

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

In re:)
) Chapter 11
)
PES HOLDINGS, LLC, <i>et al.</i> ¹) Case No. 19-11626 (KG)
)
Debtors.) (Jointly Administered)
)

**FOURTH AMENDED PLAN SUPPLEMENT FOR THE FOURTH AMENDED JOINT
CHAPTER 11 PLAN OF PES HOLDINGS, LLC AND ITS DEBTOR AFFILIATES**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) submit this amended plan supplement (this “Fourth Amended Plan Supplement”) in support of, and in accordance with, the *Fourth Amended Joint Chapter 11 Plan of PES Holdings, LLC and Its Debtor Affiliates* (as may be modified, amended, or supplemented from time to time, the “Plan”), filed contemporaneously herewith. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan. The documents contained in this Fourth Amended Plan Supplement are integral to, part of, and incorporated by reference into the Plan. These documents have not yet been approved by the Bankruptcy Court. At a hearing held on February 12, 2020, the Court approved the Plan subject to documentation consistent with the Court’s rulings at the hearing. Upon entry of the Confirmation Order, the documents contained in this Fourth Amended Plan Supplement will be approved by the Bankruptcy Court pursuant to the Confirmation Order.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PES Holdings, LLC (8157); North Yard GP, LLC (5458); North Yard Logistics, L.P. (5952); PES Administrative Services, LLC (3022); PES Energy Inc. (0661); PES Intermediate, LLC (0074); PES Ultimate Holdings, LLC (6061); and Philadelphia Energy Solutions Refining and Marketing LLC (9574). The Debtors’ service address is: 1735 Market Street, Philadelphia, Pennsylvania 19103.

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This Fourth Amended Plan Supplement contains the following documents, each as may be amended, modified, or supplemented from time to time by the Debtors in accordance with the Plan as set forth below:

<u>Exhibit</u>	<u>Description</u>
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- | | |
|-----|--|
| G | Form of Liquidating Trust Agreement |
| G-1 | Redline of <u>Exhibit G</u> to <u>Exhibit G</u> of the Third Plan Supplement |

Certain documents, or portions thereof, contained or referenced in this Fourth Amended Plan Supplement remain subject to continuing negotiations among the Debtors and parties in interest. The Debtors reserve all rights to amend, revise, or supplement the Fourth Amended Plan Supplement, and any of the documents and designations contained herein, 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.

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PES HOLDINGS, LLC, <i>et al.</i> ¹)) Case No. 19-11626 (KG)	
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Debtors.)) (Jointly Administered)	
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NOTICE OF FILING OF FOURTH AMENDED PLAN SUPPLEMENT

PLEASE TAKE NOTICE that, on January 22, 2020, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Plan Supplement for the First Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 780] (the “Original Plan Supplement”) in support of the *First Amended Joint Chapter 11 Plan of Reorganization of PES Holdings, LLC and Its Debtor Affiliates* [Docket No. 661].

PLEASE TAKE FURTHER NOTICE that, on January 28, 2020, the Debtors filed the *First Amended Plan Supplement for the First Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 819] (the “First Amended Plan Supplement”).

PLEASE TAKE FURTHER NOTICE that, on January 29, 2020, the Debtors filed the *Second Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 827].

PLEASE TAKE FURTHER NOTICE that, on February 6, 2020, the Debtors filed the *Second Amended Plan Supplement for the Second Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 926] (the “Second Amended Plan Supplement”).

PLEASE TAKE FURTHER NOTICE that, on February 10, 2020, the Debtors filed the *Third Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 959].

PLEASE TAKE FURTHER NOTICE that, on February 10, 2020, the Debtors filed the *Third Amended Plan Supplement for the Third Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* [Docket No. 926] (the “Third Amended Plan Supplement”).

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PES Holdings, LLC (8157); North Yard GP, LLC (5458); North Yard Logistics, L.P. (5952); PES Administrative Services, LLC (3022); PES Energy Inc. (0661); PES Intermediate, LLC (0074); PES Ultimate Holdings, LLC (6061); and Philadelphia Energy Solutions Refining and Marketing LLC (9574). The Debtors’ service address is: 1735 Market Street, Philadelphia, Pennsylvania 19103.

