litigation Trustee Representatives. Such report may be combined with the reports described in Sections 5.3 and 5.4 above to the extent appropriate under the circumstances. To the extent considered appropriate by the Litigation Trustee, such report may but need not be prepared by an independent certified public accountant employed by the Litigation Trust and may but need not be certified or prepared in accordance with U.S. generally accepted accounting principles. Notwithstanding anything to the contrary contained herein, the Litigation Trustee shall not provide or disclose any information that it reasonably believes is privileged or otherwise protected from discovery without first ensuring that inclusion of that information will not waive any such privilege or protection. The Litigation Trustee may, but is not required to, post the above reports (and any other reports required pursuant to this Litigation Trust Agreement) on a limited-access web site maintained by the Litigation Trustee (the “Litigation Trust Website”) and available to all Litigation Trust Beneficiaries, and any such posting may be in lieu of providing a written copy to the Reorganized Debtors and Litigation Trust Beneficiaries (unless otherwise required by law).

## **ARTICLE VI. BENEFICIAL INTERESTS AND BENEFICIARIES**

**6.1 Trust Beneficial Interests.** Each Litigation Trust Beneficiary shall hold a beneficial interest in the Litigation Trust (such interests, “Litigation Trust Interests”) in the same proportion as its rights as holders of Allowed Other Unsecured Claims. The Litigation Trust Interests will be uncertificated; accordingly, distributions of Litigation Trust Interests will be accomplished solely by the entry of the names of such holders and their respective Allowed Other Unsecured Claims against the Reorganized Debtors in the Claims registry maintained by the Reorganized Debtors or its agents (the “Claims Registry”). Each holder of a Litigation Trust Interest shall take and hold its uncertificated beneficial interest subject to all of the terms and provisions of this Litigation Trust Agreement, the Confirmation Order, and the Plan.

**6.2 Interest Beneficial Only.** Ownership of a beneficial interest in the Litigation Trust shall not entitle any Litigation Trust Beneficiary to any title in or to the Litigation Trust Assets or to any right to call for a partition or division of the Litigation Trust Assets or to require an accounting. The interest of a holder of a Litigation Trust Interest is in all respects personal property. Any transfer of any Litigation Trust Interest in violation of this Litigation Trust Agreement shall be null and void. A holder of a Litigation Trust Interest shall have no title to, right to, possession of, management of, or control of, any Litigation Trust Assets except as herein expressly provided. No surviving spouse, heir or devisee of any deceased holder of a Litigation Trust Interest shall have any right of dower, homestead, or inheritance, or of partition, or any other right, statutory or otherwise, in the Litigation Trust Assets, but the whole title to all the Litigation Trust Assets shall be vested in the Litigation Trust and the sole interest of the holders of Litigation Trust Interests shall be the rights and benefits given to such persons under this Litigation Trust Agreement. The record holder of Litigation Trust Interests, as evidenced by the Claims Registry, will be entitled to participate in the rights due to a holder of Litigation Trust Interests hereunder.



**6.3 Evidence of Beneficial Interest.** Ownership of a Litigation Trust Interest shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained by the Litigation Trustee. Except as otherwise required by law, references in this Litigation Trust Agreement to the identification of holders and the providing of information to holders shall be read to mean holders of record as set forth in the Claims Registry and shall not mean any beneficial owner not recorded in such official registry.

**6.4 Exemption from Registration.** It is intended that the Litigation Trust Interests and the entitlements hereunder, if any, of the Litigation Trust Beneficiaries shall not constitute “securities.” To the extent the Litigation Trust Interests or the entitlements of the Litigation Trust Beneficiaries are deemed to be “securities,” the issuance of Litigation Trust Interests to Litigation Trust Beneficiaries of any entitlements hereunder or under the Plan (and any redistribution of any of the foregoing pursuant to the Plan or otherwise) shall be exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended (the “Securities Act”), and any applicable state and local laws requiring registration of securities. If the Litigation Trustee determines, with the advice of counsel, that the Litigation Trust is required to comply with registration and/or reporting requirements of the Securities Act, the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”), or the Investment Company Act of 1940, as amended (the “Investment Company Act”), then the Litigation Trustee shall take any and all actions to comply with such registration and reporting requirements, if any, and file reports with the Securities and Exchange Commission (the “SEC”) to the extent required by applicable law. Notwithstanding the foregoing procedure, nothing herein shall be deemed to preclude the Litigation Trustee from amending this Litigation Trust Agreement to make such changes as are deemed necessary or appropriate by the Litigation Trustee, with the advice of counsel, to ensure that the Litigation Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the Trust Indenture Act or the Investment Company Act, except that no amendment to this Litigation Trust Agreement may be made which would not be permitted by Section 11.1 of this Litigation Trust Agreement.

**6.5 Transfers of Beneficial Interests.** The Litigation Trust Interests are non-transferable and shall not be assigned, pledged or hypothecated, in whole or in part, except upon the death of an individual interest holder, in which case such holder’s legal representative under applicable law. Any purported transfer, assignment, pledge or hypothecation of a Litigation Trust Interest or any part thereof not permitted by this Section shall constitute a violation of this Litigation Trust Agreement and shall be void *ab initio*.

**6.6 Change of Address.** A Litigation Trust Beneficiary may, after the Effective Date, select an alternative address by filing a notice with the Bankruptcy Court (with a copy served on the Litigation Trustee and Reorganized Debtors) identifying such alternative address. Absent such notice, the Litigation Trustee shall not recognize any such change of address. Such notification shall be effective only upon receipt by the Litigation Trustee and Reorganized Debtors.

**6.7 No Beneficiary Standing.** No Litigation Trust Beneficiary has any standing, authority or right to act for or bind the Litigation Trustee, or to direct the Litigation Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any Entity, and no Beneficiary has any standing, authority or right to participate in or have any control over

the business of or the Litigation Trust, except for the express rights to consent, approve or object to certain actions and decisions as expressly set forth in this Litigation Trust Agreement.

**ARTICLE VII.  
NET LITIGATION TRUST RECOVERY**

**7.1 No Effect on Mutuality.** Notwithstanding anything contained in this Litigation Trust Agreement to the contrary, nothing herein shall affect the mutuality of obligations, if any, of any holder of any Claim under section 553 of the Bankruptcy Code, nor shall the transfer of the Litigation Trust Causes of Action to the Litigation Trust diminish any defenses a defendant would have if such Litigation Trust Causes of Action had been retained by the Reorganized Debtors, all of which are fully preserved.

**7.2 Section 502(h).** Notwithstanding anything contained this Litigation Trust Agreement to the contrary, in the event that a compromise and settlement of a Litigation Trust Cause of Action or a Final Order with respect to a Litigation Trust Cause of Action provides for the allowance of a Claim pursuant to section 502(h) of the Bankruptcy Code against one or more of the Reorganized Debtors, the distributions to be made under the Plan on account of such Claim, unless otherwise agreed in writing by the Reorganized Debtors, shall be funded by the Litigation Trust in the amount(s), from time to time, that all similarly situated holders of Claims are entitled to receive thereunder.

**7.3 Net Litigation Trust Recovery.** Notwithstanding anything contained in this Litigation Trust Agreement to the contrary, in the event that a defendant in a litigation brought by the Litigation Trustee for and on behalf of the Litigation Trust (i) is required by a Final Order to make payment to the Litigation Trust (the “Judgment Amount”) and (ii) is permitted by a Final Order to assert a right of setoff under sections 553, 555, 556, 559, 560 and 561 of the Bankruptcy Code or applicable non-bankruptcy law against the Judgment Amount (a “Valid Setoff”), such defendant shall be obligated to pay only the excess, if any, of the Judgment Amount over the Valid Setoff and, unless otherwise agreed in writing by the Litigation Trustee, the applicable Reorganized Debtor shall pay an amount equal to the Valid Setoff to be applied as part of the Litigation Trust Distributable Proceeds, without further setoff or deduction.

**7.4 Litigation Trustee Consent; Resolution of Certain Claims.** Notwithstanding anything in this Litigation Trust Agreement to the contrary, or otherwise, the Reorganized Debtors shall not settle, compromise, liquidate, or allow, or fail to object to, in whole or part, any Claim against any Reorganized Debtor held by an Entity (or its Affiliates) who is a defendant in a Litigation Trust Cause of Action, or as to whom notification has been provided by the Litigation Trust to the Reorganized Debtors that a potential claim is being evaluated or contemplated by the Litigation Trust against such Entity; provided that, the Reorganized Debtors may settle, compromise, liquidate, or allow, or not object to, in whole or part, any Claim brought by any Entity against any Reorganized Debtor, to the extent such action (a) is not reasonably likely to result in a material adverse effect to a Litigation Trust Cause of Action or a potential claim against such Entity that is being evaluated or contemplated by the Litigation Trust (and which notice of such potential action has been provided by the Litigation Trust to the Reorganized Debtors) or (b) has been consented to (via writing) by Litigation Trustee. Pursuant to Section 7.2(c) of the Plan, the Litigation Trustee shall have the right to prosecute or otherwise adjudicate or settle particular

objections to Other Unsecured Claims in the event that the Reorganized Debtors and the Litigation Trustee disagree with respect to the treatment of any particular Other Unsecured Claim and the Litigation Trustee shall have standing to seek court intervention to resolve any dispute between the Reorganized Debtors and the Litigation Trustee with respect to allowance of Other Unsecured Claims.

## **ARTICLE VIII. DISTRIBUTIONS**

### **8.1 Distributions to Litigation Trust Beneficiaries.**

(a) Subject to the rights of the Litigation Trustee set forth in Section 7.4 above, the Litigation Trustee shall distribute Litigation Trust Distributable Proceeds to the Litigation Trust Beneficiaries on account of their interests in the Litigation Trust, at least annually, all net proceeds from the monetization of assets, if any, except that the Litigation Trust may retain an amount of net proceeds reasonably necessary to maintain the value of the Litigation Trust Assets or to meet claims and contingent liabilities; provided, however, that pursuant to Section 6.10 of the Plan, if a distribution to be received by the holder of an Allowed Other Unsecured Claim would be less than one hundred dollars (\$100.00) in Cash, no such payment will be made to such holder.

### **8.2 Reserves.**

(a) Notwithstanding anything in this Litigation Trust to the contrary, the Litigation Trustee may withhold from amounts transferrable to the Litigation Trust Beneficiaries, and supplement from time to time, a reserve (the "Litigation Trust Reserve") in such amount as the Litigation Trustee, in its sole discretion, determines is or may be reasonably necessary (a) to meet contingent liabilities and to maintain the value of the Litigation Trust Assets during the term of the Litigation Trust; (b) to administer the Litigation Trust and pay reasonable administrative expenses including, without limitation, the compensation and the reimbursement of reasonable, actual and necessary costs, fees, and expenses (including attorneys' fees and expenses, financial advisor fees and expenses of the Litigation Trustee in connection with the performance of their duties in connection with this Litigation Trust Agreement; (c) to wind-up the affairs of the Litigation Trust; and (d) to satisfy all other liabilities of the Litigation Trust incurred or assumed in respect of the Litigation Trust, or to which the Litigation Trust Assets are otherwise subject, other than Claims, in accordance with the Plan, the Confirmation Order and this Litigation Trust Agreement.

(b) The Litigation Trustee may also withhold from Litigation Trust Proceeds any and all amounts, determined in the Litigation Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

**8.3 Setoff and Recoupment.** In connection with any Litigation Trust Cause of Action, the Litigation Trust, in its sole discretion, may, but shall not be required to, setoff against any Claim against the Reorganized Debtors, or recoup from, any such Claims or defenses of any nature whatsoever that any of the Reorganized Debtors, their Estates or the Litigation Trust may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Reorganized Debtors, their Estates or the

Litigation Trust of any Claim, claim, defense, right of setoff, or recoupment that any of them may have against the holder of any Claim against the Reorganized Debtors. Any such setoffs or recoupments may be challenged by an affected party in interest in Bankruptcy Court.

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

## **ARTICLE IX. TAXES**

**9.1 Liquidating Trust.** The Litigation Trust shall be treated as a "liquidating trust" as described within the Trust Regulations and as a grantor trust pursuant to IRC Sections 671-677. As such, the Litigation Trust Beneficiaries will be treated as both the grantors and the deemed owners of the Litigation Trust. Any items of income, deduction, credit, and loss of the Litigation Trust shall be allocated for federal income tax purposes to the Litigation Trust Beneficiaries. Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Litigation Trustee), the Litigation Trustee may timely elect to (x) treat any portion of the Litigation Trust allocable to Disputed Claims as a "disputed ownership fund" governed by Treasury Regulation Section 1.468B-9 (and make any appropriate elections) and (y) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. If and to the extent an election to be taxed as a "disputed ownership fund" is made, for U.S. federal income tax purposes the "disputed ownership fund" will be taxable as a separate corporate entity subject to tax on amounts it earns on a current basis.

**9.2 Tax Returns.** In accordance with IRC Section 6012 and Treasury Regulation Section 1.671-4(a), the Litigation Trust shall file with the Internal Revenue Service (the "IRS") annual tax returns on Form 1041. In addition, the Litigation Trust shall file in a timely manner such other tax returns, statements or disclosures (in accordance with applicable Treasury Regulations and Rev. Proc. 94-45, 1994-2 C. B. 684), including any state and local tax returns, as are required by applicable law and pay any taxes shown as due thereon out of the Litigation Trust Assets. Within a reasonable time following the end of the taxable year, the Litigation Trust shall send to each Litigation Trust Beneficiary a separate statement setting forth the Litigation Trust Beneficiary's share of items of income, gain, loss, deduction or credit and will instruct each such Beneficiary to report such items on their federal income tax returns. The Litigation Trust may provide each Litigation Trust Beneficiary with a copy of the Form 1041 for the Litigation Trust (without attaching any other Litigation Trust Beneficiary's Schedule K-1 or other applicable information form) along with such Litigation Trust Beneficiary's Schedule K-1 or other applicable information form in order to satisfy the foregoing requirement. The Litigation Trust shall allocate the taxable income, gain, loss, deduction, or credit of the Litigation Trust with respect to each Litigation Trust Beneficiary. All parties (including the Debtors and the Estates, holders of Allowed

Other Unsecured Claims and the Litigation Trustee) shall report for U.S. federal, state, and local income tax purposes consistently with the foregoing.

**9.3 Tax Identification Numbers.** The Litigation Trustee shall require any Litigation Trust Beneficiary to furnish to the Litigation Trustee its social security number or employer or taxpayer identification number as assigned by the IRS and the Litigation Trustee may condition any distribution to any Litigation Trust Beneficiary upon the receipt of such identification number. No distribution shall be made to or behalf of a Litigation Trust Beneficiary unless and until such holder has provided the Litigation Trustee with any information applicable law requires the Litigation Trust to obtain in connection with making distributions, including completed IRS Form W-8 or W-9, as applicable. If a Litigation Trust Beneficiary does not timely provide the Litigation Trustee with its taxpayer identification number in the manner and by the deadline established by the Litigation Trustee, then the distribution to such Litigation Trust Beneficiary shall be administered as unclaimed property in accordance with Section 6.7 of the Plan.

