

Matthew A. Feldman  
Paul V. Shalhoub  
Robin Spigel  
Debra C. McElligott  
WILLKIE FARR & GALLAGHER LLP  
787 Seventh Avenue  
New York, New York 10019  
Telephone: (212) 728-8000  
Facsimile: (212) 728-8111

*Counsel for the Debtors and  
Debtors in Possession*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

|   |                           |
|---|---------------------------|
| -----X                                    |                           |
| In re:                                    | : Chapter 11              |
|   | : :                       |
| SquareTwo Financial Services              | : Case No. 17-10659 (JLG) |
| Corporation, <u>et al.</u> , <sup>1</sup> | : :                       |
|   | : (Jointly Administered)  |
| Debtors.                                  | : :                       |
| -----X                                    |                           |

**NOTICE OF FILING OF FORM OF  
CREDITOR DISTRIBUTION TRUST AGREEMENT**

PLEASE TAKE NOTICE that on May 19, 2017, the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) filed the *Debtors’ Motion Pursuant to Fed. R. Bankr. P. 9019 and 11 U.S.C. § 105(a) for Entry of Order Approving Settlement Agreement and Creditor Distribution Trust Agreement* [Docket No. 239] (the “**Motion**”).

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s federal taxpayer identification number and/or Canadian equivalent are as follows: Astrum Financial, LLC (2265); Autus, LLC (2736); CA Internet Marketing, LLC (7434); CACH, LLC d/b/a Fresh View Funding (6162); CACV of Colorado, LLC (3409); CACV of New Jersey, LLC (3499); Candeo, LLC (2809); CCL Financial Inc. (7548); Collect Air, LLC (7987); Collect America of Canada, LLC (7137); Healthcare Funding Solutions, LLC (2985); Metropolitan Legal Administration Services, Inc. (6811); Orsa, LLC (2864); Preferred Credit Resources Limited (0637); ReFinance America, Ltd. (4359); SquareTwo Financial Canada Corporation (EIN: 1034; BN: 0174); SquareTwo Financial Corporation (1849); and SquareTwo Financial Services Corporation d/b/a Fresh View Solutions (5554). The Debtors’ executive headquarters are located at 6300 South Syracuse Way, Suite 300, Centennial, CO 80111.

PLEASE TAKE FURTHER NOTICE that a substantially final form of the Creditor Distribution Trust Agreement (the “CDTA”) referenced in the Motion is annexed hereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that the Settlement Parties<sup>2</sup> are still finalizing the terms of the CDTA. If any changes are made to the form of CDTA annexed hereto prior to the hearing on the Motion, which is scheduled for June 2, 2017 at 10:00 a.m. (prevailing Eastern Time), the Debtors will file a revised version and a blackline showing changes from the form of agreement filed herewith.

Dated: May 24, 2017  
New York, New York

WILLKIE FARR & GALLAGHER LLP  
*Counsel for the Debtors and  
Debtors in Possession*

By: /s/ Paul V. Shalhoub  
Matthew A. Feldman  
Paul V. Shalhoub  
Robin Spigel  
Debra C. McElligott

787 Seventh Avenue  
New York, New York 10019  
Telephone: (212) 728-8000  
Facsimile: (212) 728-8111

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<sup>2</sup> Capitalized terms used but not defined herein have the meaning given to them in the Motion.

**EXHIBIT A**

**Form of Creditor Distribution Trust Agreement**

## CREDITOR DISTRIBUTION TRUST AGREEMENT

THIS CREDITOR DISTRIBUTION TRUST AGREEMENT (the “Agreement”) is entered into this \_th day of June, 2017, by and among the Dissolving Debtors<sup>1</sup>; the Official Committee of Unsecured Creditors of the Debtors (the “Committee”); and Ted Gavin, CTP, Managing Director of GAVIN/SOLMONESE LLC in his capacity as Creditor Trustee of the SquareTwo Unsecured Creditor Distribution Trust (the “Creditor Trustee”) (collectively, the “Parties”).

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

WHEREAS, SquareTwo Financial Services Corporation, *et al.*<sup>2</sup>, as debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on March 19, 2017 (the “Petition Date”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, on March 19, 2017, the Debtors filed the Joint Prepackaged Chapter 11 Plan for SquareTwo Financial Services Corporation and Its Affiliated Debtors [ECF No. 20] (as amended, modified, or supplemented, the “Plan”) with the Bankruptcy Court;

WHEREAS, on April 7, 2017 the United States Trustee, pursuant to sections 1102(a) and (b) of the Bankruptcy Code, appointed certain unsecured creditors to the Committee to represent the interests of all unsecured creditors in the Chapter 11 Cases [ECF No. 103];

WHEREAS, after the appointment of the Committee, the Committee conducted a review and analysis of, among other things, the claims held against the Debtors by Apollo and KKR (each as defined below), as well as terms of the Plan, and engaged in extensive discovery and investigation regarding such claims and the Plan;

WHEREAS, the Parties engaged in extensive negotiations regarding the Committee’s objections to the Plan, and the claims held by the 1.25 Lien Lenders and the 1.5 Lien Lenders, and have agreed to the terms of a settlement to resolve such objections;

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<sup>1</sup> The Dissolving Debtors consist of the following entities: Astrum Financial, LLC; Autus, LLC; CACV of New Jersey, LLC; CA Internet Marketing, LLC; Collect Air, LLC; Collect America of Canada, LLC; Orsa, LLC; ReFinance America, Ltd.; Healthcare Funding Solutions, LLC; Candeo, LLC; SquareTwo Financial Corporation; and SquareTwo Financial Services Corporation (d/b/a Fresh View Solutions) (and any of their respective successors).

<sup>2</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s federal taxpayer identification number and/or Canadian equivalent are as follows: Astrum Financial, LLC (2265); Autus, LLC (2736); CA Internet Marketing, LLC (7434); CACH, LLC d/b/a Fresh View Funding (6162); CACV of Colorado, LLC (3409); CACV of New Jersey, LLC (3499); Candeo, LLC (2809); CCL Financial Inc. (7548); Collect Air, LLC (7987); Collect America of Canada, LLC (7137); Healthcare Funding Solutions, LLC (2985); Metropolitan Legal Administration Services, Inc. (6811); Orsa, LLC (2864); Preferred Credit Resources Limited (0637); ReFinance America, Ltd. (4359); SquareTwo Financial Canada Corporation (EIN: 1034; BN: 0174); SquareTwo Financial Corporation (1849); and SquareTwo Financial Services Corporation d/b/a Fresh View Solutions (5554).