PLEASE TAKE FURTHER NOTICE that, contemporaneously herewith, the Debtors filed the *Fourth Amended Joint Chapter 11 Plan of PES Holdings, LLC and its Debtor Affiliates* (as may be amended or modified from time to time and including all exhibits and supplements thereto, the “Plan”).²

PLEASE TAKE FURTHER NOTICE that the Debtors hereby file this fourth amended Plan Supplement (this “Fourth Amended Plan Supplement” and together with the Original Plan Supplement, the First Amended Plan Supplement, the Second Amended Plan Supplement, the Third Amended Plan Supplement, the “Plan Supplement”) in support of the Plan, which includes the following documents, as may be modified, amended, or supplemented from time to time:

Exhibit G – Form of Liquidating Trust Agreement

Exhibit G-1 – Redline of **Exhibit G** to **Exhibit G** of the Third Plan Supplement

PLEASE TAKE FURTHER NOTICE that the Debtors reserve all rights, with the consent of any applicable counterparties to the extent required under the Plan, to amend, modify, or supplement the Plan Supplement, and any of the documents contained therein, in accordance with the terms of the Plan. To the extent material amendments or modifications are made to any of the Plan Supplement documents, the Debtors will file a blackline with the Bankruptcy Court prior to the Confirmation Hearing marked to reflect same.

PLEASE TAKE FURTHER NOTICE that the forms of the documents contained in the Plan Supplement are integral to, and are considered part of, the Plan. At a hearing held on February 12, 2020, the Court approved the Plan subject to documentation consistent with the Court’s rulings at the hearing. Upon entry of the Confirmation Order, the documents contained in this Fourth Amended Plan Supplement will be approved by the Bankruptcy Court pursuant to the Confirmation Order.

Debtors	Counsel to the Debtors
PES Holdings, LLC 1735 Market Street Philadelphia, Pennsylvania 19103 Attn.: Anthony M. Lagreca	Pachulski Stang Ziehl & Jones LLP 919 N. Market Street, 17th Floor, P.O. Box 8705 Wilmington, Delaware 19899 Attn: Laura Davis Jones, James E. O’Neill, and Peter J. Keane - and - Kirkland & Ellis LLP 601 Lexington Avenue New York, New York 10022 Attn: Edward O. Sassower, Steven N. Serajeddini, and Matthew C. Fagen

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

United States Trustee	Counsel to the Official Committee of Unsecured Creditors
Office of the United States Trustee for the District of Delaware 844 King Street, Suite 2207, Lockbox 35 Wilmington, Delaware 19801 Attn.: David Buchbinder	Brown Rudnick LLP Seven Times Square New York, New York 10036 Attn.: Robert J. Stark and Max D. Schlan - and - Brown Rudnick LLP One Financial Center Boston, Massachusetts 02111 Attn.: Steven D. Pohl and Sharon I. Dwoskin - and - Elliott Greenleaf, P.C. 1105 North Market Street, Suite 1700 Wilmington, Delaware 19801 Attn.: Rafael X. Zahralddin-Aravena and Jonathan M. Stemerman
Counsel to the DIP Lenders	
	Davis Polk & Wardwell LLP 450 Lexington Avenue New York, New York 10017 Attn.: Damian S. Schaible and Aryeh E. Falk - and - Morris, Nichols, Arsht & Tunnell LLP 1201 North Market Street, 16th Floor, P.O. Box 1347 Wilmington, Delaware 19899-1347 Attn.: Robert J. Dehney and Andrew R. Remming

PLEASE TAKE FURTHER NOTICE THAT if you would like to obtain a copy of the Disclosure Statement, the Plan, the Plan Supplement, or related documents, you should contact Omni Management Group, the notice and claims agent retained by the Debtors in these chapter 11 cases (the “Notice and Claims Agent”), by: (a) calling the Debtors’ restructuring hotline at (866) 989-6147 (domestic toll-free) or (818)-906-8300 (international toll) (ask for Solicitation Group); (b) visiting the Debtors’ restructuring website at: <https://cases.omniagentsolutions.com/pesholdings2019/>; and/or (c) writing to PES Ballot Processing, c/o Omni Agent Solutions, 5955 De Soto Ave., Suite 100, Woodland Hills, CA 91367. You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at: <http://www.deb.uscourts.gov>.