**9.4 Withholding of Taxes and Reporting Related to Litigation Trust Operations.** The Litigation Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the Litigation Trust shall be subject to any such withholding and reporting requirements. To the extent that the operation of the Litigation Trust or the liquidation of the Litigation Trust Assets creates a tax liability, the Litigation Trust shall promptly pay such tax liability out of the Litigation Trust Assets and any such payment shall be considered a cost and expense of the operation of the Litigation Trust payable without Bankruptcy Court order. The Litigation Trust may reserve a sum, the amount of which shall be determined by the Litigation Trustee sufficient to pay the accrued or potential tax liability arising out of the operations of the Litigation Trust or the operation of the Litigation Trust Assets. The Litigation Trustee, on behalf of the Litigation Trust, may enter into agreements with taxing authorities or other governmental units for the payment of such amounts as may be withheld. Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from distributions hereunder. The Litigation Trustee may withhold and pay to the appropriate taxing authority all amounts required to be withheld under the Tax Code or any provision of any foreign, state or local tax law with respect to any payment or distribution on account of Claims against the Reorganized Debtors. All such amounts withheld and paid to the appropriate taxing authority shall be treated as amounts distributed to the applicable holders of the Claims against the Reorganized Debtors. All Litigation Trust Beneficiaries shall be required to provide any information necessary to effect the withholding of such taxes. The Litigation Trustee may refuse to make a distribution to any holder of an Allowed Other Unsecured Claims against the Reorganized Debtors that fails to furnish such information within the time period specified by the Litigation Trustee and such distribution shall be deemed an unclaimed distribution under the Plan; provided, however, that, if the Litigation Trustee fails to withhold in respect of amounts received or distributable with respect to any such holder and the Litigation Trustee is later held liable for the amount of such withholding, such holder shall promptly reimburse the Litigation Trustee upon demand therefor for such liability. The Litigation Trustee shall be the “administrator” (as defined in the Trust Regulations) of the Litigation Trust and shall meet, without limitation, all requirements necessary to qualify and maintain qualification of the Litigation Trust as a “liquidating trust” within the meaning of the Trust Regulations, and take no action that could

cause the Litigation Trust to fail to qualify as a “liquidating trust” within the meaning of the Trust Regulations.

**9.5 Expedited Determination of Taxes.** The Litigation Trustee may request an expedited determination of taxes or tax refund rights of the Litigation Trust under section 505(b) of the Bankruptcy Code for all returns or claims filed for the Litigation Trust for all taxable periods through the termination of the Litigation Trust.

## **ARTICLE X. DISSOLUTION OF LITIGATION TRUST**

### **10.1 Dissolution of Litigation Trust.**

(a) The Litigation Trust shall commence on the Effective Date and end no later than the fifth (5<sup>th</sup>) anniversary of the Effective Date (the “Initial Litigation Trust Term”); provided, however, that the Litigation Trustee may, subject to the further provisions of this Section, extend the term of the Litigation Trust for such additional period of time as is necessary to facilitate or complete the recovery and liquidation of the Litigation Trust Assets as follows: within the six (6) month period prior to the termination of the Initial Litigation Trust Term, the Litigation Trustee may file a notice of intent to extend the term of the Litigation Trust with the Bankruptcy Court and, upon approval of the Bankruptcy Court of such extension request following notice and a hearing, the term of the Litigation Trust shall be so extended. The Litigation Trust may file one or more such extension notices, each notice to be filed within the six (6) month period prior to the termination of the extended term of the Litigation Trust (all such extensions are referred to herein in the aggregate as the “Supplemental Litigation Trust Term”). Notwithstanding anything to the contrary in this Section, however, the Supplemental Litigation Trust Term may not, in the aggregate, exceed three (3) years without a favorable letter ruling from the IRS that any further extension would not adversely affect the status of the Litigation Trust as a “liquidating trust” (or a “liquidating trust” treated as a grantor trust pursuant to the Trust Regulations) under the Trust Regulations.

(b) The Litigation Trust may be terminated earlier than its scheduled termination if (i) the Litigation Trustee determines that the pursuit of additional Litigation Trust Causes of Action is not likely to yield sufficient additional proceeds to justify further pursuit of such claims, or (ii) the Litigation Trustee has administered all Litigation Trust Assets and materially performed all duties required by the Plan, the Confirmation Order, and this Litigation Trust Agreement.

**10.2 Events Upon Termination.** At the conclusion of the term of the Litigation Trust, the Litigation Trustee shall transfer the remaining Litigation Trust Assets and Litigation Trust Proceeds (subject to a reserve for expenses to be incurred in winding up the affairs of the Litigation Trust as set forth in Section 7.2), to all Litigation Trust Beneficiaries, in accordance with the Plan, the Confirmation Order, and this Litigation Trust Agreement.

**10.3 Winding Up, Discharge, and Release of the Litigation Trustee.** Upon a motion by the Litigation Trustee, the Bankruptcy Court may enter an order relieving the Litigation Trustee and the Litigation Trustee Representatives of any further duties, discharging, and releasing the

Litigation Trustee and releasing its bond, if any. For the purposes of winding up the affairs of the Litigation Trust in an orderly manner at the conclusion of its term, the Litigation Trustee shall continue to act as Litigation Trustee until its duties under this Litigation Trust Agreement have been fully discharged or its role as Litigation Trustee is otherwise terminated under this Litigation Trust Agreement and the Plan. Upon such an occurrence, the Litigation Trustee shall proceed as promptly as possible (but in no event for a period longer than three (3) months, unless a longer period is approved by the Bankruptcy Court) to wind up the affairs of the Litigation Trust and make any required federal, state or local filings for the dissolution of the Litigation Trust. The Litigation Trust Beneficiaries shall have no right to wind up the affairs of the Litigation Trust. Upon its dissolution, the Litigation Trust will file its final tax returns, and deliver its books and records to the Reorganized Debtors. Upon completion of such process, the Litigation Trustee shall file a final report with the Bankruptcy Court stating that the Litigation Trust has been dissolved, whereupon the Litigation Trustee shall be discharged from any further responsibility under the Agreement.

## **ARTICLE XI. MISCELLANEOUS PROVISIONS**

### **11.1 Amendments.**

(a) Prior to the Effective Date, the Creditors' Committee, Debtors and Plan Sponsor may agree to modify, supplement, or amend this Litigation Trust Agreement in any way that is not inconsistent with the Plan or the Confirmation Order.

(b) After the Effective Date, unless otherwise expressly set forth in this Litigation Trust Agreement, the Litigation Trustee may, with the approval of a majority in number of the Voting Beneficiaries and with the reasonable consent of the Reorganized Debtors, modify, supplement, or amend this Litigation Trust Agreement in any way that is not inconsistent with the Plan or the Confirmation Order. In the event that a majority in number of the Voting Beneficiaries does not respond or is unable to reach agreement regarding a proposed modification, supplement, or amendment, the Litigation Trustee may seek Bankruptcy Court approval of any such modification, supplement, or amendment; provided, however, that the Litigation Trustee may amend this Litigation Trust Agreement without the consent or approval of a majority in number of the Voting Beneficiaries to: (i) preserve the legal status of the Litigation Trust as trust under applicable state or federal laws or regulations, if such amendment does materially adversely affect the interests of the Litigation Trust Beneficiaries, and (ii) to satisfy the requirements of the Trust Regulations and of any federal or state securities laws or regulations if such amendment does not materially adversely affect the interests of the Litigation Trust Beneficiaries.

**11.2 Waiver.** No failure by the Litigation Trust or the Litigation Trustee to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

**11.3 Cumulative Rights and Remedies.** The rights and remedies provided in this Litigation Trust Agreement are cumulative and are not exclusive of any rights under law or in equity.

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

**11.5 Irrevocability.** This Litigation Trust Agreement and the Litigation Trust created hereunder shall be irrevocable, except as otherwise expressly provided in this Litigation Trust Agreement.

**11.6 Relationship to the Plan.** The principal purpose of this Litigation Trust Agreement is to aid in the implementation of certain aspects of the Plan. Therefore, the Plan and the Confirmation Order are each hereby incorporated into this Litigation Trust Agreement and made a part hereof by this reference. The provisions of the Plan and Litigation Trust Agreement shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided*, that if there is determined to be any inconsistency between any provision of this Litigation Trust Agreement and the Plan, then, the provisions of the Plan shall govern.

**11.7 Division of Litigation Trust.** Under no circumstances shall the Litigation Trustee have the right or power to divide the Litigation Trust unless authorized to do so by the Bankruptcy Court.

**11.8 Applicable Law.** Except to the extent that the Bankruptcy Code or Bankruptcy Rules apply, unless otherwise stated, and subject to the provisions of any contract, instrument, release, indenture or other agreement or document entered into in connection herewith, this Litigation Trust shall be governed by, and construed and enforced in accordance with, the laws of the state of New York without giving effect to the principles of conflict of laws thereof.

**11.9 Retention of Jurisdiction.** Without in any way limiting Article XI of the Plan, notwithstanding the Effective Date, and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the Litigation Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, including, without limitation, this Litigation Trust Agreement, or any entity's obligations incurred in connection herewith, including without limitation, any action against the Litigation Trustee or any professional retained by the Litigation Trustee, in each case in its capacity as such, or any disputes with the Litigation Trust Beneficiaries. Each party to this Litigation Trust Agreement hereby irrevocably consents to the exclusive jurisdiction and venue of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Litigation Trust Agreement or of any other agreement or document delivered in connection with this Litigation Trust Agreement, and also hereby irrevocably waives any defense of improper venue, *forum non conveniens* or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that any action to enforce, interpret, or construe any provision of this Litigation Trust Agreement will be brought only in the Bankruptcy Court. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, of any process in any action to enforce, interpret or construe any provision of this Litigation Trust Agreement.

**11.10 Severability.** In the event that any provision of this Litigation Trust Agreement or the application thereof to any Entity or circumstance shall be determined by the



Bankruptcy Court to be invalid or unenforceable to any extent, the remainder of this Litigation Trust Agreement, or the application of such provision to Entities or circumstance, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Litigation Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

**11.11 Limitation of Benefits.** Except as otherwise specifically provided in this Litigation Trust Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or to give any Entity other than the parties hereto and the Litigation Trust Beneficiaries any rights or remedies under or by reason of this Litigation Trust Agreement.

**11.12 Notices.** Except as provided in Section 11.9 of this Litigation Trust Agreement, all notices, requests, demands, consents, and other communications hereunder shall be in writing and shall be deemed to have been duly given to an Entity, if delivered in person or by facsimile with an electromagnetic report of delivery or if sent by overnight mail, registered mail, certified mail, or regular mail, with postage prepaid, to the following addresses:

If to the Litigation Trustee:

Peter Kravitz  
Principal, Province  
2360 Corporate Circle, Suite 330  
Henderson, NV 89074  
T: (702) 685-5555  
pkravitz@provincefirm.com

with a copy to:

Hogan Lovells LLP  
390 Madison Avenue  
New York, New York 10017  
Telephone: (212) 918-3000  
Attn: David P. Simonds (david.simonds@hoganlovells.com)  
Ronald J. Silverman (ronald.silverman@hoganlovells.com)  
John D. Beck (john.beck@hoganlovells.com)  
Jennifer Y. Lee (jennifer.lee@hoganlovells.com)

If to a Litigation Trust Beneficiary:

To the name and distribution address set forth in the Claims Registry with respect to such Beneficiary or by posting to the Litigation Trust Website, as applicable.

The parties may designate in writing from time to time other and additional places to which notices may be sent.

**11.13 Further Assurances.** Without limiting any other provisions of Litigation Trust Agreement, from and after the Effective Date, the parties hereto covenant and agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and purposes of this Litigation Trust Agreement, and to consummate the transactions contemplated hereby.

**11.14 Integration.** This Litigation Trust Agreement, the Plan, and the Confirmation Order together constitute the entire agreement with, by and among the parties hereto, and there are no terms, conditions, representations, warranties, covenants, or obligations except as set forth herein, in the Plan and in the Confirmation Order. This Litigation Trust Agreement, together with 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. Except as otherwise provided in this Litigation Trust Agreement, the Plan or Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any Entity other than the parties hereto and the Litigation Trust Beneficiaries any rights or remedies under or by reason of this Litigation Trust Agreement.

**11.15 Interpretation.** The recitals to this Litigation Trust Agreement are hereby incorporated in and made a part of this Litigation Trust Agreement by this reference. The enumeration and Section headings contained in this Litigation Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Litigation Trust Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this Litigation Trust Agreement the singular shall include the plural and the plural shall include the singular, and words importing the masculine gender shall include the feminine and the neuter, if appropriate, and vice versa, and words importing persons shall include partnerships, associations, and corporations. The words herein, hereby, and hereunder and words with similar import, refer to this Litigation Trust Agreement as a whole and not to any particular section or subsection hereof unless the context requires otherwise. Any reference to the “Litigation Trustee” shall be deemed to include a reference to the “Litigation Trust” and any reference to the “Litigation Trust” shall be deemed to include a reference to the “Litigation Trustee” except for the references to “Exculpated Parties” and “Indemnified Parties” in Sections 4.1 and 4.2, respectively, and such other provisions in which the context otherwise requires. For purposes of this Litigation Trust Agreement: (i) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (ii) capitalized terms used but not defined herein or in the Plan shall have the meanings assigned to them in the Bankruptcy Code; and (iii) Rule 9006 of the Federal Rules of Bankruptcy Procedure shall govern the computation of time for any actions or proceedings in connection with the Litigation Trust.

**11.16 Fiscal Year.** The fiscal year of the Litigation Trust will begin on the first day of the month following the Effective Date and end on the last day of the month on which the Effective Date occurred of each calendar year.

**11.17 Intention of Parties to Establish Liquidating Trust.** This Litigation Trust Agreement is intended to create a “liquidating trust” under the Trust Regulations and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Litigation Trust Agreement

may be amended to comply with such federal income tax laws, which amendments may apply retroactively.

**11.18 Confidentiality.** The Litigation Trustee and each successor Litigation Trustee (each a “Covered Person”) shall, during the period that they serve in such capacity under this Litigation Trust Agreement and following either the termination of this Litigation Trust Agreement or such individual’s removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Entity to which any of the Litigation Trust Assets relate or of which it has become aware in its capacity (the “Information”), except to the extent disclosure is required by applicable law, order, regulation or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar legal process) to disclose any Information, such Covered Person shall notify the Reorganized Debtors reasonably promptly (unless prohibited by law) so that the Reorganized Debtors may try to seek an appropriate protective order or other appropriate remedy or, in its discretion, waive compliance with the terms of this Section (and if the Reorganized Debtors seeks such an order, the relevant Covered Person will provide cooperation as the Reorganized Debtors shall reasonably request). In the event that no such protective order or other remedy is obtained, or that the Reorganized Debtors waive compliance with the terms of this Section and any Covered Person is nonetheless legally compelled to disclose the Information, the Covered Person will furnish only that portion of the Information, which the Covered Person, advised by counsel, is legally required and will give the Reorganized Debtors written notice (unless prohibited by law) of the Information to be disclosed and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

**11.19 Counterparts.** This Litigation Trust Agreement may be signed by the parties hereto in counterparts, which, when taken together, shall constitute one and the same document. Delivery of an executed counterpart of this Litigation Trust Agreement by facsimile or email in pdf format shall be equally effective as delivery of a manually executed counterpart.