WHEREAS, on May 19, 2017, the Debtors filed the Debtors' Motion Pursuant to Fed. R. Bankr. P. 9019 and 11 U.S.C. § 105(a) For Entry of an Order Approving Settlement Agreement and Creditor Distribution Trust Agreement [ECF No. 239] (the "Settlement Motion") seeking to effectuate the agreement (the "Settlement Agreement") between the (i) Debtors, (ii) Committee, (iii) Apollo Global Management, LLC and certain entities directly or indirectly controlled by it ("Apollo"); and (iv) KKR Credit Advisors (US) LLC and certain entities directly or indirectly controlled by it ("KKR"), that resolves the Committee's objections to the Plan, and the claims held by Apollo and KKR;

WHEREAS, on June [●], 2017, the Bankruptcy Court entered an order [ECF No. ● ] (the "Settlement Order") approving the Settlement Agreement;

WHEREAS, on June [●], 2017, the Bankruptcy Court entered an order [ECF No. ● ] (the "Confirmation Order") confirming the Plan;

WHEREAS, the Settlement Order provides for, among other things, the establishment of a Creditor Distribution Trust (the "Creditor Distribution Trust") for the benefit of its Beneficiaries (defined below) and the appointment of the Creditor Trustee, as the trustee and manager of the Creditor Distribution Trust;

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

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

WHEREAS, the Creditor Distribution Trust is intended to qualify as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d) and, as such, a "grantor trust" for U.S. federal income tax purposes.

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

## ARTICLE I

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

1.1 Definitions. For the purposes of this Agreement, the following terms shall have the meanings set forth below. Capitalized terms used but not defined herein shall have the meanings attributed to them in the Plan or Settlement Agreement.

"Allowed Trust Claim" means:

(a) a Trust Claim (i) for which a proof of claim has been submitted and received by the Creditor Distribution Trust by the Trust Claim Bar Date or otherwise has been deemed timely

submitted and received under applicable law and (ii) (a) to which no objection has been filed by the applicable Trust Claim Objection Deadline and (b) that is not a Disputed Trust Claim;

(b) a Trust Claim that is allowed: (i) in any stipulation of amount and nature of claim executed by or on behalf of the Creditor Trustee and Trust Claim holder; and (ii) in a Final Order; or

(c) a Trust Claim that the Creditor Trustee determines prior to the Trust Claim Objection Deadline (i) will not be subject to an objection and (ii) will be satisfied in accordance with the terms of this Agreement, the Settlement Agreement, and the Settlement Order on or after the Effective Date.

“Disputed Trust Claim” means a Trust Claim for which a proof of claim has been submitted and received by the Creditor Distribution Trust by the Trust Claim Bar Date or has otherwise been deemed timely submitted and received under applicable law, for which an objection, complaint or request for estimation has been filed by the Creditor Trustee by the Trust Claim Objection Deadline, where such objection has not been withdrawn or denied in its entirety by a Final Order.

“Creditor Distribution Trust Fund” means \$1.3 million in Cash funded in accordance with Section 1.07 of the Settlement Agreement.

“Third Party Release” means the waiver, discharge and release in writing of all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities against (i) each of the directors and officers of Debtors serving in such capacities as of the Petition Date and (ii) the 1.25 Lien Lenders and the Consenting 1.5 Lien Lenders, or any of their respective officers, directors, employees, agents, attorneys, consultants, financial advisors, affiliates, assigns, or successors, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, now existing or hereafter arising, in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Reorganized Debtors, including the Acquired Debtors, and the Dissolving Debtors, the purchase, sale or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the Chapter 11 Cases, the Canadian Proceeding, the RSA, the DIP Facility, the Plan Funding Agreement, or the Plan or the Disclosure Statement.

“Trust Claim Bar Date” means the bar date by which a proof of Claim must be or have been submitted and received by the Creditor Distribution Trust by a (a) holder of Second Lien Lender Claims against the Debtors [Class 6 under the Plan], and (b) holder of U.S. General Unsecured Claims against the Debtors [Class 7A under the Plan] to be specifically fixed by order of the Bankruptcy Court upon application of the Creditor Trustee.

“Trust Claim” means a Claim asserted by a Beneficiary.

“Trust Claim Objection Deadline” means for all Trust Claims the latest of: (a) 90 days after the filing of a proof of Claim; and (b) such other period of limitation as may be specifically fixed by order of the Bankruptcy Court.

“Trust Election” means the election available to each (a) holder of Second Lien Lender Claims [Class 6 under the Plan], and (b) holder of U.S. General Unsecured Claims [Class 7A under the Plan] to opt to receive a distribution from the Creditor Distribution Trust in full and complete satisfaction, discharge and release of such Trust Claim; provided, that in making such election, each (a) holder of Second Lien Lender Claims against the Debtors [Class 6 under the Plan], and (b) holder of U.S. General Unsecured Claims against the Debtors [Class 7A under the Plan] shall be deemed to have granted the Third Party Release on a properly cast Trust Election Form.

“Trust Election Form” means the form distributed to each (a) holder of Second Lien Lender Claims against the Debtors [Class 6 under the Plan], and (b) holder of U.S. General Unsecured Claims against the Debtors [Class 7A under the Plan] on which each holder may elect to receive a distribution from the Creditor Distribution Trust in full and complete satisfaction, discharge and release of such Trust Claim; provided, that in making such election, each (a) holder of Second Lien Lender Claims against the Debtors [Class 6 under the Plan], and (b) holder of U.S. General Unsecured Claims against the Debtors [Class 7A under the Plan] shall be deemed to have granted the Third Party Release. The Creditor Distribution Trust shall provide a draft copy of the Trust Election Form at least three (3) days prior to the service of such form to counsel to the Debtors and counsel to Apollo and KKR, and such form shall be in form and substance acceptable to Counsel to the Debtors and counsel to Apollo and KKR.

“Trust Election Form Deadline” means the deadline for returning the Trust Election Form to be specifically fixed by order of the Bankruptcy Court.

1.2 Other Definitions. The following terms shall have the meanings defined in the Section indicated:

|  |              |
|--|--------------|
| Agreement.....                               | Preamble     |
| Apollo.....                                  | Recitals     |
| Bankruptcy Code.....                         | Recitals     |
| Bankruptcy Court.....                        | Recitals     |
| Beneficiaries.....                           | Section 5.1  |
| Committee.....                               | Preamble     |
| Confirmation Order.....                      | Recitals     |
| Creditor Distribution Trust.....             | Preamble     |
| Creditor Trustee.....                        | Preamble     |
| Creditor Distribution Trust Functions.....   | Section 3.3  |
| Creditor Trust Disputed Claims Reserves..... | Section 3.6  |
| Debtors.....                                 | Recitals     |
| Dissolving Debtors.....                      | Preamble     |
| Indemnified Party.....                       | Section 4.10 |
| KKR.....                                     | Recitals     |
| Petition Date.....                           | Recitals     |

|                           |              |
|---------------------------|--------------|
| Plan.....                 | Recitals     |
| Plan Investor.....        | Recitals     |
| RSA.....                  | Recitals     |
| Resignation Notice.....   | Section 7.2  |
| Settlement Agreement..... | Recitals     |
| Settlement Motion.....    | Recitals     |
| Settlement Order.....     | Recitals     |
| Trust Accounts.....       | Section 4.12 |
| Trust Professionals.....  | Section 4.7  |

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

## ARTICLE II

### **Establishment of the Creditor Distribution Trust, Appointment of the Creditor Trustee**

2.1 Establishment of the Creditor Distributions Trust. Effective as of the Effective Date, the Creditor Distribution Trust shall be deemed established and will become effective, in order to carry out the Creditor Distribution Trust Functions (defined below). The Creditor Distribution Trust is organized and established as a trust for the benefit of the Beneficiaries (defined below) and is intended to qualify as a liquidating trust within the meaning of Treasury Regulation Sections 301.7701-4(d). The Creditor Distribution Trust will not be deemed a successor-in-interest of the Estate for any purpose other than as specifically set forth in this Agreement. This Agreement and the Creditor Distribution Trust created hereby are hereby declared to be irrevocable and the Debtors, Plan Investor, Apollo and KKR shall not have any right at any time to withdraw any of the property held hereunder or to revoke, annul, or cancel the Creditor Distribution Trust in whole or in part, or to alter, amend, or modify this Agreement in any respect.