[Remainder of Page Left Blank]

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

**REORGANIZED DEBTORS:**

**SpeedCast International Limited**

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

**CapRock Communications (Australia) Pty Ltd**

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

**CapRock Communications Pte. Ltd.**

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

**CapRock Comunicações do Brasil Ltda.**

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

**CapRock Participações do Brasil Ltda.**

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

**CapRock UK Limited**

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

**CCI Services Corp.**

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

**Evolution Communications Group Limited**

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

**Globecomm Europe B.V.**

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

**Globecomm Network Services Corporation**

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

**Hermes Datacommunications International Limited**

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

**Maritime Communication Services, Inc.**

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

**NewCom International, Inc.**

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

**Oceanic Broadband Solutions Pty Ltd**

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

**Satellite Communications Australia Pty Ltd**

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

**SpaceLink Systems II, LLC**

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

**SpaceLink Systems, LLC**

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

**SpeedCast Americas, Inc.**

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

**SpeedCast Australia Pty Limited**

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

**Speedcast Canada Limited**

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

**SpeedCast Communications, Inc.**

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

**Speedcast Cyprus Ltd.**

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

**SpeedCast France SAS**

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

**SpeedCast Group Holdings Pty Ltd**

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

**SpeedCast Limited**

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

**SpeedCast Managed Services Pty Limited**

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

**SpeedCast Netherlands B.V.**

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

**SpeedCast Norway AS**

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

**SpeedCast Singapore Pte. Ltd.**

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

**SpeedCast UK Holdings Limited**

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

**Telaurus Communications LLC**

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

**LITIGATION TRUSTEE:**

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

## **Schedule 1**

### **Litigation Trust Causes of Action**

- All Causes of Actions by or on behalf of any Debtor or Debtor's Estate against Non-Released Parties (as defined in the Plan) (and, if a Non-Released Party is a former director or officer of the Debtors, solely to the extent of available proceeds under the applicable D&O Policy).
- All Causes of Action of any Debtor, the Debtors' Estates, and the Reorganized Debtors arising under any D&O Policy solely to the extent such Causes of Action are based on the Bankruptcy Code, state or other applicable or similar fraudulent transfer statutes, or claims arising under state or other applicable law based upon negligence, breach of fiduciary duty and/or other similar Causes of Action and to the extent assignable to the Litigation Trust pursuant to the terms of the applicable D&O Policy.
- All Causes of Action to be mutually determined, prior to the Effective Date, by the Debtors, Plan Sponsor, and the Creditors' Committee, including Causes of Action, if any, arising under the Bankruptcy Code, state or other applicable or similar fraudulent transfer statutes, or claims arising under state or other applicable law based upon negligence, breach of fiduciary duty, lender liability, and/or other similar Causes of Action.
- The Litigation Trust Causes of Action shall not include: (x) any Causes of Action against any Released Party that is released pursuant to the Plan, and (y) Causes of Action against holders of Allowed Unsecured Trade Claims and any counterparty to an executory contract or unexpired lease under section 365(b)(1)(A) of the Bankruptcy Code that has been assumed by the Reorganized Debtors to the extent such counterparty is not otherwise a Non-Released Party.



**Exhibit 1-A**

**Litigation Trust Agreement  
Redline**

Draft 12/17/2020

## LITIGATION TRUST AGREEMENT

This Litigation Trust Agreement (the “Litigation Trust Agreement”) is made and established this \_\_\_ day of \_\_\_\_\_, 2020, by and among SpeedCast International Limited; CapRock Communications (Australia) Pty Ltd; CapRock Communications Pte. Ltd.; CapRock Comunicações do Brasil Ltda.; CapRock Participações do Brasil Ltda.; CapRock UK Limited; CCI Services Corp.; Evolution Communications Group Limited; Globecomm Europe B.V.; Globecomm Network Services Corporation; Hermes Datacommunications International Limited; Maritime Communication Services, Inc.; NewCom International, Inc.; Oceanic Broadband Solutions Pty Ltd; Satellite Communications Australia Pty Ltd; SpaceLink Systems II, LLC; SpaceLink Systems, LLC; SpeedCast Americas, Inc.; SpeedCast Australia Pty Limited; Speedcast Canada Limited; SpeedCast Communications, Inc.; Speedcast Cyprus Ltd.; SpeedCast France SAS; SpeedCast Group Holdings Pty Ltd; SpeedCast Limited; SpeedCast Managed Services Pty Limited; SpeedCast Netherlands B.V.; SpeedCast Norway AS; SpeedCast Singapore Pte. Ltd.; SpeedCast UK Holdings Limited; and Telaurus Communications LLC (each, a “Debtor”, collectively, the “Debtors” and, as of the Effective Date, including New Speedcast Parent, the “Reorganized Debtors”), and ~~[-]~~ Peter Kravitz, as Litigation Trustee (the “Litigation Trustee”), in connection with the *Second Amended Joint Chapter 11 Plan of Speedcast International Limited and its Debtor Affiliates*, dated November 25, 2020 (as altered, amended, modified, or supplemented from time to time, the “Plan”), filed with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Bankruptcy Court”) in the Chapter 11 Cases (as defined below).<sup>1</sup>

### RECITALS

**WHEREAS**, the Debtors each filed a voluntary petition in the Bankruptcy Court under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”);

**WHEREAS**, the Chapter 11 Cases are continuing and are jointly administered under case number 20-32243;

**WHEREAS**, on November 25, 2020, the Debtors filed the Plan [Dkt. No. 992];

**WHEREAS**, on December \_\_, 2020, the Bankruptcy Court entered an order confirming the Plan (the “Confirmation Order”) [Dkt. No. [ ]];

**WHEREAS**, the Effective Date of the Plan occurred on \_\_\_\_\_, 2021;

**WHEREAS**, the Plan contemplates, on the Effective Date, among other things, (a) the creation of the Litigation Trust (the “Litigation Trust”) to be treated as a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) (the “Trust Regulations”) for the benefit of holders of Allowed Other Unsecured Claims entitled to a Pro Rata share of the Litigation Trust Distributable Proceeds (the “Litigation Trust Beneficiaries”), (b) the Litigation Trust will be funded and vested with a one-time, non-refundable payment of Cash in the amount of \$2,500,000 (the “Litigation Trust Cash Amount”) to be transferred into the Litigation Trust by

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Plan.

or at the direction of the Reorganized Debtors, consistent with the terms of the Plan, and (c) the Litigation Trust Causes of Action, as more fully described on **Schedule 1** hereto and subject to the terms and provisions of the Plan (collectively, as amended from time to time, the “Litigation Trust Causes of Action” and, together with the Litigation Trust Cash Amount, the “Litigation Trust Assets”; following the Effective Date, “Litigation Trust Assets” shall also be deemed to include all Litigation Trust Distributable Proceeds and all other proceeds, products and income thereof) will be transferred into the Litigation Trust, as set forth in the Plan; and

**WHEREAS**, the Plan further contemplates that the Litigation Trust is intended to qualify as a “liquidating trust” within the meaning of the Trust Regulations, and shall be created for the purposes of, among other things, and the Litigation Trustee shall be the sole Entity responsible for, (a) investigating, prosecuting, settling, liquidating, or disposing of the Litigation Trust Causes of Action, (b) distributing the Litigation Trust Distributable Proceeds to the Litigation Trust Beneficiaries as holders of Allowed Other Unsecured Claims entitled to its Pro Rata share of the Litigation Trust Distributable Proceeds, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to and consistent with the purpose of the Litigation Trust and the Plan; and

**WHEREAS**, presuming that the Litigation Trust qualifies as a “liquidating trust” within the meaning of the Trust Regulations, to the extent permitted by law, the parties hereto will elect to treat the Litigation Trust for tax purposes as a “grantor trust” pursuant to the Treasury Regulations for U.S. federal income tax purposes, pursuant to Sections 671-679 of the Internal Revenue Code of 1986, as amended (the “IRC”), with the Litigation Trust Beneficiaries to be treated as the grantors of the Litigation Trust and deemed to be the owners of the Litigation Trust Assets (subject to the rights of creditors of the Litigation Trust), and consequently, for federal income tax purposes the transfer of the Litigation Trust Assets to the Litigation Trust shall be treated as a deemed transfer of those assets from the Reorganized Debtors and their Estates to the Litigation Trust Beneficiaries followed by a deemed transfer by such Litigation Trust Beneficiaries to the Litigation Trust at a valuation determined by the Litigation Trustee to be reported consistently by all parties; provided, however, if any assets are allocable to a disputed claim reserve, the Litigation Trustee may elect to treat any disputed claim reserve as a “disputed ownership fund” governed by Treasury Regulation Section 1.468B-9.

**NOW, THEREFORE**, pursuant to the Plan and the Confirmation Order, in consideration of the promises, the mutual agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the parties hereto hereby agree as follows:

## **ARTICLE I. DECLARATION OF TRUST**

**1.1 Creation and Purpose of the Litigation Trust.** The Reorganized Debtors and the Litigation Trustee hereby create the Litigation Trust, which is in a form reasonably acceptable to the Creditors’ Committee, for the purpose of (i) evaluating and prosecuting the Litigation Trust Causes of Action, (ii) liquidating the Litigation Trust Assets, and (iii) distributing the Litigation Trust Distributable Proceeds, if any, to the Litigation Trust

Beneficiaries 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.

**1.2 Declaration of Trust.** In order to declare the terms and conditions hereof, and in consideration of the confirmation of the Plan, the Reorganized Debtors and the Litigation Trustee have executed this Litigation Trust Agreement and, effective on the Effective Date, the Reorganized Debtors hereby irrevocably transfer and assign to the Litigation Trust, all right, title, and interests of the Reorganized Debtors in the Litigation Trust Assets, to have and to hold unto the Litigation Trust and its successors and assigns, under and subject to the terms of the Plan and the Confirmation Order for the benefit of the Litigation Trust Beneficiaries and their permitted successors and assigns solely to the extent provided for in this Litigation Trust Agreement and in the Plan and Confirmation Order. Notwithstanding the foregoing, subject to Section 5.20 of the Plan and the rights of the Litigation Trustee set forth in Section 7.4 below, all Litigation Trust Proceeds shall be distributed by the Litigation Trustee, to the Litigation Trust Beneficiaries; in accordance with the provisions of the Plan and the Confirmation Order.

**1.3 Transfer and Vesting of Estate Assets.**

(a) On the Effective Date, pursuant to the terms of the Plan, the Litigation Trust Assets, including all Litigation Trust Assets held or controlled by the Debtors, if any, shall be vested in the Litigation Trust, which also shall, without limiting any of the other provisions hereof, own and be authorized to obtain, liquidate, and collect all of the Litigation Trust Assets in the possession of the Debtors, and pursue all of the Litigation Trust Causes of Action. All Litigation Trust Assets shall be transferred and delivered to the Litigation Trust free and clear of all Claims and Liens, and such transfer and delivery shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar tax. The Litigation Trust will be the successor-in-interest to each of the Reorganized Debtors with respect to any action or proceeding that was or could have been commenced by any of the Reorganized Debtors prior to the Effective Date that is a Litigation Trust Asset and shall be deemed and entitled to be substituted for the same as the party in all such actions, litigations, arbitrations or similar proceedings. To the extent any of the foregoing does not automatically occur on the Effective Date or is not effectuated through the Plan, the Confirmation Order or this Litigation Trust Agreement, the Reorganized Debtors shall, reasonably promptly, cause to be executed such other and further documents in form and substance reasonably acceptable to the Litigation Trustee and the Creditors' Committee, as are reasonably necessary to effectuate all of the foregoing and shall cooperate with the Litigation Trustee ~~{(and the respective parties shall bear their own reasonable costs associated therewith)}~~ in transitioning the administration. All reasonable out-of-pocket costs and expenses incurred, upon prior written request of the Litigation Trustee, by the Debtors or the Reorganized Debtors in connection with actions taken under this subsection 1.3(a) or 5.20(f) of the Plan shall be at the expense of the Litigation Trust Assets to. For the avoidance of doubt, notwithstanding anything in the Plan to the contrary, the Debtors or Reorganized Debtors, as applicable, shall not charge the Litigation Trust any amounts on account of such applicable entities' overhead costs or for the time of such entities' employees in assisting the Litigation Trust; provided that the Debtors or Reorganized Debtors, as applicable, may charge the Litigation Trust for reasonable out-of-pocket costs of third party vendors, legal counsel or other

professional service providers reasonably necessary or convenient to effectuate the sharing of information and cooperation contemplated herein.

(b) ~~In connection with Litigation Trust Assets, a~~Any attorney-client privilege, work-product privilege, joint interest privilege or other privilege or immunity (collectively, the “Privileges”) belonging to any of the Reorganized Debtors and attaching to any documents information or communications (whether written or oral) ~~shall vest in the in connection with Litigation Trust Assets shall be transferred to the Litigation Trust for the purpose of allowing the Litigation Trustee and its representatives, and the Reorganized Debtors and the~~to carry out its obligations under this Litigation Trustee ~~are authorized to take all necessary actions to effectuate the transfer of such privileges and available defenses~~Agreement. The Reorganized Debtors and the Litigation Trust agree that, in the case of disclosures made pursuant this Litigation Trust Agreement: (i) the documents, information or communications are privileged; (ii) the disclosure is made to the Litigation Trust solely for the specific purpose of enabling the Litigation Trustee to carry out its duties under the Litigation Trust Agreement; and (iii) the Reorganized Debtors do not intend, by the disclosure, to waive any privileges or immunities as against any other person or entity. Further, the Litigation Trust agrees: (x) to keep the documents, information and communications (and their contents) strictly confidential, not disclose them to any other party, and preserve and protect all applicable privileges attaching to them; (y) to return to the Reorganized Debtors on reasonable demand any documents, information or communications or copies of them (or records of their contents); and (z) to inform the Reorganized Debtors ~~reasonably promptly~~immediately if it receives any voluntary or compulsory request for production to a third party of the documents, information or communications (or their contents) to enable the Reorganized Debtors to assert their privilege. The Litigation Trust’s receipt of the Privileges associated with the Litigation Trust ~~Causes of Action and Litigation Trust~~ Assets shall not operate as a waiver of other privileges possessed or retained by the Reorganized Debtors. For avoidance of doubt, the foregoing provision does not waive, limit, or dispose of any Privileges of any of the Reorganized Debtors.

(c) Not later than five (5) Business Days following the Effective Date, at the reasonable cost of the Litigation Trust, the Reorganized Debtors and the Creditors’ Committee (notwithstanding the Creditors’ Committee’s dissolution on the Effective Date), shall deliver or cause to be delivered to the Litigation Trust, with the exception of documents that cannot be provided under applicable local law after reasonable effort by the Reorganized Debtors to provide such documents in compliance with applicable local law, copies of any and all books and records and all other documents and communications related to the Litigation Trust Assets, including those maintained in electronic format and original documents, whether held by the Reorganized Debtors, the Creditors’ Committee, or their respective current officers, directors, employees, agents, advisors, attorneys, accountants, or any other professionals. After the Effective Date, during ordinary business hours and with written notice by the Litigation Trustee, the Reorganized Debtors shall provide reasonable and continuing access to officers, directors and employees of the Reorganized Debtors and their agents, advisors, attorneys, accountants or any other professionals with knowledge of matters relevant to the Litigation Trust Assets (including any former officers, directors, employees, agents, advisors, attorneys, accountants, or other professionals who owe a continuing duty of cooperation to the Reorganized Debtors).

(d) Without limiting any other provision of this Litigation Trust Agreement, the Plan or the Confirmation Order, the Reorganized Debtors shall, subject to Section 1.3(e) below, reasonably promptly following receipt of a reasonable request from the Litigation Trustee, (i) take, or cause to be taken, all such further actions, and execute and/or deliver all such additional instruments, agreements or documents, as the Litigation Trustee may reasonably request in order to evidence or effectuate the transfer of the Litigation Trust Assets and the Privileges to the Litigation Trustee by the Plan; (ii) reasonably cooperate with the Litigation Trustee in the prosecution of the Litigation Trust Causes of Action; and (iii) otherwise take any action reasonably necessary to carry out the intent of the parties hereunder and under the Plan. Notwithstanding anything contained herein, without the express written consent of the Litigation Trustee, no Entity or creditor of the Reorganized Debtors shall be permitted to assert, bring, institute, commence or continue any Litigation Trust Cause of Action that is transferred to the Litigation Trust pursuant to the Plan or take any other action in the name of the Litigation Trust.

(e) Notwithstanding anything to the contrary, in no event shall anything contained in this Litigation Trust Agreement be deemed or construed to require the Reorganized Debtors or any other Persons to, and such Persons shall not be required, to provide such cooperation to the extent it would (A) interfere substantially with the business or operations of the Reorganized Debtors or their affiliates or (B) require the Reorganized Debtors or their affiliates to take any action that could reasonably be expected to conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time, or both) under, their respective organizational documents, any applicable laws or any material contract.

(f) The Creditors' Committee and its advisors, notwithstanding the Creditor Committee's dissolution on the Effective Date (subject to certain exceptions), shall be permitted to share any discovery, communications, or analyses obtained relating to the Reorganized Debtors and/or Litigation Trust Assets with the Litigation Trustee without waiver of any Privileges. In addition, all rights of the Creditors' Committee in connection with any Rule 2004 examinations, orders, and agreements related thereto concerning the Reorganized Debtors or their Affiliates shall ~~vest in the~~ be transferred to the Litigation Trust for the purpose of allowing the Litigation Trustee and its representatives, and the Reorganized Debtors and the ~~to carry out its obligations under this~~ Litigation Trustee are authorized to take all necessary actions to effectuate the transfer of such rights and privileges Agreement.

(g) The transfer of the Litigation Trust Assets to the Litigation Trust shall be made, as provided in the Plan and this Litigation Trust Agreement, for the benefit of the Litigation Trust Beneficiaries. In accordance with the Plan and this Litigation Trust Agreement, the Reorganized Debtors shall transfer, on behalf of the Litigation Trust Beneficiaries, the Litigation Trust Assets to the Litigation Trust for the benefit of the Litigation Trust Beneficiaries. Upon the transfer of the Litigation Trust Assets, the Reorganized Debtors shall have no interest in or claim to the Litigation Trust Assets or the Litigation Trust, and the Litigation Trust shall succeed to all of the Reorganized Debtors' right, title and interest in and to the Litigation Trust Assets. The Litigation Trustee shall have no authority to bind the Reorganized Debtors in any manner except with respect to a Litigation Trust Cause of Action. Notwithstanding the foregoing, for purposes of section 553 of the Bankruptcy Code, the transfer of the Litigation Trust Assets to the Litigation Trust shall not affect the mutuality of obligations which otherwise may have existed prior to the effectuation of such transfer. Notwithstanding

would have if such Litigation Trust Causes of Action had been retained by the Reorganized Debtors, all of which are fully preserved.

**7.2 Section 502(h).** Notwithstanding anything contained this Litigation Trust Agreement to the contrary, in the event that a compromise and settlement of a Litigation Trust Cause of Action or a Final Order with respect to a Litigation Trust Cause of Action provides for the allowance of a Claim pursuant to section 502(h) of the Bankruptcy Code against one or more of the Reorganized Debtors, the distributions to be made under the Plan on account of such Claim, unless otherwise agreed in writing by the Reorganized Debtors, shall be funded by the Litigation Trust in the amount(s), from time to time, that all similarly situated holders of Claims are entitled to receive thereunder.

**7.3 Net Litigation Trust Recovery.** Notwithstanding anything contained in this Litigation Trust Agreement to the contrary, in the event that a defendant in a litigation brought by the Litigation Trustee for and on behalf of the Litigation Trust (i) is required by a Final Order to make payment to the Litigation Trust (the “Judgment Amount”) and (ii) is permitted by a Final Order to assert a right of setoff under sections 553, 555, 556, 559, 560 and 561 of the Bankruptcy Code or applicable non-bankruptcy law against the Judgment Amount (a “Valid Setoff”), such defendant shall be obligated to pay only the excess, if any, of the Judgment Amount over the Valid Setoff and, unless otherwise agreed in writing by the Litigation Trustee, the applicable Reorganized Debtor shall pay an amount equal to the Valid Setoff to be applied as part of the Litigation Trust Distributable Proceeds, without further setoff or deduction.

**7.4 Litigation Trustee Consent; Resolution of Certain Claims.** Notwithstanding anything in this Litigation Trust Agreement to the contrary, or otherwise, the Reorganized Debtors shall not settle, compromise, liquidate, or allow, or fail to object to, in whole or part, any Claim against any Reorganized Debtor held by an Entity (or its Affiliates) who is a defendant in a Litigation Trust Cause of Action, or as to whom notification has been provided by the Litigation Trust to the Reorganized Debtors that a potential claim is being evaluated or contemplated by the Litigation Trust against such Entity; provided that, the Reorganized Debtors may settle, compromise, liquidate, or allow, or not object to, in whole or part, any Claim brought by any Entity against any Reorganized Debtor, to the extent such action (a) is not reasonably likely to result in a material adverse effect to a Litigation Trust Cause of Action or a potential claim against such Entity that is being evaluated or contemplated by the Litigation Trust (and which notice of such potential action has been provided by the Litigation Trust to the Reorganized Debtors) or (b) has been consented to (via writing) by Litigation Trustee. Pursuant to Section 7.2(c) of the Plan, the Litigation Trustee shall have the right to prosecute or otherwise adjudicate or settle particular objections to Other Unsecured Claims in the event that the Reorganized Debtors and the Litigation Trustee disagree with respect to the treatment of any particular Other Unsecured Claim and the Litigation Trustee shall have standing to seek court intervention to resolve any dispute between the Reorganized Debtors and the Litigation Trustee with respect to allowance of Other Unsecured Claims.†

and releasing the Litigation Trustee and releasing its bond, if any. For the purposes of winding up the affairs of the Litigation Trust in an orderly manner at the conclusion of its term, the Litigation Trustee shall continue to act as Litigation Trustee until its duties under this Litigation Trust Agreement have been fully discharged or its role as Litigation Trustee is otherwise terminated under this Litigation Trust Agreement and the Plan. Upon such an occurrence, the Litigation Trustee shall proceed as promptly as possible (but in no event for a period longer than three (3) months, unless a longer period is approved by the Bankruptcy Court) to wind up the affairs of the Litigation Trust and make any required federal, state or local filings for the dissolution of the Litigation Trust. The Litigation Trust Beneficiaries shall have no right to wind up the affairs of the Litigation Trust. Upon its dissolution, the Litigation Trust will file its final tax returns, and deliver its books and records to the Reorganized Debtors. Upon completion of such process, the Litigation Trustee shall file a final report with the Bankruptcy Court stating that the Litigation Trust has been dissolved, whereupon the Litigation Trustee shall be discharged from any further responsibility under the Agreement.

## ARTICLE XI. MISCELLANEOUS PROVISIONS

### 11.1 Amendments. ~~Unless~~

(a) Prior to the Effective Date, the Creditors' Committee, Debtors and Plan Sponsor may agree to modify, supplement, or amend this Litigation Trust Agreement in any way that is not inconsistent with the Plan or the Confirmation Order.

(b) After the Effective Date, unless otherwise expressly set forth in this Litigation Trust Agreement, the Litigation Trustee may, with the approval of a majority in number of the Voting Beneficiaries and with the reasonable consent of the Reorganized Debtors, modify, supplement, or amend this Litigation Trust Agreement in any way that is not inconsistent with the Plan or the Confirmation Order. In the event that a majority in number of the Voting Beneficiaries does not respond or is unable to reach agreement regarding a proposed modification, supplement, or amendment, the Litigation Trustee may seek Bankruptcy Court approval of any such modification, supplement, or amendment; provided, however, that the Litigation Trustee may amend this Litigation Trust Agreement without the consent or approval of a majority in number of the Voting Beneficiaries to: (i) preserve the legal status of the Litigation Trust as trust under applicable state or federal laws or regulations, if such amendment does materially adversely affect the interests of the Litigation Trust Beneficiaries, and (ii) to satisfy the requirements of the Trust Regulations and of any federal or state securities laws or regulations if such amendment does not materially adversely affect the interests of the Litigation Trust Beneficiaries.

**11.2 Waiver.** No failure by the Litigation Trust or the Litigation Trustee to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.



**11.3 Cumulative Rights and Remedies.** The rights and remedies provided in this Litigation Trust Agreement are cumulative and are not exclusive of any rights under law or in equity.

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

**11.5 Irrevocability.** This Litigation Trust Agreement and the Litigation Trust created hereunder shall be irrevocable, except as otherwise expressly provided in this Litigation Trust Agreement.

### **11.6 Relationship to the Plan**

. {The principal purpose of this Litigation Trust Agreement is to aid in the implementation of certain aspects of the Plan. Therefore, the Plan and the Confirmation Order are each hereby incorporated into this Litigation Trust Agreement and made a part hereof by this reference. The provisions of the Plan and Litigation Trust Agreement shall be construed in a manner consistent with each other so as to effectuate the purposes of each; provided, however, to the extent that if there is conflict determined to be any inconsistency between the any provisions of this Litigation Trust Agreement and the Plan, then, the provisions of the Plan, and/or the Confirmation Order, the Plan shall govern.}

**11.7 Division of Litigation Trust.** Under no circumstances shall the Litigation Trustee have the right or power to divide the Litigation Trust unless authorized to do so by the Bankruptcy Court.

**11.8 Applicable Law.** Except to the extent that the Bankruptcy Code or Bankruptcy Rules apply, unless otherwise stated, and subject to the provisions of any contract, instrument, release, indenture or other agreement or document entered into in connection herewith, this Litigation Trust shall be shall be governed by, and construed and enforced in accordance with, the laws of the state of New York without giving effect to the principles of conflict of laws thereof.

**11.9 Retention of Jurisdiction.** Without in any way limiting Article XI of the Plan, notwithstanding the Effective Date, and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the Litigation Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, including, without limitation, this Litigation Trust Agreement, or any entity's obligations incurred in connection herewith, including without limitation, any action against the Litigation Trustee or any professional retained by the Litigation Trustee, in each case in its capacity as such, or any disputes with the Litigation Trust Beneficiaries. Each party to this Litigation Trust Agreement hereby irrevocably consents to the exclusive jurisdiction and venue of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Litigation Trust Agreement or of any other agreement or document delivered in connection with this Litigation Trust Agreement, and also hereby irrevocably waives any defense of improper venue, *forum non*

*conveniens* or lack of pe

any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that any action to enforce, interpret, or construe any provision of this Litigation Trust Agreement will be brought only in the Bankruptcy Court. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, of any process in any action to enforce, interpret or construe any provision of this Litigation Trust Agreement.

### 11.10 Severability

. In the event that any provision of this Litigation Trust Agreement or the application thereof to any Entity or circumstance shall be determined by the Bankruptcy Court to be invalid or unenforceable to any extent, the remainder of this Litigation Trust Agreement, or the application of such provision to Entities or circumstance, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Litigation Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

**11.11 Limitation of Benefits.** Except as otherwise specifically provided in this Litigation Trust Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or to give any Entity other than the parties hereto and the Litigation Trust Beneficiaries any rights or remedies under or by reason of this Litigation Trust Agreement.

**11.12 Notices.** Except as provided in Section 11.9 of this Litigation Trust Agreement, all notices, requests, demands, consents, and other communications hereunder shall be in writing and shall be deemed to have been duly given to an Entity, if delivered in person or by facsimile with an electromagnetic report of delivery or if sent by overnight mail, registered mail, certified mail, or regular mail, with postage prepaid, to the following addresses:

If to the Litigation Trustee:

[✉Peter Kravitz](mailto:pkravitz@provincefirm.com)  
[Principal, Province](mailto:pkravitz@provincefirm.com)  
[2360 Corporate Circle, Suite 330](mailto:pkravitz@provincefirm.com)  
[Henderson, NV 89074](mailto:pkravitz@provincefirm.com)  
[T: \(702\) 685-5555](mailto:pkravitz@provincefirm.com)  
[pkravitz@provincefirm.com](mailto:pkravitz@provincefirm.com)

with a copy to:

Hogan Lovells LLP  
390 Madison Avenue  
New York, New York 10017  
Telephone: (212) 918-3000  
Attn: David P. Simonds (david.simonds@hoganlovells.com)  
Ronald J. Silverman (ronald.silverman@hoganlovells.com)  
John D. Beck  
[john.beck@hoganlovells.com](mailto:john.beck@hoganlovells.com) [john.beck@hoganlovells.com](mailto:john.beck@hoganlovells.com)

[Jennifer Y. Lee \(jennifer.lee@hoganlovells.com\)](mailto:jennifer.lee@hoganlovells.com)

If to a Litigation Trust Beneficiary:

To the name and distribution address set forth in the Claims Registry with respect to such Beneficiary or by posting to the Litigation Trust Website, as applicable.

The parties may designate in writing from time to time other and additional places to which notices may be sent.

**11.13 Further Assurances.** Without limiting any other provisions of Litigation Trust Agreement, from and after the Effective Date, the parties hereto covenant and agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and purposes of this Litigation Trust Agreement, and to consummate the transactions contemplated hereby.

**11.14 Integration.** This Litigation Trust Agreement, the Plan, and the Confirmation Order together constitute the entire agreement with, by and among the parties hereto, and there are no terms, conditions, representations, warranties, covenants, or obligations except as set forth herein, in the Plan and in the Confirmation Order. This Litigation Trust Agreement, together with 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. Except as otherwise provided in this Litigation Trust Agreement, the Plan or Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any Entity other than the parties hereto and the Litigation Trust Beneficiaries any rights or remedies under or by reason of this Litigation Trust Agreement.

**11.15 Interpretation.** The recitals to this Litigation Trust Agreement are hereby incorporated in and made a part of this Litigation Trust Agreement by this reference. The enumeration and Section headings contained in this Litigation Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Litigation Trust Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this Litigation Trust Agreement the singular shall include the plural and the plural shall include the singular, and words importing the masculine gender shall include the feminine and the neuter, if appropriate, and vice versa, and words importing persons shall include partnerships, associations, and corporations. The words herein, hereby, and hereunder and words with similar import, refer to this Litigation Trust Agreement as a whole and not to any particular section or subsection hereof unless the context requires otherwise. Any reference to the "Litigation Trustee" shall be deemed to include a reference to the "Litigation Trust" and any reference to the "Litigation Trust" shall be deemed to include a reference to the "Litigation Trustee" except for the references to "Exculpated Parties" and "Indemnified Parties" in Sections 4.1 and 4.2, respectively, and such other provisions in which the context otherwise requires. For purposes of this Litigation Trust Agreement: (i) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (ii) capitalized terms used but not defined herein or in the Plan shall have the meanings assigned to them in the Bankruptcy Code; and (iii) Rule 9006 of

## Schedule 1

### **Litigation Trust Causes of Action**

~~{To Be Added}~~

- All Causes of Actions by or on behalf of any Debtor or Debtor's Estate against Non-Released Parties (as defined in the Plan) (and, if a Non-Released Party is a former director or officer of the Debtors, solely to the extent of available proceeds under the applicable D&O Policy).
- All Causes of Action of any Debtor, the Debtors' Estates, and the Reorganized Debtors arising under any D&O Policy solely to the extent such Causes of Action are based on the Bankruptcy Code, state or other applicable or similar fraudulent transfer statutes, or claims arising under state or other applicable law based upon negligence, breach of fiduciary duty and/or other similar Causes of Action and to the extent assignable to the Litigation Trust pursuant to the terms of the applicable D&O Policy.
- All Causes of Action to be mutually determined, prior to the Effective Date, by the Debtors, Plan Sponsor, and the Creditors' Committee, including Causes of Action, if any, arising under the Bankruptcy Code, state or other applicable or similar fraudulent transfer statutes, or claims arising under state or other applicable law based upon negligence, breach of fiduciary duty, lender liability, and/or other similar Causes of Action.
- The Litigation Trust Causes of Action shall not include: (x) any Causes of Action against any Released Party that is released pursuant to the Plan, and (y) Causes of Action against holders of Allowed Unsecured Trade Claims and any counterparty to an executory contract or unexpired lease under section 365(b)(1)(A) of the Bankruptcy Code that has been assumed by the Reorganized Debtors to the extent such counterparty is not otherwise a Non-Released Party.