2.2 Appointment of Creditor Trustee. Ted Gavin, CTP, Managing Director of GAVIN/SOLMONESE LLC is hereby appointed as the Creditor Trustee and hereby accepts such appointment. On the Effective Date and automatically and without further action, the Creditor Trustee will have full power and authority as the trustee of the Creditor Distribution Trust in accordance with the Settlement Agreement, Settlement Order, and this Agreement to take any and all actions as he believes may be reasonably necessary, desirable or appropriate with respect to the Creditor Distribution Trust.



2.3 Vesting of Creditor Distribution Trust Fund. On the Effective Date, pursuant to the Settlement Agreement and Settlement Order, Apollo and KKR shall carve out of the proceeds of their collateral and the Plan Investor will transfer, grant, assign, convey, set over, and deliver to the Creditor Trustee, for the benefit of the Creditor Distribution Trust, the Creditor Distribution Trust Fund free and clear of all Liens, Claims, encumbrances or interests of any kind in such property.

2.4 Trust Name. The trust created hereby shall be known as the SquareTwo Unsecured Creditor Distribution Trust, in which name the Creditor Trustee may, among other things, carry out the Creditor Distribution Trust Functions.

### ARTICLE III

#### **Creditor Distribution Trust, Purpose, Administration**

3.1 Purpose of the Creditor Distribution Trust. The Creditor Distribution Trust shall be established for the purpose of carrying out the Creditor Distribution Trust Functions, including liquidating, distributing and resolving the claims of (a) holders of Second Lien Lender Claims against the Debtors [Class 6 under the Plan], and (b) holders of U.S. General Unsecured Claims against the Debtors [Class 7A under the Plan] to the Creditor Distribution Trust Fund, in accordance with Treasury Regulations Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. Accordingly, the Creditor Trustee shall, in an expeditious but orderly manner, carry out the Creditor Distribution Trust Functions and make timely distributions and not unduly prolong the duration of the Creditor Distribution Trust.

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

3.3 Purpose of this Agreement and Creditor Distribution Trust Functions. The Parties hereby enter into this Agreement for the purposes of establishing the Creditor Distribution Trust contemplated by the Settlement Agreement and Settlement Order and authorizing the Creditor Trustee to, among other things, implement and carry out the Creditor Distribution Trust functions as follows: (a) adopt, execute, deliver or file all plans, agreements, certificates and other documents and instruments necessary or appropriate to implement the provisions of the Settlement Agreement, Settlement Order, and this Agreement; (b) perform the duties, exercise the powers, and assert the rights of a trustee or estate representative under applicable law with respect to the Creditor Distribution Trust, including for purposes of reconciling, objecting to and settling the Trust Claims; (c) to accept, preserve, manage, invest, and supervise the Creditor Distribution Trust Fund pending distributions; (d) calculate and make distributions to holders of Allowed Trust Claims; (e) pay all expenses and make all other payments relating to the Creditor Distribution Trust; (f) exercise rights and fulfill obligations under this Agreement, the Settlement Agreement, and the Settlement Order; (g) review, reconcile, settle or object to Trust Claims and resolve such objections; (h) retain third party disbursing agents and professionals and other entities; (i) file appropriate tax returns and other reports on behalf of the Creditor Distribution Trust and pay taxes or other obligations owed by the Creditor Distribution Trust on account of its status as a trust (and not on account of any taxes

owed by the Debtors or the Reorganized Debtors); (j) dissolve the Creditor Distribution Trust; (k) establish, keep, and maintain a reserve for the benefit of Disputed Trust Claims; (l) engage and reasonably compensate the Trust Professionals (defined herein) to assist the Creditor Trustee in carrying out his duties; and (m) prepare and deliver written statements or notices, quarterly or otherwise, required by law to be delivered to Beneficiaries of the Creditor Distribution Trust (collectively "Creditor Distribution Trust Functions"). All Creditor Distribution Trust Functions and related activities of the Creditor Trustee shall be reasonably necessary to, and consistent with, the accomplishment of these purposes.

3.4 Authority of the Creditor Trustee. The Creditor Trustee will serve as a fiduciary to the Beneficiaries and will be empowered to perform the Creditor Distribution Trust Functions.

3.5 Expenses of the Creditor Distribution Trust. The Creditor Distribution Trust Fund will be used to pay all liabilities, costs and expenses of the Creditor Distribution Trust, including compensation then due and payable to the Creditor Trustee, his agents, representatives, the Trust Professionals and employees and all costs, expenses, and liabilities incurred by the Creditor Trust in connection with the performance of the Creditor Trustee's duties and the Creditor Distribution Trust Functions. The reasonable fees and expenses of the Creditor Trust and its counsel and agents will be paid from the Creditor Distribution Trust Fund without need of Bankruptcy Court approval, subject to the terms set forth in Section 4.15 herein. In no event shall any of the Debtors, the Reorganized Debtors or their respective estates, or Apollo or KKR have any liability whatsoever for any liabilities, costs or expenses of the Creditor Distribution Trust.

3.6 Tax Treatment of Creditor Distribution Trust. For United States federal and applicable state income tax purposes, the transfer of the Creditor Distribution Trust Fund to the Creditor Distribution Trust pursuant to and in accordance with the Settlement Agreement, Settlement Order, and this Agreement shall be treated as a disposition of such assets directly to and for the benefit of the Beneficiaries. The Creditor Distribution Trust is intended to qualify as a liquidating trust that is treated as a "grantor trust" for federal income tax purposes, and the Creditor Trustee shall use his best efforts to operate and maintain the Creditor Distribution Trust in compliance with all applicable guidelines regarding liquidating trusts issued by the Internal Revenue Service (including Revenue Procedure 94-45, 1994-2 C.B. 684); provided, however, that the Creditor Trustee shall timely elect to treat any assets allocable to, or retained on account of, Disputed Trust Claims (the "Creditor Trust Disputed Claims Reserves") under Treasury Regulations Section 1.468B-9(c)(2)(ii) to treat the Creditor Trust Disputed Claims Reserve as a "disputed ownership fund." Accordingly, other than the portion of the Creditor Distribution Trust Fund comprising the Creditor Trust Disputed Claims Reserve, Beneficiaries shall be treated for U.S. federal income tax purposes, (i) as direct recipients of an undivided interest in the assets transferred to the Creditor Distribution Trust and as having immediately contributed such assets to the Creditor Distribution Trust, and (ii) thereafter, as the grantors and deemed owners of the Creditor Distribution Trust and thus, the direct owners of an undivided interest in the assets held by the Creditor Distribution Trust. The Beneficiaries will be treated as the grantors and owners of the Creditor Distribution Trust. All parties (including the Creditor Trustee and the Beneficiaries) shall report for United States federal, state and local income tax purposes consistently with foregoing.