**Exhibit 2**

**Schedule of Retained Causes of Action**

**Amended Schedule of Retained Causes of Action**

In accordance with and as provided by section 1123(b) of the Bankruptcy Code<sup>1</sup> and section 10.11 of the *Second Amended Joint Chapter 11 Plan of Speedcast International Limited and its Affiliated Debtors* [Docket No. 992, **Exhibit A**] (as may be amended, modified, or supplemented, the “**Plan**”), the Reorganized Debtors shall have, retain, reserve and be entitled to assert all rights to commence, pursue, prosecute, and/or settle, as appropriate, any and all Causes of Action<sup>2</sup> (including all Avoidance Actions), whether arising before or after the Petition Date, including, but not limited to, any actions specifically enumerated herein, and such rights to commence, pursue, prosecute, and/or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date.

Specifically, as provided by section 10.11 of the Plan, the Reorganized Debtors shall have, retain, reserve, and be entitled to assert all Causes of Action, including all claims, rights of setoff or recoupment, and other legal or equitable defenses as fully as if the Chapter 11 Cases had not been commenced, and all of the Debtors’ legal and equitable rights in respect of any claims

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<sup>1</sup> Unless otherwise defined, capitalized terms used herein have the meanings ascribed to them in the Plan (as defined below).

<sup>2</sup> Under Section 1.1 of the Plan, “**Cause of Action**” means any action, claim, cross-claim, third-party claim, cause of action, controversy, dispute, demand, right, lien, indemnity, contribution, guaranty, suit, obligation, liability, loss, debt, fee or expense, damage, interest, judgment, cost, account, defense, remedy, recovery, offset, power, privilege, proceeding, license, and franchise of any kind or character whatsoever, known, unknown, foreseen or unforeseen, existing or hereafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including any alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action also includes: (i) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (ii) the right to object to Claims or Interests; (iii) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (iv) any claim or defense including fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code; and (v) any claims under any state or foreign law, including any fraudulent transfer or similar claims.

which are Unimpaired may be asserted after the Effective Date to the same extent as if the Chapter 11 Cases had not been commenced.

Despite the Debtors' reasonable efforts to identify all known Causes of Action in the Plan, herein, the Disclosure Statement, or in the Schedules and Statements, the Debtors may not have listed all of their Causes of Action or potential Causes of Action, including, but not limited to, Avoidance Actions and actions under other relevant non-bankruptcy laws to recover assets. No Entity may rely on the absence of a specific reference in the Plan, herein, the Disclosure Statement, or the Schedules and Statements to any Cause of Action against it as any indication that the Reorganized Debtors will not pursue any and all available Causes of Action against it. Nothing herein shall be deemed a waiver of any such claims, causes of action, or Avoidance Actions or in any way prejudice or impair the assertion of such claims.

Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled under the Plan or pursuant to a Bankruptcy Court order, the Reorganized Debtors expressly reserve all Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of confirmation or consummation of the Plan.

In accordance with section 1123(b)(3) of the Bankruptcy Code, except as otherwise provided in the Plan or herein, any Causes of Action that a Debtor may hold against any Entity shall vest in the applicable Reorganized Debtor. The applicable Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors shall have the exclusive right, authority, and

discretion to determine, initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, and to decline to do any of the foregoing without the consent or approval of any third party or further notice to, or action, order, or approval of, the Bankruptcy Court.

Notwithstanding the above, pursuant to the Plan and the Litigation Trust Agreement dated as of the Effective Date, a Litigation Trust for the benefit of holders of Other Unsecured Claims will be formed on the Effective Date. Pursuant to the Plan and the Litigation Trust Agreement, the Litigation Trustee will have the power and authority to prosecute and resolve those Causes of Action defined as “Litigation Trust Causes of Action” under Section 1.1 of the Plan,<sup>3</sup> including any Causes of Action against the parties identified on the Non-Released Parties Exhibit, and contributed to the Litigation Trust pursuant to section 5.20 of the Plan.

Notwithstanding and without limiting the generality of section 10.11 of the Plan, the Reorganized Debtors expressly reserve all claims and Causes of Action, including, but not limited to, those categories and specific Causes of Action listed below.

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<sup>3</sup> Under Section 1.1 of the Plan, “**Litigation Trust Causes of Action**” means (i) all Causes of Actions by or on behalf of any Debtor or Debtor’s Estate against (A) Non-Released Parties (and, if a Non-Released Party is a former director or officer of the Debtors, solely to the extent of available proceeds under the applicable D&O Policy), and (B) other persons to be mutually determined by the Debtors, the Plan Sponsor, and the Creditors’ Committee, including Causes of Action, if any, arising under the Bankruptcy Code, state or other applicable or similar fraudulent transfer statutes, or claims arising under state or other applicable law based upon negligence, breach of fiduciary duty, lender liability, and/or other similar Causes of Action; (ii) all Causes of Action of any Debtor, the Debtors’ Estates, and the Reorganized Debtors arising under any D&O Policy solely to the extent such Causes of Action are based on the Bankruptcy Code, state or other applicable or similar fraudulent transfer statutes, or claims arising under state or other applicable law based upon negligence, breach of fiduciary duty and/or other similar Causes of Action and to the extent assignable to the Litigation Trust pursuant to the terms of the applicable D&O Policy; provided, that Litigation Trust Causes of Action shall not include: (x) any Causes of Action against any Released Party that is released pursuant to the Plan, and (y) Causes of Action against holders of Allowed Unsecured Trade Claims and any counterparty to an executory contract or unexpired lease under section 365(b)(1)(A) of the Bankruptcy Code that has been assumed by the Reorganized Debtors to the extent such counterparty is not otherwise a Non-Released Party.



## I. Claims Related to Insurance Policies

Unless otherwise released by the Plan, the Reorganized Debtors expressly reserve and retain all Causes of Action based in whole or in part upon any and all insurance contracts and insurance policies (including any and all D&O Policies) to which any Debtor or Reorganized Debtor is or was a party, or pursuant to which any Debtor or Reorganized Debtor has any rights whatsoever, regardless of whether such contract or policy is specifically identified in the Plan, this Plan Supplement, or any amendments thereto, including, without limitation, Causes of Action against insurance carriers, reinsurance carriers, insurance brokers, underwriters, occurrence carriers, or surety bond issuers relating to coverage, indemnity, contribution, reimbursement, or any other matters. For the avoidance of doubt, the Reorganized Debtors expressly reserve and retain all Causes of Action arising in connection with any previously asserted, pending, or future claims under the insurance contracts and insurance policies. Without limiting the generality of the foregoing, the Reorganized Debtors expressly reserve all Causes of Action against the Entities identified herein.

<b>Insurance Policies under which Causes of Action Could Arise</b>		
<b>Insurer</b>	<b>Address</b>	<b>Description / Coverage</b>
AIG	American International Group, Inc. 175 Water St New York, NY 10038	Workers Compensation (SC Comm-USA, Various US States) Policy #: 80390397, 80371954, 80371953, 80371952, 80390997, 80388598, 80396007, 80396878, 80381088, 80371945, 80371943, 80371941, 80378111, 80371933, 80376466 Policy Term: July 1, 2019 - July 1, 2020
AIG Insurance Hong Kong Limited	AIG Insurance Hong Kong Limited 46/F, One Island East 18 Westlands Rd Quarry Bay, Hong Kong	Excess Technology Liability Policy #: MPL001076/000001 Policy Term: October 1, 2019 - September 30, 2020
Allianz	Allianz 30 Ozerkovskaya Embankment Moscow, ME 115184 Russia	Workers Compensation (Speedcast Managed Services Pty Ltd. (SCP), Australia) Policy #: 15252746 (ER #) Policy Term: July 1, 2019 - June 30, 2020
Allianz	Allianz 30 Ozerkovskaya Embankment Moscow, ME 115184 Russia	Workers Compensation (Speedcast Limited (SCL), Hong Kong) Policy #: HKC0004023191WC Policy Term: October 1, 2019 - September 30, 2020
Allianz Australia Ltd	Allianz Australia Insurance Limited GPO Box 5429 Sydney 02001 Australia	Second Excess Directors and Officers Liability Policy #: 99 0004430 PLP Policy Term: July 1, 2014 - July 1, 2021
Avero	Avero Gatwickstraat Amsterdam, NY 1043 GK Netherlands	Workers Compensation (Speedcast Europe B.V., Netherlands) Policy #: 155398082 Policy Term: December 12, 2019 - December 12 2020

<b>Insurance Policies under which Causes of Action Could Arise</b>		
Chubb Global Guard Multinational Liability Insurance	Chubb Global Guard Chubb Limited 202A Halls Mill Road - 2E Whitehouse Station, NJ 08889	Primary Commercial General Liability Policy #: TEC0581233/19 Policy Term: October 1, 2019 - September 30, 2020
Chubb Insurance Company of Australia Limited	Chubb Insurance Company of Australia Limited Grosvenor Place Level 38 225 George Street Sydney NSW 2000 Australia	Public Offering Liability Policy #: 93314576 Policy Term: July 1, 2014 - July 1, 2021
Chubb Insurance Hong Kong Limited	Chubb Insurance Hong Kong Limited 39/F, One Taikoo Place, 979 King's Road Quarry Bay Hong Kong	Technology Liability Policy #: TEC1200032/19 Policy Term: October 1, 2019 - September 30, 2020
Chubb Insurance Hong Kong Limited	Chubb Insurance Hong Kong Limited 39/F, One Taikoo Place, 979 King's Road Quarry Bay Hong Kong	Directors' & Officers' Liability Policy #: 92557756/19 Policy Term: October 1, 2019 - September 30, 2020
GIO	GIO Registered Office Level 28 266 George St Brisbane, QLD 04000 Australia	Workers Compensation (CapRock Communications (Australia) Pty Ltd., Australia) Policy #: WCW004439353 Policy Term: September 30, 2019 - September 30, 2020
Holland Securus	Holland Mocambique Companhia De Seguros SARL Autorizacao No 89/01 Edificio Hollard Av Sociedade Geografia No 269 - 1st Andar Maputo Mocambique	Workers Compensation (Speedcast Mozambique Lda, Mozambique) Policy #: MAP/WCAMMP/0000 69920 Policy Term: December 23, 2019 - November 1, 2020
Liberty Specialty Markets Hong Kong Limited	Liberty International Underwriters Inc. 55 Water Street 23rd Floor New York, NY 10041	Second Excess Directors' & Officers' Liability Policy #: DO-HK-19-582980D Policy Term: October 1, 2019 - September 30, 2020
Mercer Nederland B.V.	Mercer Nederland B.V. Startbaan 6 Amstelveen, 1185 XR Netherlands	Workers Compensation (Globecomm Europe B.V., Netherlands) Policy #: 202077403, 202077404 Policy Term: January 8, 2017 - January 1, 2021
MSIG Insurance	MSIG Insurance 4 Shenton Way #21 01 SGX Centre 2 68807 Singapore	Workers Compensation (CapRock Communications Pte. Ltd., Speedcast Singapore Pte Ltd, Singapore) Policy #: B 28963822 WIC Policy Term: October 1, 2019 - September 30, 2020

<b>Insurance Policies under which Causes of Action Could Arise</b>		
Nomad Life	Nomad Life Nomad Life insurance company JSC Aigerim Bayeva 15, Republic square Almaty, Almaty Kazakhstan	Workers Compensation (Hermes Datacomms LLP, Kazakhstan) Policy #: 41101019002/210819/1 -8 Policy Term: November 11, 2019 - November 10, 2020
Prudential	Prudential Prudential Insurance Co. Ltd Triveni Complex ,2nd Floor Putali Sadak, POBox 15123 Kathmandu, Nepal	Workers Compensation (Caprock Comunicacoes Angola Lda, Angola) Policy #: AT2016000752 Policy Term: February 26, 2020 - February 25, 2021
Starr International Insurance (Asia) Limited	Starr International Insurance (Asia ) Limited 399 Park Avenue, 2nd Floor New York, NY 10022	First Excess Directors' & Officers' Liability Policy #: FDO00020219 Policy Term: October 1, 2019 - September 30, 2020
Workcover Queensland	Workcover Queensland GPO Box 2772 Brisbane, QLD 04001 Australia	Workers Compensation (Speedcast Australia Pty Ltd (SCA), Australia) Policy #: WCA160492503 Policy Term: July 1, 2019 - September 30, 2020
XL Insurance Company SE	XL Insurance Co Ltd, XL Holdings, XL Financial Services (Ireland) Ltd XL House 70 Gracechurch St London, EC3V 0XL United Kingdom	Excess Commercial General Liability Policy #: HK00015472LI19A Policy Term: October 1, 2019 - September 30, 2020
XL Insurance Company SE	XL Insurance Co Ltd, XL Holdings, XL Financial Services (Ireland) Ltd XL House 70 Gracechurch St London, EC3V 0XL United Kingdom	Special Contingency Insurance Policy #: B0901LP1933179000 Policy Term: October 29, 2019 - October 29, 2020
Zurich Insurance Australia	Zurich Insurance Australia 5 Blue St North Sydney NSW 2060 Australia	First Excess Prospectus Liability Policy #: N/A Policy Term: July 1, 2014 - July 1, 2021
Zurich Insurance Company LTD	Zurich Insurance Company Ltd Singapore Land Tower 50 Raffles Place, #29-01 Singapore 048623 Singapore	Global Material Damage & Business Interruption Insurance Programme Policy Policy #: ZFA0001271GC Policy Term: October 1, 2019 - September 30, 2020
Zurich Insurance Company LTD	Zurich Insurance Company Ltd Singapore Land Tower	Marine Cargo Insurance Policy #: CGA0000305GC (BRK) Policy Term: October 1, 2019 - September 30, 2020

<b>Insurance Policies under which Causes of Action Could Arise</b>		
	50 Raffles Place, #29-01 Singapore 048623 Singapore	
Zurich Insurance Company LTD, Hong Kong Branch	Zurich Insurance Company LTD, Hong Kong Branch 25-26/F, One Island East 18 Westlands Road Quarry Bay Hong Kong	Group Travel Insurance Policy #: TTT0000178GC (BRK) Policy Term: October 1, 2019 - September 30, 2020

## II. Claims Related to Tax Obligations and Refunds

Unless otherwise released by the Plan, the Reorganized Debtors expressly reserve all Causes of Action against or related to all Entities that owe or that may in the future owe money related to tax refunds, credits, overpayments, recoupments or offsets that may be due and owing to the Debtors or the Reorganized Debtors, regardless of whether such Entity is specifically identified herein. Furthermore, the Debtors expressly reserve all Causes of Actions against or related to all Entities that assert or may assert that the Debtors owe taxes to them, regardless of whether such Entity is specifically identified herein, including but not limited to those Causes of Action specifically identified herein:

<b>Debtor</b>	<b>Taxing Authority</b>	<b>Case Description</b>	<b>Court or Venue</b>
CapRock Communications (Australia) Pty Ltd	Australia	Pay-roll tax investigation 2019	State Revenue Office Victoria
CapRock Comunicações do Brasil Ltda.	Brazil	ICMS tax liability dispute 2014 - 2017	Administrative 2nd Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	FUST tax liability dispute Jan 2013 - Dec 2014	Administrative 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	FUNTEL tax liability dispute Jan - Dec 2012	Administrative 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	FUNTEL tax liability dispute Jan - Dec 2013	Administrative 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	FUNTEL tax liability dispute Jan - Dec 2014	Administrative 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	IRPJ/CSLL tax liability dispute Mar 2012	Administrative 2nd Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	IRPJ/CSLL tax liability dispute Mar 2012	Administrative 2nd Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	IRPJ/CSLL tax liability dispute Dec 2014	Administrative 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	IRPJ/CSLL tax liability dispute Jan 2016	Administrative 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	IRPJ/CSLL tax liability dispute Jan 2016	Administrative 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	FUNTEL tax liability dispute Jan - Dec 2011	Administrative 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	FUST tax liability dispute Jan-Dec 2010	Administrative 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	FUST tax liability dispute Jan - Dec 2011	Administrative 1st Level Rio de Janeiro State Court

<b>Debtor</b>	<b>Taxing Authority</b>	<b>Case Description</b>	<b>Court or Venue</b>
CapRock Comunicações do Brasil Ltda.	Brazil	FUST tax liability dispute Jan - Dec 2012	Judicial 2nd Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	ICMS tax liability dispute 2011 - 2013	Judicial 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	FUST tax liability dispute Jan - Dec 2012	Judicial 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	ICMS tax liability dispute 2005 - 2010	Judicial 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	ICMS tax liability dispute 2013 - 2014	Judicial 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	ICMS tax liability dispute 2005 - 2010	Judicial 3rd Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	ICMS tax liability dispute 2013 - 2014	Judicial 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	ICMS tax liability dispute 2011 - 2013	Judicial 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	FUST tax liability dispute Jan - Dec 2012	Judicial 1st Level Rio de Janeiro State Court
CCI Services Corp.	Equatorial Guinea	Equatorial Guinea Branch 2013-2017 Income Tax Audit	N/A
Maritime Communication Services, Inc.	Louisville, Kentucky	Payroll withholding notices for failure to file monthly payroll returns (2019)	Louisville Metro Revenue Commission, Jefferson, Kentucky
Oceanic Broadband Solutions Pty Ltd.	Australia	Pay-roll tax investigation 2019	State Revenue Office Victoria
Satellite Communications Australia Pty Ltd	Australia	Pay-roll tax investigation 2019	State Revenue Office Victoria
SpeedCast Americas, Inc.	Memphis, Tennessee	Payroll withholding notices for failure to file monthly payroll returns issued by IRS Memphis, Tennessee (2019)	Internal Revenue Service, Memphis, Tennessee
SpeedCast Americas, Inc.	Commonwealth of Virginia	Payroll withholding notices for failure to file monthly payroll returns	Commonwealth of Virginia Tax Department
SpeedCast Australia Pty Limited	Australia	Pay-roll tax investigation 2019	State Revenue Office Victoria
SpeedCast Communications, Inc.	United States	Property Tax Notice 2017	Harris County, Texas Appraisal District
SpeedCast Communications, Inc.	Indiana	Payroll withholding notices for failure to file monthly payroll returns (2019)	Indiana Department of Revenue

<b>Debtor</b>	<b>Taxing Authority</b>	<b>Case Description</b>	<b>Court or Venue</b>
Speedcast Limited	Hong Kong	Corporate Income Tax enquiry 2013/2014	Hong Kong Internal Revenue Department
SpeedCast Managed Services Pty Limited	Australia	Pay-roll tax investigation 2019	State Revenue Office Victoria

### III. Claims, Defenses, Cross-claims, and Counterclaims Related to Litigation and Possible Litigation

Unless otherwise released by the Plan, the Reorganized Debtors expressly reserve all Causes of Action against or related to all Entities that are party to or that may in the future become party to litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal or judicial or non-judicial, including an adversary proceeding before the Bankruptcy Court, between the Debtors and such Entity, regardless of whether such Entity is specifically identified in the Plan, this Plan Supplement, or any amendments thereto. Without limiting the generality of the foregoing, the Reorganized Debtors expressly reserve all Causes of Action against the Entities identified herein. Notwithstanding and without limiting the generality of section 10.11 of the Plan, the Reorganized Debtors also expressly reserve the specified Causes of Action provided below.

<b>Claims, Defenses, Cross-Claims, and Counterclaims in Current Litigation</b>			
<b>Debtor</b>	<b>Party(ies)</b>	<b>Case Number or Name (As Applicable)</b>	<b>Court Name</b>
CapRock UK Limited	ANINF (Gabon)	N/A	N/A
NewCom International, Inc.	N/A	Administrative Investigation Number 2521, 2019 Against Speedcast Sucursal Colombia	Ministry of Information and Communications Technology (Colombia)
SpeedCast Communications, Inc.	N/A	Charge N: 510-2019-00716, Filed October 30, 2018	Equal Employment Opportunity Commission
SpeedCast Communications, Inc.	N/A	Charge N: 460-2019-04785 (June 7, 2019)	Equal Employment Opportunity Commission

<b>Claims, Defenses, Cross-Claims, and Counterclaims Related to Possible Litigation</b>		
<b>Debtor</b>	<b>Party(ies)</b>	<b>Nature of the Potential Action</b>
Maritime Communication Services, Inc	Novelsat	Equipment damage
Speedcast Netherlands BV	Cobham plc	Remediation of equipment failure in process
Speedcast Managed Services Pty Limited	Jeylabs Pty Limited	Failure to provide contracted services
Speedcast Managed Services Pty Limited	Dimension Data Pty Limited	Failure to provide contracted services in accordance with contract timeframes
Speedcast Americas Inc	HPS Investment Partners, LLC	Closing adjustments related to acquisition of Globecom business.
SpeedCast International Limited	Harris Corporation	Indemnities arising from the Sale Agreement between SpeedCast International Limited and Harris Corporation dated as of November 1, 2016



#### **IV. Claims Related to Contracts and Leases**

Unless otherwise specifically released by the Plan, the Reorganized Debtors expressly reserve all Causes of Action based in whole or in part upon any and all contracts and leases to which any of the Debtors or Reorganized Debtors is a party or pursuant to which any of the Debtors or Reorganized Debtors has any rights whatsoever, including, without limitation, all contracts and leases that are assumed or rejected pursuant to the Plan or an order of the Bankruptcy Court. The claims and Causes of Action reserved include, without limitation, Causes of Action against vendors, suppliers of goods and services, customers, or any other parties: (a) for overpayments, back charges, duplicate payments, improper holdbacks, deductions owing or improper deductions taken, deposits, warranties, guarantees, indemnities, recoupment, or setoff; (b) for wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (c) for failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtors before the assumption or rejection, if applicable, of such contracts; (d) for payments, deposits, holdbacks, reserves or other amounts owed by any creditor, utility, supplier, vendor, insurer, surety, factor, lender, bondholder, lessor or other party; (e) for any liens, including mechanics', maritime, artisans', materialmens', possessory or statutory liens held by any one or more of the Debtors (including those Causes of action identified in paragraph VII below); (f) for counterclaims and defenses related to any contractual obligations, including, but not limited to, any right to indemnification, contribution, setoff/offset, or recoupment; (g) for any turnover actions arising under section 542 or 543 of the Bankruptcy Code; and (h) for unfair competition, interference with contract or potential business advantage, breach of contract, infringement of intellectual property or any business tort claims.

#### **V. Claims Related to Accounts Receivable and Accounts Payable**

Unless otherwise released by the Plan, the Reorganized Debtors expressly reserve all Causes of Action against or related to all Entities that owe or that may in the future owe money to the Debtors or the Reorganized Debtors, regardless of whether such Entity is expressly identified in the Plan, herein, other Plan Supplement schedules, or any amendments thereto. Furthermore, the Reorganized Debtors expressly reserve all Causes of Action against or related to all Entities that assert or may assert that the Debtors or the Reorganized Debtors, as applicable, owe money to them.

#### **VI. Claims Related to Deposits/Prepayments, Adequate Assurance Postings, and Other Collateral Postings**

Unless otherwise released by the Plan, the Reorganized Debtors expressly reserve all Causes of Action based in whole or in part upon any and all postings by Debtors of a security deposit, adequate assurance payment, or any other type of deposit, prepayment, or collateral, regardless of whether such posting of security deposit, adequate assurance payment, or any other type of deposit, prepayment or collateral is specifically identified herein or in the Plan, any proof of Claim, and/or in any Bankruptcy Court filing.

## VII. Claims Related to Liens

Unless otherwise released by the Plan, the Reorganized Debtors expressly reserve all Causes of Action based in whole or in part upon any and all liens, including mechanics', maritime, artisans', materialmens', possessory or statutory liens held by any one or more of the Debtors, regardless of whether such lien is specifically identified herein. The Reorganized Debtors expressly reserve all Causes of Action including against advisors, agents, attorneys, representatives, professionals, consultants, financial advisors, other professional advisors and/or third parties related to the prepetition conduct or advice concerning any liens, including, without limitation, the scope, priority, validity, and documentation of such liens and the original preparation and recordation of any deeds of trust related to such liens.

## VIII. Avoidance Actions

Unless otherwise released by the Plan, the Reorganized Debtors expressly reserve all avoidance, recovery, subordination, or other claims, actions, or remedies that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under chapter 5 of the Bankruptcy Code or related applicable non-bankruptcy law, including actions or remedies under sections 502, 510, 544, 547, 548, 549, 550, or 551 of the Bankruptcy Code.

## IX. Claims against nbn

Unless otherwise released by the Plan or the Transition Agreement between Speedcast Managed Services Pty Ltd and nbn co limited ("**nbn**"), dated September 16, 2020 [Docket No. 739-1] (the "**Transition Agreement**"), the Reorganized Debtors expressly reserve all Causes of Action against nbn and any related entity of nbn (each an "**nbn Group Member**"), as set forth in the Transition Agreement, that may be brought by or on behalf of the Debtors or their Estates, including but not limited to (i) recovery, reimbursement, recoupment, contribution or setoff in relation to any Agreement Claim payments pursuant to section 18.8 of the Transition Agreement, and (ii) reimbursement of benefits paid to any nbn Group Member pursuant to section 18.9 of the Transition Agreement.

## X. Claims against Inmarsat

Unless otherwise released by the Plan, the Asset Sale Agreement with Inmarsat Global Limited ("**Inmarsat**"), dated November 13, 2020 [Docket No. 950] (the "**Inmarsat APA**"), or the order approving the Inmarsat APA, the Reorganized Debtors expressly reserve all Causes of Action against Inmarsat and any related entity of Inmarsat, as set forth in the Inmarsat APA, that may be brought by or on behalf of the Debtors or their Estates, including but not limited to (i) any Claim (as defined in the Inmarsat APA) for joint and several indemnification, defense, and holding harmless from, against and in respect of any and all Losses (as defined in the Inmarsat APA) incurred or suffered pursuant to section 16.2; or (ii) any demand, Claim, complaint, dispute or Action (as defined in the Inmarsat APA), however arising and whether present, unascertained, immediate, future or contingent, including, without limitation, successor liability in relation to any provision of the Inmarsat APA (including, without limitation, those relating to breach of any term or provision of the Inmarsat APA), or the Assets (as defined in the Inmarsat APA) or their purchase or sale (each an "**Agreement Claim**") pursuant to section 17.1 of the Inmarsat APA.

## **XI. Other Causes of Action**

Unless otherwise released by the Plan, the Reorganized Debtors expressly reserve all Causes of Action against:

- all Entities that have filed, or may file, a proof of claim or request for payment of administrative expenses in these chapter 11 cases;
- all agents and independent contractors of any Debtor, creditors, service providers, utilities, suppliers, vendors, insurers, sureties, factors, lessors, or other parties that provided financial accommodations, goods or services of any kind to any Debtor at any time;
- any Entity that owed any legal duty, no matter how arising, to any Debtor;
- any Entity against whom a Cause of Action is discovered after the confirmation of the Plan; and
- any Entity identified in the Debtors' respective Statements of Financial Affairs [Docket Nos. 392–424, 27-929, 941] and Schedules [Docket Nos. 359–391, 917–26, 930, 940-41], which are incorporated herein by reference.

In addition, unless otherwise released or exculpated by the Plan, the Reorganized Debtors expressly reserve the following other claims: (i) derivative claims of the Debtors pursuant to state or non-bankruptcy law, the Bankruptcy Code, or any other statute, legal theory, or theory under equity and (ii) claims of the Debtors against any former or current directors or officers arising under state or other non-bankruptcy law or arising under the Bankruptcy Code, these chapter 11 cases, or in any way related to these chapter 11 cases, or under and/or pursuant to any statute or legal or equitable theory that is any manner arising from, connected with, or related to any act or omission of such director or officer that occurred prior to the Effective Date. Moreover, unless otherwise released by the Plan, the Reorganized Debtors expressly reserve all Causes of Action and contingent and unliquidated claims against all Entities, as well as their affiliates, parents, subsidiaries, successors, or assigns, including, but not limited to, Causes of Action:

- for letters of credit, notes payable and receivable, overpayments, back charges, duplicate payments, improper holdbacks, deposits, warranties, guarantees, indemnities, recoupment, reimbursement, contribution or setoff;
- for wrongful or improper termination, suspension of services or supply of goods or services, or failure to meet other contractual or regulatory obligations;
- for failure to fully perform or to condition performance on additional requirements under contracts with the Debtors before the assumption or rejection, if applicable, of such contracts;
- for payments, deposits, holdbacks, reserves or other amounts owed to the Debtors;
- for any liens or security interests, including mechanic's, maritime, artisan's, materialmen's, possessory, statutory liens and rights of setoff held by the Debtors;

- concerning counterclaims and defenses related to any contractual obligations;
- for unfair competition, interference with contract or potential business advantage, breach of contract, infringement of intellectual property, or any business tort claims;
- for the commission of any tortious act against any Debtor; and
- for any other legal or equitable Cause of Action or remedy that is just and reasonable under the circumstances.

For the avoidance of doubt, subject to any applicable consent rights contained in the Plan the Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained therein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

**Exhibit 2-A**

**Schedule of Retained Causes of Action  
Redline**

**Amended Schedule of Retained Causes of Action**

In accordance with and as provided by section 1123(b) of the Bankruptcy Code<sup>1</sup> and section 10.11 of the *Second Amended Joint Chapter 11 Plan of Speedcast International Limited and its Affiliated Debtors* [Docket No. 992, **Exhibit A**] (as may be amended, modified, or supplemented, the “**Plan**”), the Reorganized Debtors shall have, retain, reserve and be entitled to assert all rights to commence, pursue, prosecute, and/or settle, as appropriate, any and all Causes of Action<sup>2</sup> (including all Avoidance Actions), whether arising before or after the Petition Date, including, but not limited to, any actions specifically enumerated herein, and such rights to commence, pursue, prosecute, and/or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date.

Specifically, as provided by section 10.11 of the Plan, the Reorganized Debtors shall have, retain, reserve, and be entitled to assert all Causes of Action, including all claims, rights of setoff or recoupment, and other legal or equitable defenses as fully as if the Chapter 11 Cases had not been commenced, and all of the Debtors’ legal and equitable rights in respect of

<sup>1</sup> Unless otherwise defined, capitalized terms used herein have the meanings ascribed to them in the Plan (as defined below).

<sup>2</sup> Under Section 1.1 of the Plan, “**Cause of Action**” means any action, claim, cross-claim, third-party claim, cause of action, controversy, dispute, demand, right, lien, indemnity, contribution, guaranty, suit, obligation, liability, loss, debt, fee or expense, damage, interest, judgment, cost, account, defense, remedy, recovery, offset, power, privilege, proceeding, license, and franchise of any kind or character whatsoever, known, unknown, foreseen or unforeseen, existing or hereafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, direct or indirect, choate or inchoate, secured or unsecured, assertable directly or derivatively (including any alter ego theories), whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law. For the avoidance of doubt, Cause of Action also includes: (i) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (ii) the right to object to Claims or Interests; (iii) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (iv) any claim or defense including fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code; and (v) any claims under any state or foreign law, including any fraudulent transfer or similar claims.