3.7 Cooperation by the Dissolving Debtors and Plan Administrator. After the Effective Date, but prior to the completion of the Wind Down, the Dissolving Debtors, and the Plan Administrator, shall provide reasonable cooperation and assistance to the Creditor Trustee in its administration of the Creditor Distribution Trust and the performance of the Creditor Distribution Trust Functions, including no later than five (5) Business Days of the Effective Date (a) providing the Creditor Trustee with the names and addresses of (i) all known holders of U.S. General Unsecured Claims against the Debtors and (ii) named plaintiffs in putative class actions and their counsel (but not all potential class members), and (b) requesting that the Second Lien Agent provide the Creditor Trustee with the names and addresses of holders of Second Lien Claims. Such assistance shall also include timely responses to reasonable requests by the Creditor Trustee for information related to his duties under this Agreement and the Creditor Distribution Trust Functions, designating a representative of the Dissolving Debtors (the “DD Rep”), no later than five (5) Business Days of the Effective Date, as the source of contact for the Creditor Distribution Trust, providing reasonable access (subject to mutually acceptable confidentiality agreements) to the Dissolving Debtors’ books and records and requesting books and records from the Acquired Debtors to the extent they are permitted under the Plan Funding Agreement and TSA, to the extent necessary for the administration of the Creditor Distribution Trust until the earlier of the completion of the Wind Down or the dissolution of the Creditor Distribution Trust. Notwithstanding anything to the contrary contained herein, (i) the DD Rep shall not be required to expend more than five (5) hours per month responding to the requests of the Creditor Trustee and (ii) the obligations of the Dissolving Debtors and the Plan Administrator under this Agreement shall not require any Dissolving Debtor or the Plan Administrator to incur any out-of-pocket costs or expend any monies. Any request made by the Creditor Trustee that requires the incurrence of any out-of-pocket costs or expenditure of any monies by the Dissolving Debtors shall not be required to be undertaken unless the Creditor Trustee has agreed to pay for such costs or expenses out of the Creditor Distribution Trust Fund.

#### ARTICLE IV

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

4.1 Duties of the Creditor Trustee. The Creditor Trustee shall have the exclusive right and duty to perform the Creditor Distribution Trust Functions, including administering the Creditor Distribution Trust Fund and pursuing and overseeing the objections and resolution of Claims submitted by holders of Second Lien Lender Claims [Class 6 under the Plan] and U.S. General Unsecured Claims [Class 7A under the Plan] and related processes, and make distributions to the Beneficiaries from the Creditor Distribution Trust, as provided under this Agreement, the Settlement Agreement, and the Settlement Order.

4.2 Standard of Care. The Creditor Trustee shall exercise his rights and powers vested in it by this Agreement and use reasonable business judgment in his exercise of his duties. Subject to applicable law, the Creditor Trustee shall not be liable to the Creditor Distribution Trust or any Beneficiary for any act he may do or omit to do as a Creditor Trustee while acting in good faith and in the exercise of his reasonable business judgment. The foregoing limitation on liability will apply equally to the agents, and/or employees of the Creditor Trustee and Trust Professionals (defined herein) acting on behalf of the Creditor Trustee in the fulfillment of the Creditor Trustee’s duties hereunder.

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

4.4 Creditor Trustee's Rights and Powers. The Creditor Trustee shall act on behalf of the Creditor Distribution Trust and shall be vested with all rights, powers, privileges, and benefits afforded to a trustee or estate representative under applicable law. The Creditor Trustee shall have all the powers and authority set forth herein and in the Settlement Agreement, Settlement Order, and this Agreement necessary to effect the claims reconciliation process and distribution of all Creditor Distribution Trust Fund and proceeds thereof. As of the Effective Date, the rights and powers of the Creditor Trustee shall include, the right and power, without further Bankruptcy Court approval, to:

- (a) Object, settle, and resolve Trust Claims;
- (b) Seek to establish the Trust Claim Objection Deadline, Trust Election Form Deadline and solicit the Trust Election Form from each (a) holder of Second Lien Lender Claims [Class 6 under the Plan], and (b) holder of U.S. General Unsecured Claims [Class 7A under the Plan];
- (c) Make distributions to the Beneficiaries hereunder;
- (d) Seek an estimation of contingent or unliquidated Trust Claims under section 502(c) of the Bankruptcy Code;
- (e) Invest the Creditor Distribution Trust Fund, which investment powers of the Creditor Trustee are limited by Section 4.12 herein;
- (f) Establish, maintain and administer the Creditor Trust Disputed Claims Reserves;
- (g) Maintain and administer the Cash in the Creditor Distribution Trust;
- (h) Enforce and carry out with the terms of the Settlement Agreement, Settlement Order, and this Agreement;
- (i) Enforce, carry out and perform the Creditor Trustee's duties and Creditor Distribution Trust Functions under this Agreement;
- (j) Pay all expenses and obligations of the Creditor Distribution Trust, including professional fees, out of the Creditor Distribution Trust Fund;
- (k) Retain counsel or special counsel, financial advisors or accountants, and employ other individuals in connection with the administration of the Creditor Distribution Trust;
- (l) Prepare and deliver written statements or notices, quarterly or otherwise, required by law or by the terms of this Agreement to be delivered to Beneficiaries;

(m) If at any time the Creditor Trustee determines, in reliance upon such professionals as the Creditor Trustee may retain, that the expense of administering the Creditor Distribution Trust so as to make a final distribution to the Beneficiaries is likely to exceed the value of the assets remaining in the Creditor Distribution Trust, the Creditor Trustee shall apply to the Bankruptcy Court for authority to donate a balance to a charitable organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, that is unrelated to the Creditor Distribution Trust, the Creditor Trustee;

(n) Hold legal title to any and all rights of the Beneficiaries in or arising from the Creditor Distribution Trust or Creditor Distribution Trust Fund;

(o) Execute and file any and all documents, regulatory filings and transfer applications and take any and all other actions related to, or in connection with, the Creditor Distribution Trust Functions granted herein;

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

(q) File, if necessary, any and all tax and information returns with respect to the Creditor Distribution Trust treating the Creditor Distribution Trust as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a) and pay taxes properly payable by the Creditor Distribution Trust, if any, and make distributions to Beneficiaries net of any such taxes;

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

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

(t) Seek any relief from or resolution of any disputes concerning the Settlement Agreement, Settlement Order, the Creditor Distribution Trust, or the Creditor Distribution Trust Fund by the Bankruptcy Court or any other court with proper jurisdiction;

(u) Appear and participate in any proceeding before the Bankruptcy Court or any other court with proper jurisdiction with respect to any matter regarding or relating to this

Agreement, the Settlement Agreement, Settlement Order, Confirmation Order, Creditor Distribution Trust, or the Creditor Distribution Trust Fund; and

(v) Otherwise take such other actions as shall be necessary to implement the Settlement Agreement, Settlement Order, the terms of this Agreement, wind down the affairs of the Creditor Trust or to carry out the Creditor Distribution Trust Functions and related obligations and to exercise its rights in accordance with and subject to the Settlement Order, and shall perform all of the duties, responsibilities and obligations as set forth in this Agreement.

4.5 Estimation of Claims. The Creditor Trustee may at any time request that the Bankruptcy Court estimate any Trust Claim pursuant to section 502(c) of the Bankruptcy Code to the extent that such Claim has not already been adjudicated by the Bankruptcy Court on the same grounds. In the event that the Bankruptcy Court estimates any Trust Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Creditor Trustee may pursue supplementary proceedings to object to the allowance of such Trust Claim. All of the aforementioned objection, estimation, and resolution procedures are intended to be cumulative and not exclusive of one another.

4.6 Limitations on the Creditor Trustee's Liabilities. The Creditor Trustee and the Creditor Distribution Trust's professionals, including accountants, financial advisors, legal advisors, shall not be responsible and shall not have any liability whatsoever to any person for any loss or liability the Creditor Distribution Trust, the Debtors, the Reorganized Debtors, or the Estates may sustain or incur, except as otherwise provided in Section 4.10 of this Agreement.

4.7 Selection of Agents. The Creditor Trustee may select and employ, and determine compensation for, any professionals, including accountants, financial advisors, legal advisors, brokers, consultants, custodians, investment advisors, asset services, auditors, and other agents, as the Creditor Trustee deems necessary (collectively, the "Trust Professionals") to assist it in carrying out his duties and the Creditor Distribution Trust Functions, with the reasonable fees and expenses of such professionals to be paid by the Creditor Distribution Trust. The Creditor Trustee shall not be liable for any loss to the Debtors, the Dissolving Debtors, or the Creditor Distribution Trust or any person interested therein, including Beneficiaries, by reason of any mistake or default of any such agent or consultant.

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

4.9 Maintenance of Register. The Creditor Trustee shall at all times maintain or cause to be maintained a register of the names, addresses, and amount of the Beneficiaries.

4.10 Liability of Creditor Trustee.

(a) Liability; Indemnification. The Creditor Trustee, the Trust Professionals, and the Creditor Trustee's agents and servants, shall not in any way be liable for any acts or omissions to act except by reason of their gross negligence, willful misconduct, fraud, or a criminal act in the performance of their duties under the Settlement Agreement, Settlement Order, or this Agreement. The Creditor Distribution Trust shall indemnify the Creditor Trustee, the Trust Professionals, the Creditor Trustee's agents and servants, and the Dissolving Debtors and the Plan Administrator and their respective employees, agents and advisors (for any activities taken by them as required by this Agreement), and hold them harmless from and against any and all liabilities, expenses, claims, damages and losses incurred by them as a direct result of actions taken or omissions to act by them in such capacity or otherwise related to this Agreement or the Creditor Distribution Trust. The Creditor Distribution Trust shall indemnify and hold harmless any entity who was, or is, a party, or is threatened to be made a party, to any pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such entity is or was the Creditor Trustee, a Trustee Professional, or the Creditor Trustee's agent or servant, and the Dissolving Debtors and the Plan Administrator and their respective employees, agents and advisors (for any activities taken by them as required by this Agreement), against all costs, expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by such entity in connection with such action, suit or proceeding, or the defense or settlement of any claim, issue or matter therein, to the fullest extent permitted by applicable law, if such costs and expenses, judgments, fines or amounts paid in settlement are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from the entity's gross negligence, willful misconduct, fraud or criminal act. Costs or expenses incurred by any entity entitled to the benefit of the provisions of this Section 4.10 in defending any such action, suit or proceeding may be paid by the Creditor Distribution Trust in advance of the institution or final disposition of such action, suit or proceeding, if authorized by the Creditor Trustee, subject to providing an undertaking to repay all such advanced amounts if he is subsequently determined that such entity is not entitled to indemnification under this Section 4.10. Any dispute regarding such indemnification of the Creditor Trustee shall be resolved only by the Bankruptcy Court, which shall retain jurisdiction over matters relating to the indemnification provided under this Section 4.10. The Creditor Trustee may in its discretion purchase and maintain insurance on behalf of any entity who is or was a beneficiary of this provision. Promptly after receipt by an indemnified party or parties (the "Indemnified Party") of notice of any claim, or notice of commencement of any action, suit, or proceeding by an Entity other than the Creditor Trustee, in respect of which the Indemnified Party may seek indemnification from the Creditor Distribution Trust pursuant to this Section 4.10, the Indemnified Party, if not the Creditor Distribution Trust, shall notify the Creditor Trustee of such claim, action, suit or proceeding and shall thereafter promptly convey all further communications and information in respect thereof to the Creditor Trustee. If the Indemnified Party is the Creditor Trustee, the Creditor Trustee shall notify the Bankruptcy Court of such claim, action, suit, or proceeding and shall thereafter promptly convey all further communications and information in respect thereof to the Bankruptcy Court. The Creditor Trustee shall, if he so elects, have sole control at the expense of the Creditor Distribution Trust

over the contest, settlement, adjustment, or compromise of any claim, action, suit, or proceeding in respect of which this Section 4.10 requires that the Creditor Distribution Trust indemnify the Indemnified Party. If the Creditor Trustee is the Indemnified Party, he shall obtain the written approval of Bankruptcy Court before settling, adjusting, or compromising any claim, action, suit, or proceeding in respect of which this Section 4.10 requires that the Creditor Distribution Trust indemnify the Indemnified Party. The Indemnified Party shall cooperate with the reasonable requests of the Creditor Trustee in connection with such contest, settlement, adjustment, or compromises, provided that (i) the Indemnified Party may, if it so elects, employ counsel at its own expense to assist in (but not control) the handling of such claim, action, suit, or proceeding, (ii) the Creditor Trustee shall obtain the prior written approval of the Indemnified Party before entering into any settlement, adjustment, or compromise of such claim, action, suit, or proceeding, or ceasing to defend against such claim, action, suit, or proceeding, if pursuant thereto or as a result thereof injunction or other relief would be imposed upon the Indemnified Party, and (iii) the Indemnified Party shall obtain the prior written approval of the Creditor Trustee, or, if the Creditor Trustee is the Indemnified Party, the prior written approval of the Bankruptcy Court, before entering into any settlement, adjustment or compromise of such claim, action, suit, or proceeding, or ceasing to defend against such claim, action, suit, or proceeding, and no such settlement, adjustment, or compromise shall be binding on the Creditor Distribution Trust without such approval.

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

(c) No Implied Obligations. The Creditor Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, in the Settlement Agreement or the Settlement Order, and no other or further covenants or obligations shall be implied into this Agreement. The Creditor Trustee shall not be responsible for making distributions to holders of Second Lien Lender Claims [Class 6 under the Plan] and U.S. General Unsecured Claims [Class 7A under the Plan] that are not Beneficiaries of the Creditor Trust. The Creditor Trustee shall not be responsible in any manner whatsoever for the correctness of any recitals, statements, representations, or warranties herein or in any documents or instrument evidencing or otherwise constituting a part of the Creditor Distribution Trust Fund. The Creditor Trustee makes no representations as to validity, execution, enforceability, legality, or sufficiency of this Agreement; and the Creditor Trustee shall incur no liability or responsibility with respect to any such matters.