<b>Debtor</b>	<b>Taxing Authority</b>	<b>Case Description</b>	<b>Court or Venue</b>
		2011	
CapRock Comunicações do Brasil Ltda.	Brazil	FUST tax liability dispute Jan - Dec 2012	Judicial 2nd Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	ICMS tax liability dispute 2011 - 2013	Judicial 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	FUST tax liability dispute Jan - Dec 2012	Judicial 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	ICMS tax liability dispute 2005 - 2010	Judicial 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	ICMS tax liability dispute 2013 - 2014	Judicial 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	ICMS tax liability dispute 2005 - 2010	Judicial 3rd Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	ICMS tax liability dispute 2013 - 2014	Judicial 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	ICMS tax liability dispute 2011 - 2013	Judicial 1st Level Rio de Janeiro State Court
CapRock Comunicações do Brasil Ltda.	Brazil	FUST tax liability dispute Jan - Dec 2012	Judicial 1st Level Rio de Janeiro State Court
CCI Services Corp.	Equatorial Guinea	Equatorial Guinea Branch 2013-2017 Income Tax Audit	N/A
Maritime Communication Services, Inc.	Louisville, Kentucky	Payroll withholding notices for failure to file monthly payroll returns (2019)	Louisville Metro Revenue Commission, Jefferson, Kentucky
Oceanic Broadband Solutions Pty Ltd.	Australia	Pay-roll tax investigation 2019	State Revenue Office Victoria
Satellite Communications Australia Pty Ltd	Australia	Pay-roll tax investigation 2019	State Revenue Office Victoria
SpeedCast Americas, Inc.	Memphis, Tennessee	Payroll withholding notices for failure to file monthly payroll returns issued by IRS Memphis, Tennessee (2019)	Internal Revenue Service, Memphis, Tennessee
SpeedCast Americas, Inc.	Commonwealth of Virginia	Payroll withholding notices for failure to file monthly payroll returns	Commonwealth of Virginia Tax Department
<b>SpeedCast Americas, Inc.</b>	<b>United States</b>	<b>Federal Tax IDR 2017</b>	<b>Internal Revenue Service</b>
SpeedCast Australia Pty Limited	Australia	Pay-roll tax investigation 2019	State Revenue Office Victoria
SpeedCast Communications, Inc.	United States	Property Tax Notice 2017	Harris County, Texas Appraisal District
SpeedCast Communications, Inc.	Indiana	Payroll withholding notices for failure to	Indiana Department of Revenue

## VII. Claims Related to Liens

Unless otherwise released by the Plan, the Reorganized Debtors expressly reserve all Causes of Action based in whole or in part upon any and all liens, including mechanics', maritime, artisans', materialmen's, possessory or statutory liens held by any one or more of the Debtors, regardless of whether such lien is specifically identified herein. The Reorganized Debtors expressly reserve all Causes of Action including against advisors, agents, attorneys, representatives, professionals, consultants, financial advisors, other professional advisors and/or third parties related to the prepetition conduct or advice concerning any liens, including, without limitation, the scope, priority, validity, and documentation of such liens and the original preparation and recordation of any deeds of trust related to such liens.

## VIII. Avoidance Actions

Unless otherwise released by the Plan, the Reorganized Debtors expressly reserve all avoidance, recovery, subordination, or other claims, actions, or remedies that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under chapter 5 of the Bankruptcy Code or related applicable non-bankruptcy law, including actions or remedies under sections 502, 510, 544, 547, 548, 549, 550, or 551 of the Bankruptcy Code.

## IX. Claims against nbn

Unless otherwise released by the Plan or the Transition Agreement between Speedcast Managed Services Pty Ltd and nbn co limited ("**nbn**"), dated September 16, 2020 [Docket No. 739-1] (the "**Transition Agreement**"), the Reorganized Debtors expressly reserve all Causes of Action against nbn and any related entity of nbn (each an "**nbn Group Member**"), as set forth in the Transition Agreement, that may be brought by or on behalf of the Debtors or their Estates, including but not limited to (i) recovery, reimbursement, recoupment, contribution or setoff in relation to any Agreement Claim payments pursuant to section 18.8 of the Transition Agreement, and (ii) reimbursement of benefits paid to any nbn Group Member pursuant to section 18.9 of the Transition Agreement.

## X. Claims against Inmarsat

Unless otherwise released by the Plan ~~or~~, the Asset Sale Agreement with Inmarsat Global Limited ("**Inmarsat**"), dated November 13, 2020 [Docket No. 950] (the "**Inmarsat APA**"), or the order approving the Inmarsat APA, the Reorganized Debtors expressly reserve all Causes of Action against Inmarsat and any related entity of Inmarsat, as set forth in the Inmarsat APA, that may be brought by or on behalf of the Debtors or their Estates, including but not limited to (i) any Claim (as defined in the Inmarsat APA) for joint and several indemnification, defense, and holding harmless from, against and in respect of any and all Losses (as defined in the Inmarsat APA) incurred or suffered pursuant to section 16.2; or (ii) any demand, Claim, complaint, dispute or Action (as defined in the Inmarsat APA), however arising and whether present, unascertained, immediate, future or contingent, including, without limitation, successor liability in relation to any provision of the Inmarsat APA (including, without limitation, those relating to breach of any term or provision of the Inmarsat APA), or the Assets (as defined in the



**Exhibit 3**

**Schedule of Assumed and Rejected Contracts**

**Cover Page**

**Amendment and Supplement to Schedule of  
Assumed Executory Contracts and Unexpired Leases**

In accordance with Section 8.1 of the *Second Amended Joint Chapter 11 Plan of Speedcast International Limited and its Affiliated Debtors* [Docket No. 992, **Exhibit A**] (as may be amended, modified, or supplemented, the “**Plan**”)<sup>1</sup> and section 365 and 1123 of the Bankruptcy Code, as of and subject to the occurrence of the Effective Date of the Plan, and except as expressly set forth in sections 8.4 and 8.5 of the Plan, each of the executory contracts and unexpired leases to which the Debtors are party shall (subject, in the cases of clauses (ii) and (iii), to the consent of the Plan Sponsor, whose consent will not to be unreasonably withheld) be deemed rejected as of the Effective Date, except for any executory contract or unexpired lease that (i) has been assumed pursuant to a Final Order prior to entry of the Confirmation Order and in respect to which a motion for such assumption has been filed prior to the initial filing of this Plan; (ii) is specifically designated in this schedule or in the initial *Schedule of Assumed Executory Contracts and Unexpired Leases* [Docket No. 1011, **Exhibit E**] (collectively, the “**Assumption Schedules**”); or (iii) is the subject of a separate (A) assumption motion filed by the Debtors or (B) rejection motion filed by the Debtors under section 365 of the Bankruptcy Code before the Confirmation Date. The Debtors intend to assume all employment agreements, offer letters, or award letters to which the Debtors are a party except as specifically set out in these Assumption Schedules.

Unless otherwise provided in the Plan and except as applicable to any Non-Released Party, all employment policies, and all compensation and benefits plans, policies, and programs of the Debtors applicable to their respective employees, retirees, and non-employee directors, including all savings plans, retirement plans, healthcare plans, disability plans, severance

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<sup>1</sup> Unless otherwise defined, capitalized terms used herein have the meanings ascribed to them in the Plan.

benefit plans, incentive plans, and life and accidental death and dismemberment insurance plans, are deemed to be, and shall be treated as, executory contracts under the Plan and, on the Effective Date, shall be assumed pursuant to sections 365 and 1123 of the Bankruptcy Code, regardless of whether such obligations are identified herein.

The Debtors have identified all agreements with its employees, including offer letters, employment agreements, or award letters (the “**Employee Agreements**”) in their Schedules, and notwithstanding the fact that the Debtors have not specifically enumerated each of those Employee Agreements herein or in the Schedules, all Employee Agreements to which the Debtors are a party are deemed to be, and shall be treated as, executory contracts under the Plan and, on the Effective Date, shall be assumed pursuant to sections 365 and 1123 of the Bankruptcy Code, unless otherwise set forth herein.

The Debtors reserve all rights to amend, supplement, and otherwise modify the Assumption Schedules, including to add or remove executory contracts and unexpired leases, to assert that contracts or leases identified on the Assumption Schedules are not executory or unexpired, and to assert that contracts or leases not identified on the Assumption Schedules are executory or unexpired.

Neither the exclusion nor the inclusion of a contract or lease by the Debtors on the Assumption Schedules, or any amendment, supplement, or modification to this schedule, nor anything contained herein, shall constitute an admission by the Debtors that any such contract or lease is an executory contract or unexpired lease or that the Debtors, the Reorganized Debtors, or their respective affiliates, has any liability thereunder. Except as otherwise provided in the Plan or in a previously entered order of the Bankruptcy Court, nothing shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the

Debtors or the Reorganized Debtors under any executory or non-executory contract or unexpired or expired lease. Nothing herein or in the Plan shall increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtors or the Reorganized Debtors, as applicable, under any executory or non-executory contract or unexpired or expired lease. For the avoidance of doubt, nothing herein or in the Plan shall or shall be deemed to constitute a waiver of any rights, claims and/or remedies of any Prepetition Lender against another Prepetition Lender(s) or the Syndicated Facility Agent under the Syndicated Facility Agreement, including, the New Incremental Term Loans (as defined in the Incremental Assumption and Amendment Agreement, dated as of October 16, 2018), the other SFA Loan Documents or any related instrument, agreement or document. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of its assumption under this Plan, the Debtors or Reorganized Debtors, as applicable, shall have sixty (60) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

Out of an abundance of caution, the Debtors have listed certain contracts or leases on the Assumption Schedules that have or may have either terminated or expired (or will terminate or expire) prior to the Confirmation Hearing pursuant to the terms of such contracts or leases, or pursuant to a Notice of Termination delivered pursuant to the terms of such contracts or leases; or may have been objected to pursuant to the *Notice of Intent to Assume and Cure Amounts with Respect to Executory Contracts and Unexpired Leases of Debtors* [Docket No. 958]. Such termination, expiration, or objection shall supersede any purported assumption or rejection implied by the listing of such contract or lease on this schedule.

As a matter of administrative convenience, in many cases the Debtors have listed the original parties to the documents listed in this schedule without taking into account any

succession of trustees or any other transfers from one party to another. The fact that the current parties to a particular agreement may not be named in this schedule is not intended to change the treatment of such documents.

Out of an abundance of caution, and for the avoidance of doubt, the Debtors may have listed on the Assumption Schedules certain contracts or leases that they have previously assumed or rejected, and nothing herein is intended to change or alter the date of assumption or rejection or the terms of assumption or rejection of any previously assumed or rejected contract or lease.

**Exhibit 3-A**

**Schedule of Assumed and Rejected Contracts**

**Vendors**

Vendors

Added to Schedule of Assumed Contracts and Leases - Vendors

Item	Debtor	Contract Counterparty	Contract Description	Cure Amount
255	SpeedCast Communications, Inc.	BlackLine Systems, Inc.	MSA and Order Form Q044828	\$ -
256	SpeedCast UK Holdings Limited	Clara Carpenè S.R.L. (in connection with In Aria! Limited)	Call Option Deed relating to In Aria! Limited (dated 2018)	\$ -
257	SpeedCast UK Holdings Limited	Clara Carpenè S.R.L.; Alberto Carpenè; In Aria! Limited	Subscription and Shareholders' Agreement (dated August 2018)	\$ -
258	SpeedCast Americas, Inc.	Euclid Transactional LLC	Representation and Warranty Insurance Policy in connection with the acquisition of Globecom, effective as of August 27, 2018	\$ -
259	SpeedCast Communications, Inc.	Eutelsat	Master Services Agreement dated August 2008	See Item 64 on Exhibit A-1 of the Initial Cure Schedule (\$1,081,599.00). <sup>1</sup>
260	SpeedCast Americas, Inc.	HPS Investment Partners, LLC	Agreement and Plan of Merger, dated August 27, 2018	\$ -
261	SpeedCast Limited	In Aria! Limited	Speedcast Distributor Agreement	\$ -
262	SpeedCast France SAS	Iridium Satellite LLC	OpenPort Agreement dated May 2, 2013	See Item 116 on Exhibit A-1 of the Initial Cure Schedule (\$244,230.92).
263	SpeedCast France SAS	Iridium Satellite LLC	OpenPort Agreement Updated Exhibits dated October 10, 2016	See Item 116 on Exhibit A-1 of the Initial Cure Schedule (\$244,230.92).
264	SpeedCast France SAS	Iridium Satellite LLC	Certus Special Customer Agreement dated January 12, 2018	See Item 116 on Exhibit A-1 of the Initial Cure Schedule (\$244,230.92).
265	Telaurus Communications LLC	Iridium Satellite LLC	Special Customer Agreement dated March 6, 2019	See Item 118 on Exhibit A-1 of the Initial Cure Schedule (\$484,520.40).
266	Telaurus Communications LLC	Iridium Satellite LLC	OpenPort Distributor Agreement dated June 2, 2008	See Item 118 on Exhibit A-1 of the Initial Cure Schedule (\$484,520.40).
267	SpeedCast Americas, Inc.	Newcom International, Inc.; Jaime Dickinson	Share Purchase Agreement (dated December 28, 2015)	\$ -
268	CapRock Comunicações do Brasil Ltda.	SES	New Skies Occasional Use Service Agreement, dated April 15, 2006	See Item 149 on Exhibit A-1 of the Initial Cure Schedule (\$4,100,000.00).
269	SpeedCast Communications, Inc.	SES	Capacity Reservation Agreement, dated February 19, 2009	See Item 149 on Exhibit A-1 of the Initial Cure Schedule (\$4,100,000.00).
270	SpeedCast Limited	SES	Framework Agreement Term Sheet, dated September 14, 2015	See Item 149 on Exhibit A-1 of the Initial Cure Schedule (\$4,100,000.00).
271	SpeedCast Limited	SRH Marine Electronics S.A.	Speedcast Strategic Reseller Agreement dated April 26, 2018	\$ -
272	SpeedCast Limited	SRH Marine Electronics S.A.	Amendment No 1 to Speedcast Strategic Reseller Agreement for "SRH Delta Fleet" Product dated June 12, 2019	\$ -
273	SpeedCast Americas, Inc.	UltiSat, Inc.; Sellers (defined therein); Mohammed G. Abutaleb	Share Purchase Agreement (dated July 23, 2017)	\$ -
274	SpeedCast Americas, Inc.	UltiSat, Inc.; Sellers (defined therein); Mohammed G. Abutaleb	Amended and Restated Share Purchase Agreement (dated October 31, 2017)	\$ -
275	SpeedCast Australia Pty Limited	Vodafone Enterprise Australia	Global Carrier Services Master Agreement, dated April 1, 2017 – Buy Side Only	\$ -

Revised Cure Amounts of Assumed Contracts and Leases - Vendors

Item	Debtor	Contract Counterparty	Contract Description	Cure Amount <sup>2</sup>
99	SpeedCast International Limited	Harris Corporation	Sale Agreement dated November 1, 2016	To be determined.
216	SpeedCast Limited	Telesat	Master Service Agreement for provision of bandwidth dated April 9, 2018	\$ 1,218,000.00
236	SpeedCast Australia Pty Limited	Telstra International Limited	Telecommunications Service Agreement and Variation Agreement	\$ -

<sup>1</sup> "Initial Cure Schedule" means the Schedule of Assumed Contracts and Leases and Proposed Cure Amounts (Docket No. 958, Exhibit A).