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



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

(e) No Personal Obligation for Debtors' Liabilities. Beneficiaries or other persons dealing with the Creditor Trustee in his capacity as Creditor Trustee within the scope of this Agreement shall look solely to the Creditor Distribution Trust Fund to satisfy any liability incurred by the Creditor Trustee to such person in carrying out the terms of this Agreement, and the Creditor Trustee and all Beneficiaries shall have no personal or individual obligation to satisfy any such liability.

4.11 Establishment of Trust Accounts. The Creditor Trustee shall establish and maintain accounts in connection with carrying out the purposes of the Creditor Distribution Trust (the "Trust Accounts"). Such accounts bear a designation clearly indicating that the funds deposited therein are held for the benefit of the Creditor Distribution Trust.

4.12 Investment of Cash. Cash in the Trust Accounts and any other amounts contemplated by this Agreement shall be maintained in United States dollars or shall be invested by the Creditor Trustee in (a) direct obligations of, or obligations guaranteed by, the United States of America, (b) obligations of any agency or corporation that is or may hereafter be created by or pursuant to an act of Congress of the United States of America as an agency or instrumentality thereof, or (c) such other obligations or instruments as may from time to time be permitted under section 345 of the Bankruptcy Code; provided that the Creditor Trustee may, to the extent necessary to implement the provisions of the this Agreement, deposit moneys in demand deposits, time accounts or checking accounts at any banking institution or trust company having combined capital stock and surplus in excess of \$100,000,000 based upon its most recently available audited financial statements, or any institution approved by the Executive Office of the United States Trustee Program for deposit of estate funds. Such investments shall mature in such amounts and at such times as the Creditor Trustee, in his discretion, shall deem appropriate to provide funds when needed to transfer funds in accordance with the Settlement Agreement, Settlement Order and this Agreement, make payments to the Trust Accounts or make distributions in accordance with this Agreement, the Settlement Agreement and the Settlement Order. Notwithstanding anything to the contrary herein, the scope of any such investment shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulations Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS Service rulings, other IRS pronouncements or otherwise.

4.13 Tax Returns.

(a) From and after the Effective Date, to the extent required, the Creditor Trustee shall be responsible for the preparation and filing of any and all tax returns or other filings as required by law to be filed on behalf of the Creditor Distribution Trust. Such returns shall be consistent with the treatment of the Creditor Distribution Trust as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d) that is a grantor trust pursuant to Treasury Regulations Section 1.671-4(a) other than with respect to the Creditor Trust

Disputed Claims Reserves, which shall be consistent with the treatment of the Creditor Trust Disputed Claims Reserves as a “disputed ownership fund” within the meaning of Treasury Regulations Section 1.468B-9(b)(1), and to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes.

(b) Allocations of Creditor Distribution Trust taxable income among the Beneficiaries of the Creditor Distribution Trust (other than taxable income allocable to the Creditor Trust Disputed Claims Reserves) shall be determined by reference to the manner in which an amount of Cash representing such taxable income would be distributed (were such Cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Creditor Distribution Trust had distributed all its assets (valued at their tax book value, and other than assets allocable to the Creditor Trust Disputed Claims Reserves) to the Beneficiaries, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Creditor Distribution Trust.

4.14 Compensation for Creditor Trustee. The Creditor Trustee shall be paid fair and reasonable compensation from the Creditor Distribution Trust Fund. The Creditor Trustee shall be entitled to reimbursement of reasonable and actual out-of-pocket expenses, to be paid monthly from the Creditor Distribution Trust Fund.

4.15 Reimbursement of the Creditor Trustee’s and Trust Professionals’ Fees and Expenses. The Creditor Trustee may pay from the Creditor Distribution Trust Fund all reasonable fees and expenses incurred in connection with the duties and actions of the Creditor Trustee and the Creditor Distribution Trust Functions, including, but not limited to, (a) fees and expenses of any agents or consultants employed pursuant to this Agreement, (b) fees and expenses of any Trust Professionals retained under this Agreement, and (c) fees and expenses arising in the ordinary course of business in maintaining and distributing the Creditor Distribution Trust Fund.

## ARTICLE V

### **Beneficiaries**

5.1 Identification of Beneficiaries. The Creditor Distribution Trust is created for the benefit of the following beneficiaries (the “Beneficiaries”): (i) holders of Second Lien Lender Claims against the Debtors [Class 6 under the Plan], and (ii) holders of U.S. General Unsecured Claims against the Debtors [Class 7A under the Plan] that, in each case; (a) properly and timely submit a Proof of Claim no later than the Trust Claim Bar Date; and (b) properly make the Trust Election on a properly cast Trust Election Form and return a completed W-9 (or other tax identification information as may be reasonably required by the Creditor Distribution Trust) no later than the Trust Election Bar Date. The Beneficiaries shall each have an undivided beneficial interest in the assets of the Creditor Distribution Trust (“Beneficial Interest”). All distributions to Beneficiaries shall be made in accordance with the terms of this Agreement, the Settlement Agreement, and the Settlement Order.

5.2 Rights of Beneficiaries. Each Beneficiary shall be entitled to participate in the rights due to a Beneficiary hereunder. Each Beneficiary shall take and hold its Beneficial

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

5.3 Transferability. Interests in the Creditor Distribution Trust shall not be transferred or assigned by a holder of an interest in the Creditor Distribution Trust except by will, intestate succession or operation of law, provided, however, that a holder of such interests may abandon such interests back to the Creditor Distribution Trust at its sole discretion.

## ARTICLE VI

### **Distributions**

6.1 Distributions under the Agreement. The Creditor Trustee shall make Distributions to the Beneficiaries as holders of Allowed Trust Claims pursuant to the terms of this Agreement.

6.2 Distributions to Allowed Trust Claims. Each Beneficiary holding an Allowed Trust Claim will receive in full satisfaction, release, settlement and discharge of such Allowed Trust Claim and Beneficial Interest, its Pro Rata share of any proceeds of the Creditor Distribution Trust Fund remaining after the payment of the costs of administering the Creditor Distribution Trust.

6.3 Releases. Each Beneficiary receiving a distribution from the Creditor Trust Distribution Fund shall, upon receiving such distribution, be deemed to have granted the Third Party Release.

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

6.5 No Distributions Pending Allowance. Notwithstanding anything in the Agreement to the contrary: (a) no distribution will be made with respect to any Disputed Trust Claim until such Trust Claim becomes an Allowed Trust Claim, and (b) unless determined otherwise by the Creditor Trustee, no distribution will be made to any Person that holds both (i)

an Allowed Trust Claim and (ii) a Disputed Trust Claim until such Person's Disputed Trust Claim has been resolved by settlement or Final Order.

6.6 Objection Deadline. The Creditor Trustee will file all objections to Disputed Trust Claims, and will file all motions to estimate Trust Claims under section 502(c) of the Bankruptcy Code, on or before the Trust Claims Objection Deadline: provided, however, that the Creditor Trustee may request that the Bankruptcy Court extend the Trust Claim Objection Deadline.

6.7 Creditor Trust Disputed Claims Reserve. On and after the Effective Date, the Creditor Distribution Trust will maintain, as part of the Creditor Trust Disputed Claims Reserves, such Cash as the Creditor Distribution Trust estimates to be reasonably necessary to satisfy the distributions that could be required to be made under the Plan.

6.8 Settling Disputed Trust Claims. The Creditor Trustee is authorized to settle, or withdraw any objections to, any Disputed Trust Claims following the Effective Date without need for approval of the Bankruptcy Court.

6.9 Distributions in Cash. The Creditor Trustee will make any required Cash payments to Beneficiaries holding Allowed Trust Claims: (a) in U.S. dollars by check, draft or warrant, drawn on a domestic bank, or by wire transfer from a domestic bank, and (b) by first-class mail (or by other equivalent or superior means as determined by the Creditor Trustee).

6.10 Unclaimed Distributions. Any Beneficiary holding an Allowed Trust Claim that does not assert a claim pursuant to this Agreement for an undeliverable distribution within 60 days after the last date on which a distribution was deliverable to such Beneficiary will have its claim for such undeliverable distribution deemed satisfied, waived and released and will be forever barred from asserting any such claim against the Creditor Distribution Trust and its respective property. In such cases, unclaimed distributions will revert to the Creditor Distribution Trust for disposition in accordance with the terms of this Agreement. Nothing contained in this Agreement, the Settlement Agreement, or the Settlement Order shall require the Creditor Trustee or any third party disbursing agent to attempt to locate any holder of any Beneficiary holding an Allowed Trust Claim.

6.11 Setoff. Nothing contained in the Agreement shall constitute a waiver or release by the Creditor Distribution Trust of any right of setoff or recoupment the Debtors, the Dissolving Debtors, the Acquired Debtors, the Estates, or the Creditor Distribution Trust, may have against any Beneficiary. To the extent permitted by applicable law, the Creditor Trustee may, but is not required to, set off or recoup against any Trust Claim and the payments or other distributions to be made under this Agreement in respect of such Trust Claim, claims of any nature whatsoever that arose before the Petition Date that the Dissolving Debtors or the Creditor Distribution Trust may have against the holder of such Trust Claim.

6.12 Taxes. To the extent permitted by section 346(f) of the Bankruptcy Code, the Creditor Trustee will be entitled to deduct and withhold any federal, state, or local taxes from any payments made with respect to holders of Beneficial Interests with Allowed Trust Claims, as appropriate. All such amounts withheld shall be treated as amounts distributed to such holder for

all purposes of this Agreement. The Creditor Trustee will be authorized to take all actions necessary to comply with applicable withholding and recording requirements. Notwithstanding any provision of this Agreement, each holder that has received a distribution of Cash under the this Agreement, the Settlement Agreement, and the Settlement Order will have sole and exclusive responsibility for the satisfaction or payment of any tax obligation imposed by any governmental unit, including income, withholding and other tax obligation, on account of such distribution. For tax purposes, distributions received in respect of any Trust Claim will be allocated first to the principal amount of such Trust Claim, with any excess allocated to unpaid accrued interest.

6.13 De Minimis Distributions. If any interim distribution under this Agreement to a Beneficiary holding an Allowed Trust Claim would be less than \$50.00, the Creditor Trustee may withhold such distribution until a final distribution is made to such holder. If any final distribution under the Plan to a Beneficiary holding an Allowed Trust Claim would be less than \$50.00, the Creditor Trustee may cancel such distribution.

## ARTICLE VII

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

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

7.2 Resignation of the Creditor Trustee. The Creditor Trustee may resign as Creditor Trustee at any time by giving prior written notice thereof to the Bankruptcy Court (the “Resignation Notice”); provided, however, that such resignation shall not be effective earlier than sixty (60) days after the date of such Resignation Notice, unless an earlier effective date is allowed by the Bankruptcy Court. If the Creditor Trustee resigns from his position hereunder, subject to a final accounting, he shall be entitled to all accrued unpaid fees, reimbursement, and other compensation to the extent incurred or arising or relating to events occurring before such resignation, and any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties to the successor Creditor Trustee.

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

## ARTICLE VIII

### **Waiver**

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

## ARTICLE IX

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

9.1 Termination of the Agreement. This Agreement (other than Section 4.11, 4.15 and 4.16 and related provisions) shall terminate and the Creditor Distribution Trust shall dissolve and terminate and be of no further force or effect upon the earlier to occur of (a) the final distribution of all monies in accordance with the terms of this Agreement, the Settlement Agreement, and the Settlement Order and (b) entry of a Final Order of the Bankruptcy Court terminating and dissolving the Creditor Distribution Trust as provided under the terms of this Agreement. The Creditor Distribution Trust will terminate no later than the third (3rd) anniversary of the Effective Date, provided, however, that, on or prior to such termination, the Bankruptcy Court, upon motion by the Creditor Trustee or a party in interest, may within the six-month period prior to the third (3rd) anniversary (or within the six-month period prior to the end of any extension period), extend the term of the Creditor Distribution Trust for a fixed period if it is necessary complete the distribution of the Creditor Distribution Trust Fund), provided, however, that the aggregate of all such extensions shall not exceed two (2) years, unless the Creditor Trustee receives a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Creditor Distribution Trust as a grantor trust for federal income tax purposes. The Creditor Trustee will not unduly prolong the duration of the Creditor Distribution Trust and will at all times endeavor to resolve, settle or otherwise dispose of all Trust Claims, to effect distributions to Beneficiaries holding Allowed Trust Claims in accordance with the terms hereof and to terminate the Creditor Distribution Trust as soon as practicable in a prompt and timely fashion. In the event that the Creditor Trustee elects to terminate the Creditor Distribution Trust, he shall provide twenty (20) day notice thereof to the Office of United States Trustee and file such notice with the Bankruptcy Court and upon such termination, the Creditor Trustee shall cease to act as the Creditor Trustee such that the Creditor Trustee shall not have any further duties or responsibilities under the Agreement or otherwise.

9.2 Amendment of the Agreement. Except as otherwise set forth herein, any provisions of this Agreement may be amended, modified, terminated, revoked, or altered only in writing pursuant to an Order of the Bankruptcy Court. Notwithstanding this Section 9.2, any amendments to this Agreement shall not be inconsistent with the Plan or the purpose and intention of the Creditor Distribution Trust to distribute in an expeditious but orderly manner the Creditor Distribution Trust Fund in accordance with Treasury Regulations Section 301.7701-4(d) this Agreement, the Settlement Agreement, and the Settlement Order.