<sup>2</sup> The Cure Amounts set forth herein modify and supercede the corresponding Cure Amounts set forth in the Initial Cure Schedule.

**Exhibit 3-B**

**Schedule of Assumed and Rejected Contracts**

**Leases**



Leases

Added to Schedule of Assumed Contracts and Leases - Leases

Item	Debtor	Contract Counterparty	Contract Description	Cure Amount
24	Hermes Datacommunications International Limited	Dr. Tahir Abd al-Rahman Tahir	Property lease at Iraq/Basra/ Amman neighbourhood 211/19	\$ -
25	Hermes Datacommunications International Limited	Oryx Investments Incorporated	Property lease at 3007 The Dome Tower, Cluster N, JLT Dubai, UAE	\$ -

**Exhibit 3-C**

**Schedule of Assumed and Rejected Contracts**

**Customers**

## Added to Schedule of Assumed Contracts and Leases - Customers

Item	Debtor	Contract Counterparty	Contract Description	Cure Amount
3816	Globecom Network Services Corporation	Maersk Line A/S	Addendum No. 2 to Future Connectivity Purchase Agreement	\$ -
3817	Globecom Network Services Corporation	Maersk Line A/S	Purchase Agreement establishing a framework and specific project purposes	\$ -

## Revised Cure Amounts of Assumed Contracts and Leases - Customers

Item	Debtor	Contract Counterparty	Contract Description	Cure Amount <sup>1</sup>
2623	SpeedCast Communications, Inc.	Oceaneering International, Inc	Master Agreement whereby Oceaneering International, Inc is to perform certain services and provide certain equipment/product to Harris CapRock and its affiliates and subsidiaries.	\$ 56,838.33

## Removed from Schedule of Assumed Contracts and Leases - Customers

Item	Debtor	Contract Counterparty	Contract Description	Cure Amount
266	SpeedCast Netherlands B.V.	Axxess Marine LLC	GlobalFX activation request	\$ -
307	SpeedCast Netherlands B.V.	Axxess Marine LLC	GlobalFX re-activation request	\$ -
308	SpeedCast Netherlands B.V.	Axxess Marine LLC	GlobalFX suspend request	\$ -
309	SpeedCast Netherlands B.V.	Axxess Marine LLC	GlobalFX activation request	\$ -
363	SpeedCast Netherlands B.V.	Axxess Marine LLC	GlobalFX suspend request	\$ -
1450	SpeedCast Singapore Pte. Ltd.	First Marine Service Co.,Ltd.	Proposal cum Contract for FBB services.	\$ -
1729	SpeedCast Singapore Pte. Ltd.	Goodwood	Service report with summary of tasks performed.	\$ -
1730	SpeedCast Singapore Pte. Ltd.	Goodwood Ship Management Pte Ltd	Proposed Cum Contract - Immarsat Fleet Xpress Services	\$ -
1731	SpeedCast Singapore Pte. Ltd.	Goodwood Ship Management Pte Ltd	Proposed Cum Contract - Immarsat Fleet Xpress Service	\$ -
1732	SpeedCast Singapore Pte. Ltd.	Goodwood Ship Management Pte Ltd	Service order.	\$ -
1733	SpeedCast Singapore Pte. Ltd.	Goodwood Ship Management Pte Ltd	Service order.	\$ -
1734	SpeedCast Singapore Pte. Ltd.	Goodwood Ship Management Pte Ltd	Service Order - Speedmail Activation	\$ -
1735	SpeedCast Singapore Pte. Ltd.	Goodwood Ship Management Pte Ltd	Service order.	\$ -
1736	SpeedCast Singapore Pte. Ltd.	Goodwood Ship Management Pte Ltd	'Proposal cum contract' to deliver Inmarsat Fleet Xpress Services.	\$ -
1737	SpeedCast Limited	Goodwood Ship Management Pte Ltd	FleetBroadbank Single and Dual SIM Card Service Activation Request	\$ -
1738	SpeedCast Singapore Pte. Ltd.	Goodwood Ship Management Pte Ltd	'Proposal cum contract' to deliver Ku and Mss services.	\$ -
1739	SpeedCast Singapore Pte. Ltd.	Goodwood Ship Management Pte Ltd	Service Order	\$ -
1740	SpeedCast Singapore Pte. Ltd.	Goodwood Ship Management Pte Ltd	Service Order - Speedmail Activation	\$ -
1741	SpeedCast Singapore Pte. Ltd.	Goodwood Ship Management Pte Ltd	Service order for hardware.	\$ -
1742	SpeedCast Singapore Pte. Ltd.	Goodwood Ship Management Pte Ltd	Service order for SpeedMail+ Bundle	\$ -
1743	SpeedCast Singapore Pte. Ltd.	Goodwood Ship Management Pte Ltd	Service order.	\$ -
1744	SpeedCast Singapore Pte. Ltd.	Goodwood Ship Management Pte Ltd	Contract with Goodwood Ship Management Pte Ltd	\$ -
1745	SpeedCast Singapore Pte. Ltd.	Goodwood Ship Management Pte Ltd	'Proposal cum contract' to deliver MSS Services.	\$ -
1746	SpeedCast Singapore Pte. Ltd.	Goodwood Ship Management Pte Ltd	Proposed Cum Contract - MSS Services	\$ -
1747	SpeedCast Singapore Pte. Ltd.	Goodwood Ship Management Pte Ltd	Service order and copy.	\$ -

<sup>1</sup> The Cure Amounts set forth herein modify and supercede the corresponding Cure Amounts set forth in the Initial Cure Schedule.

Schedule of Assumed Contracts and Leases  
Customers

Item	Debtor	Contract Counterparty	Contract Description	Cure Amount
1916	Globecom Europe B.V.	Inmarsat	Email Chain	\$ -
1918	Speedcast Cyprus Ltd.	INMARSAT SOLUTIONS AS NORWAY	Contract with INMARSAT SOLUTIONS AS NORWAY	\$ -
1958	SpeedCast Singapore Pte. Ltd.	IO3 Pte Ltd	Proposal Cum Contract - Inmarsat Fleet Xpress Services	\$ -
1961	SpeedCast Singapore Pte. Ltd.	iO3 Pte Ltd	Proposal Cum Contract - Inmarsat Fleet Xpress Services (Project Name: FX for Taiwan Fisherx)	\$ -
1987	SpeedCast Singapore Pte. Ltd.	ISM PTE LTD	SpeedMail+ order form activation request	\$ -
1988	SpeedCast Singapore Pte. Ltd.	ISM Pte Ltd	FleetBroadband Single & Dual SIM Card Service Activation Request	\$ -
1989	SpeedCast Singapore Pte. Ltd.	ISM Pte Ltd	Letter regarding the supply of Fleet Broadband airtime 500mb data plan for vessel MV Brilliant Journey	\$ -
2173	Evolution Communications Group Limited	Mackay Communications Inc	INMARSAT Traffic Agreement	\$ -
2194	SpeedCast Netherlands B.V.	Marconn B.V.	Communications service quotation for FX airtime services with Fleet Edge and SIGMA net.	\$ -
2199	Speedcast Cyprus Ltd.	Marconn B.V.	Speedcast Greece FleetXpress Order Form for Trinitas.	\$ -
2362	SpeedCast Australia Pty Limited	Max Dee Integrated Engineering Ltd	Proposal for the provision of Inmarsat Fleet Broadband and Iridium Pilot (OpenPort) services.	\$ -
2592	SpeedCast Australia Pty Limited	Nsw Police Force	Application for service activation of Inmarsat Fleet One terminal	\$ -
2843	Evolution Communications Group Limited	Ramson Tade Ou	Invoice for January 2020 billing period for Inmarsat prepay.	\$ -
3134	SpeedCast Australia Pty Limited	SGS Australia Pty Ltd	Application for service activation of Inmarsat IsatPhone Pro Terminal	\$ -
3135	SpeedCast Australia Pty Limited	SGS Australia Pty Ltd	Application for the service activation of Inmarsat isatPhone Pro Terminal	\$ -
3233	SpeedCast Australia Pty Limited	SKY TECHNOLOGIES LTD	Application for service activation of Inmarsat IsatPhone Pro Prepaid Terminal	\$ -
3263	SpeedCast Netherlands B.V.	Solitaire Transport Chartering	Invoice for RS-L-BAND-INMARSAT FBB SUBSCRIPTION - 1 Mar 2020 - 31 Mar 2020	\$ -
3264	SpeedCast Netherlands B.V.	Solitaire Transport Chartering	Invoice for RS-L-BAND-INMARSAT FBB SUBSCRIPTION 1 Jan 2020 - 31 Jan 2020	\$ -
3268	Hermes Datacommunications International Limited	South Caucasus Pipeline Company	Purchase order for inmarsat bgan standard sim cards, post-paid plans and broadband.	\$ -
3269	Hermes Datacommunications International Limited	South Caucasus Pipeline Company	Purchase order for inmarsat bgan standard sim cards, post-paid plans and broadband..	\$ -
3375	SpeedCast Australia Pty Limited	Tamrose Ventures Ltd	Application for service activation of Inmarsat Fleet Broadband Terminal	\$ -
3376	SpeedCast Australia Pty Limited	Tamrose Ventures Ltd	Application for service activation of Inmarsat Fleet Broadband Terminal and terms and conditions for SpeedCast Airtime Services.	\$ -
3377	SpeedCast Australia Pty Limited	Tamrose Ventures Ltd	Application for service activation of Inmarsat Fleet Broadband Terminal.	\$ -
3643	SpeedCast Singapore Pte. Ltd.	U Shipz Pte Ltd	Letter of request for transfer INMARSAT terminals	\$ -
3798	SpeedCast Singapore Pte. Ltd.	Yellow Marine Co Ltd	Inmarsat FleetBroadband Airtime Service Application	\$ -

**Exhibit 4**

**Initial Board of Directors, Managers or Officers of New Speedcast Parent**

### **Members of the Board of Directors and Officers of the Reorganized Debtors and New Speedcast Parent**

This Exhibit G sets forth the members of the board of directors and officers of the Reorganized Debtors, the board of directors of New Speedcast Parent (herein referred to as the “New Speedcast Parent Board”) and the officers of New Speedcast Parent proposed to serve after the Confirmation Date and upon the Effective Date, consistent with the requirements of Section 1129(a)(5) of the United States Bankruptcy Code and the terms of the Plan.

All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan, or, if not defined in the Plan, in the other Plan Documents.

Upon confirmation of the Plan, the existing directors and officers of each of the Debtors as of immediately prior to the Confirmation Date shall, unless otherwise determined by the Debtors or the Plan Sponsor, remain in their current capacities as such of the respective Debtors, subject to the ordinary rights and powers of the boards of directors of the Debtors to remove or replace them in accordance with the organizational documents of the Debtors and any other applicable agreements.

The appointment of certain officers and directors or the continuance of such officers or directors in their respective roles as set forth in this Exhibit is consistent with the interests of creditors and equity security holders and with public policy.

#### **List of Members of the New Speedcast Parent Board**

As of the Effective Date, New Speedcast Parent will be governed by the New Speedcast Parent Board, to be comprised initially of three individuals: the individuals listed below as well as the Chief Executive Officer of New Speedcast Parent as of such date. The size and composition of the New Speedcast Parent Board may be changed from time to time by the Plan Sponsor. To the extent identified prior to the Effective Date, the Debtors will post to the docket the identity and affiliations of any other individuals to be appointed to the New Speedcast Parent Board as of the Effective Date.

Jared S. Hendricks – Senior Managing Director, Centerbridge Partners, L.P. Mr. Hendricks is a Senior Managing Director at Centerbridge Partners, L.P., a New York-based private investment management firm. Prior to joining Centerbridge, Mr. Hendricks was an Associate at Silver Lake Partners, a private equity firm focused on investments in technology and related growth companies operating at scale. Previously, Mr. Hendricks was an Investment Banking Analyst within the Global Industrial and Services Group at Credit Suisse First Boston. Mr. Hendricks serves on the boards of directors of AHEAD, LLC, American Renal Associates Holdings, Inc. (and affiliated entities), IPC Corp. (and affiliated entities), Ligado Networks LLC, Acoustic, L.P. and the board affiliated with Precisely.

Bao D. Truong – Senior Managing Director, Centerbridge Partners, L.P. Mr. Truong is a Senior Managing Director at Centerbridge Partners, L.P., a New York-based private investment management firm. Prior to joining Centerbridge, Mr. Truong was a Managing Director and Partner in the credit business of Fortress Investment Group LLC, from 2004 to 2010. While at Fortress,

Mr. Truong was a Senior Member of the Corporate Securities Group that was engaged principally in public market investments across the corporate capital structure, with a focus on distressed and special situations. Previously, Mr. Truong was a member of the Distressed and High-Yield Research and Trading business of Lehman Brothers Inc. Mr. Truong serves on the boards of directors of Genco Shipping and Trading Ltd, IPC Corp. (and affiliated entities), Penhall Holding Company (and affiliated entities), Seitel, Inc. (and affiliated entities), and Ambrosia Holdings, L.P.

### **List of Officers of New Speedcast Parent**

The existing officers of Speedcast International Limited as of immediately prior to the Effective Date shall, unless otherwise determined by the Debtors, the Plan Sponsor or the New Speedcast Parent Board, remain in their capacities as such to serve New Speedcast Parent, subject to the ordinary rights and powers of the New Speedcast Parent Board to remove or replace them in accordance with the Summary of Principal Governance Terms filed with the Plan Supplement on December 1, 2020, the New Organizational Documents (as defined in the Plan), the Amended Organizational Documents (as defined in the Plan), any other organizational documents for New Speedcast Parent and the Reorganized Debtors (together, the “New Speedcast Organizational Documents”), and any other applicable agreements. To the extent identified prior to the Effective Date, the Debtors will post to the docket the identity and affiliations of any other individuals to be appointed as officers of New Speedcast Parent as of the Effective Date.

### **List of Directors of Each of the Other Reorganized Debtors**

The existing directors (except in the case of Speedcast International Limited, the directors and officers of which shall be as provided above in the List of Members of the New Speedcast Parent Board and the List of Officers of New Speedcast Parent in this document), as applicable, of each of the other Debtors as of immediately prior to the Effective Date shall, upon such date, unless otherwise determined by the Debtors, the Plan Sponsor or the New Speedcast Parent Board, remain in their current capacities as such of the respective Reorganized Debtors, subject to the ordinary rights and powers of the New Speedcast Parent Board to remove or replace them in accordance with the New Speedcast Organizational Documents and any other applicable agreements.

### **List of Officers of the Reorganized Debtors and Nature of Compensation**

The existing officers of each of the Debtors as of immediately prior to the Effective Date shall, upon such date, unless otherwise determined by the Debtors, the Plan Sponsor or the New Speedcast Parent Board, remain in their current capacities as officers of the Reorganized Debtors, subject to the ordinary rights and powers of the New Speedcast Parent Board and the board of directors of each of the Reorganized Debtors to remove or replace them in accordance with the New Speedcast Organizational Documents, and any other applicable agreements, including employment agreements. The nature of compensation for the continuing officers shall continue in such form as existed as of immediately prior to the Effective Date (aside from participation in former equity plans), subject to the possibility of such officers’ participation in the Management Incentive Plan, which will be determined in the sole discretion of the New Speedcast Parent Board after the Effective Date, and, further, with respect to certain employees, such compensation as may

be set forth in such employee's employment agreement and/or amended employment agreement and any other agreed terms or terms that may be determined by the New Speedcast Parent Board.