## ARTICLE X

### Miscellaneous

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

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

10.3 Books and Records.

(a) Subject to mutually acceptable confidentiality arrangements, for the later of (i) six (6) months after the Effective Date, and (ii) the completion of the Wind Down, the Dissolving Debtors shall provide reasonable access to the Creditor Distribution Trust to the books and records of the Dissolving Debtors in the Dissolving Debtors' possession relating to Second Lien Lender Claims [Class 6 under the Plan] and U.S. General Unsecured Claims [Class 7A under the Plan], and shall request from third parties, including the Acquired Debtors to the extent the Dissolving Debtors are permitted to do so under the Plan Funding Agreement and the TSA, or professionals possessing such books and records (including computer generated or computer maintained books, records and data, legal and accounting files maintained by any professional of the Debtors and other of the Debtors' books and records maintained by or in the possession of third parties), to permit access to such books and records as may be reasonably requested by the Creditor Trustee, provided that the Creditor Trustee shall only request such books and records or access thereto to the extent reasonably necessary to the Creditor Trustee's performance of his duties hereunder. Notwithstanding anything to the contrary contained herein, (i) the DD Rep shall not be required to expend more than five (5) hours per month responding to the requests of the Creditor Trustee and (ii) the obligations of the Dissolving Debtors and the Plan Administrator under this Agreement shall not require any Dissolving Debtor or the Plan Administrator to incur any out-of-pocket costs or expend any monies. Any request made by the Creditor Trustee that requires the incurrence of any out-of-pocket costs or expenditure of any monies by the Dissolving Debtors shall not be required to be undertaken unless the Creditor Trustee has agreed to pay for such costs or expenses out of the Creditor Distribution Trust Fund.

(b) The Creditor Distribution Trust will maintain reasonably good and sufficient books and records in respect to matters related to the Creditor Distribution Trust

Functions. The Creditor Trustee may, upon notice to the Dissolving Debtors and without Bankruptcy Court approval, destroy any documents that each believes are no longer required to effectuate the terms and conditions of the Settlement Agreement, Settlement Order, and this Agreement. Upon dissolution of the Creditor Distribution Trust, unless otherwise ordered by the Court, the Creditor Trustee may destroy or otherwise dispose of all records maintained by them.

ix. Tax Identification Numbers. The Creditor Trustee will require any Beneficiary holding an Allowed Trust Claim to furnish to the Creditor Trustee, (i) its employer or taxpayer identification number as assigned by the Internal Revenue Service, and (ii) such other information, records or documents necessary to satisfy the Creditor Trustee's tax reporting obligations (including certificates of non-foreign status). Distribution to any Beneficiary is conditioned upon receipt of such identification number and requested documents.

10.4 U.S. Trustee Fees and Post-Confirmation Reports. After the Effective Date, the Dissolving Debtors shall pay any statutory fees due for the post-Effective Date period pursuant to 28 U.S.C. § 1930(a)(6) and such fees shall be paid until entry of a final decree or an order converting or dismissing the Bankruptcy Case. After the Effective Date, Creditor Trustee will file post-confirmation status reports in the form of a post-confirmation operating report acceptable to the Office of the United States Trustee for Region 2, on a quarterly basis up to the entry of a final decree closing the Bankruptcy Case or termination of the Creditor Distribution Trust whichever occurs first. Notwithstanding the foregoing, the Creditor Trustee must reimburse the Dissolving Debtors for any statutory fees due relating to any distributions made by the Creditor Distribution Trust. Prior to the completion of the Wind Down, if a Dissolving Debtors provides written notice to the Creditor Trustee of its intention to close the applicable chapter 11 case, the Creditor Trustee may request that such chapter 11 case remain open, provided that the Creditor Distribution Trust shall thereafter be responsible for all statutory fees relating to the applicable Dissolving Debtor, until such time that the Creditor Trustee provides written notice to the applicable Dissolving Debtor that it may close the case.

10.5 Privilege.

(a) The Committee's counsel and financial advisor shall provide to the Creditor Trustee (or such professionals designated by the Creditor Trustee) documents and other information gathered, and relevant work product developed, during the Chapter 11 Cases, provided that the provision of any such documents and information shall be without waiver of any evidentiary privileges, including without limitation the attorney-client privilege, work-product privilege or other privilege or immunity attaching to any such documents or information (whether written or oral).

(b) Solely to the extent necessary for completion of the Creditor Distribution Trust Functions, the attorney-client privilege, work product doctrine or other privileges or immunities inuring to the benefit of the Dissolving Debtors or attaching to documents or communications of the Dissolving Debtors may be transferred to the Creditor Distribution Trust and shall be shared between the Creditor Trustee and the Dissolving Debtors. The Creditor Trustee is authorized to assert or, with consent of the Dissolving Debtors, waive any such privilege or doctrine, as necessary or appropriate for the administration of the Creditor Trust; provided that, to the extent any such privilege or doctrine is waived in connection with



information requested of any professional previously employed by the Debtors, the Creditor Trustee agrees that he shall obtain the consent of the Dissolving Debtors prior to waiving any privilege.

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

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

10.8 Entire Agreement. This Agreement (including the recitals), the Settlement Agreement, and the Settlement Order constitute the entire agreement of the parties and there are no representations, warranties, covenants, or obligations except as set forth herein or therein. This Agreement, the Settlement Agreement, and the Settlement 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 specifically provided herein, nothing in this Agreement is intended or shall be construed to confer upon or to give any Person other than the Beneficiaries and the parties hereto and their respective heirs, administrators, executors, successors, and assigns any rights or remedies under or by reason of this Agreement.

10.9 Jurisdiction; Venue.

(a) Each party hereto irrevocably agrees that any suit, action or proceeding with respect to this Agreement shall be brought in the United States Bankruptcy Court for the Southern District of New York, and by execution and delivery of this Agreement, each party (a) irrevocably submits to each such jurisdiction and venue, (b) waives, to the fullest extent permitted by law, any objection that it may have to the laying of the venue of any such suit, action or proceeding brought in such court has been brought in an inconvenient forum, and (c) agrees that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon it and may be enforced in any court to the jurisdiction of which such party is subject by a suit upon such judgment, provided that service of process is effected as otherwise permitted by law.

(b) The Bankruptcy Court shall have jurisdiction over all matters arising in, arising under, or related to the Chapter 11 Cases and this Agreement, including but not limited to (i) to ensure that distributions to holders of Allowed Trust Claims are accomplished as provided

herein, and (ii) to consider Trust Claims or the allowance, classification, priority, compromise, estimation, or payment of Trust Claims.

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

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

[•]

With a copy to his counsel:

[•]

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

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

10.12 Exculpatory Provisions and Survival Thereof. Whether or not expressly therein so provided, any and all exculpatory provisions, immunities and indemnities, and any limitations and negations of liability contained in this Agreement, in each case inuring to the benefit of the Creditor Trustee and the Trust Professionals, Plan Administrator, Dissolving Debtors and their respective employees, agents and advisors, shall survive (a) the termination or revocation of this Agreement, and (b) as to any person who has served as Creditor Trustee, the resignation or removal of such person as Creditor Trustee.

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

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

10.15 Successors and Assigns. All covenants and agreements contained herein shall, as applicable, be binding upon, and inure to the benefit of the Committee, the Creditor Trustee and its successors, the Dissolving Debtors and its successors, all as herein provided.

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

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

CREDITOR TRUST:

By: \_\_\_\_\_  
Ted Gavin, CTP, Managing Director of  
GAVIN/SOLMONESE LLC in his capacity as  
Creditor Trustee of the SquareTwo Unsecured Creditor  
Distribution Trust

DISSOLVING DEBTORS:

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

COMMITTEE:

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