**THIS NOTICE IS BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY.
IF YOU HAVE QUESTIONS WITH RESPECT TO YOUR RIGHTS UNDER THE PLAN
OR ABOUT ANYTHING STATED HEREIN, OR IF YOU WOULD LIKE TO OBTAIN
ADDITIONAL INFORMATION, CONTACT THE NOTICE AND CLAIMS AGENT.**

Dated: February 13, 2020
Wilmington, Delaware

/s/ Laura Davis Jones

Laura Davis Jones (DE Bar No. 2436)
James E. O'Neill (DE Bar No. 4042)
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Co-Counsel to the Debtors and Debtors in Possession

EXHIBIT G

Form of Liquidating Trust Agreement¹

Certain documents, or portions thereof, contained or referenced in this **Exhibit G** and the Plan Supplement remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. The Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, 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.

¹ Capitalized terms used but not defined in this **Exhibit G** shall have the meanings ascribed to them in the Plan.

LIQUIDATING TRUST AGREEMENT

This liquidating trust agreement (this “Agreement”) is made this [•]th day of [•], 2020 by and among PES Holdings, LLC and its affiliated debtors (together, with its successors or assigns, the “Debtors”), [●] as trustee, [●] as trustee, [●] as trustee, [●] as trustee, and [●] as trustee (collectively, the “Liquidating Trustees” and each, individually, a “Liquidating Trustee”), and [●], as Delaware Trustee (the “Delaware Trustee”), for the purpose of forming a statutory trust under and pursuant to the provisions of the Delaware Statutory Trust Act, 12 Del. C. §§ 3801, et seq. (as amended, the “Delaware Act”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan (as defined below).

RECITALS

WHEREAS, on July 21, 2019, each of the Debtors filed a voluntary Chapter 11 petition with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

WHEREAS, on [•], 2020, the Bankruptcy Court entered an order [Docket No. [•]] (the “Confirmation Order”) confirming the *Second Amended Joint Chapter 11 Plan of Reorganization of PES Holdings, LLC and Its Debtor Affiliates* (the “Plan”);

WHEREAS, the Plan contemplates, on the Effective Date of the Plan, (a) the formation of a liquidating trust (the “Liquidating Trust”) and the creation of the beneficial interests in the Liquidating Trust of the Beneficiaries identified herein and in accordance with the Plan, and (b) that the Liquidating Trust will (i) be vested with the Liquidating Trust Assets, to be liquidated and distributed to the Beneficiaries, and (ii) fulfill the Liquidating Trust Obligations, as set forth herein and in accordance with the Plan and the Confirmation Order;

WHEREAS, the Plan contemplates that, pursuant to Treasury Regulation Section 301.7701-4(d), the Liquidating Trust shall be created for the primary purpose of liquidating the Liquidating Trust Assets in an expeditious but orderly manner for the benefit of the Beneficiaries, 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 liquidating purpose of the Liquidating Trust; and

WHEREAS, the Liquidating Trust is intended to qualify as a “grantor trust” for U.S. federal income tax purposes, pursuant to Sections 671-677 of the Internal Revenue Code of 1986, as amended (the “IRC”), with the Beneficiaries to be treated as the grantors of the Liquidating Trust and deemed to be the owners of the Liquidating Trust Assets, and, consequently, the transfer of the Liquidating Trust Assets to the Liquidating Trust shall be treated as a deemed transfer of those assets from the Debtors and the Estates to the Beneficiaries (to the extent of the value of their respective interests in such assets) followed by a deemed transfer by such Beneficiaries (to the extent of the value of their respective interests in such assets) to the Liquidating Trust for federal income tax purposes.

NOW, THEREFORE, pursuant to the Plan and the Confirmation Order, in consideration of the mutual agreements of the parties contained herein, and for other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the parties hereby agree as follows:

ARTICLE I **DECLARATION OF TRUST**

1.1 Formation and Purpose of the Liquidating Trust. The Debtors and the Liquidating Trustees hereby form the Liquidating Trust as a statutory trust under the Delaware Act for the primary purpose of collecting, holding, liquidating, and distributing the Liquidating Trust Assets to the Beneficiaries in accordance with their respective entitlements under the Plan, the Confirmation Order, and applicable tax statutes, rules, and regulations, and in an expeditious but orderly manner, 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 liquidating purpose of the Liquidating Trust and the Plan. In particular, the Liquidating Trustees shall (a) make continuing efforts to collect and reduce the Liquidating Trust Assets to Cash, (b) fulfill the Liquidating Trust Obligations, (c) make timely distributions, including by transferring proceeds of Liquidating Trust Assets to any Distribution Reserve Account in accordance with the Plan and the Confirmation Order, and not unduly prolong the duration of the Liquidating Trust, and (d) take such steps as are reasonably necessary to accomplish such purpose, all as more fully provided in, and subject to the terms and provisions of, the Plan, the Confirmation Order and this Agreement. The Liquidating Trust shall also be entitled to exercise the rights of the Sellers pursuant to the Purchase Agreement, and any surviving obligations of the Plan Sponsor or the Acquired Reorganized Debtors to the Sellers shall be deemed obligations to the Liquidating Trust. Promptly following execution of this Agreement, the Liquidating Trustees shall cause an appropriate form of Certificate of Trust of the Liquidating Trust to be filed in the Office of the Secretary of State of the State of Delaware in accordance with the applicable provisions of the Delaware Act.

1.2 Declaration of Trust. In order to declare the terms and conditions hereof, and in consideration of the confirmation of the Plan, the Debtors, the Liquidating Trustees and the Delaware Trustee have executed this Agreement, which shall constitute the governing instrument of the Liquidating Trust, and, effective on the Effective Date of the Plan, the Debtors hereby absolutely and irrevocably transfer to the Liquidating Trust, all of the right, title, and interests of the Debtors in and to the Liquidating Trust Assets, to have and to hold unto the Liquidating Trust and its successors and assigns forever, under and subject to the terms of the Plan and the Confirmation Order, for the benefit of the Beneficiaries (to the extent of their respective legal entitlements) and their successors and assigns as provided for in this Agreement and in the Plan and Confirmation Order. The Debtors shall execute and deliver such other instruments of sale, transfer, conveyance, assignment and confirmation, and will cooperate and take such other actions as the Liquidating Trustees may deem reasonably necessary or desirable in order to more effectively transfer, convey and assign all rights, title and interests in and to the Liquidating Trust Assets to the Liquidating Trust. The Liquidating Trust hereby accepts and assumes from the Debtors, and shall pay, perform, and discharge when due, all of the Liquidating Trust Obligations. The Liquidating 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 any of the Trustees or the Beneficiaries for any purpose be, or be deemed to be or be treated in any way whatsoever to be, liable or responsible hereunder as

partners or joint venturers. The relationship of the Beneficiaries to the Liquidating Trustees shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Liquidating Trust Agreement.

1.3 Vesting of Liquidating Trust Assets. On the Effective Date of the Plan, pursuant to the terms of the Plan, (a) each of the assets and Interest of the Non-Acquired Reorganized Debtors that are not transferred under the Purchase Agreement (including, for the avoidance of doubt, Proceeds from the Sale Transaction not actually distributed on the Effective Date); and (b) each of the Excluded Assets, including, but not limited, to (i) any Proceeds arising from, or otherwise related to the Retained Matters, including the Business Interruption and Property Damage Insurance Policies and (ii) all Claims and Causes of Action identified on the Retained Causes of Action List other than Claims and Causes of Action vested in the Acquired Reorganized Debtors including, for the avoidance of doubt, the Retained Matters (collectively, the “Liquidating Trust Assets”), and (c) all work product, attorney-client, or other privilege (the “Privileges”) shall be vested in the Liquidating Trust, which also shall be authorized to obtain, liquidate, and collect all of the Liquidating Trust Assets not in its possession. Subject to the provisions of the Plan and the Confirmation Order, all Liquidating Trust Assets shall be delivered to the Liquidating Trust free and clear of Liens, Claims, and Interests of any kind to the maximum extent permitted by applicable law except as expressly provided in the Plan. On the Effective Date, the Liquidating Trust shall stand in the shoes of the Debtors for all purposes with respect to the Liquidating Trust Assets and administration of the Causes of Action identified on the Retained Causes of Action List as being vested in the Liquidating Trust. To the extent (i) any law or regulation prohibits the transfer of ownership of any of the Liquidating Trust Assets from the Debtors to the Liquidating Trust (the “Transfer”) and such law is not superseded by the Bankruptcy Code or (ii) any other facts or circumstances that renders any such Transfer to be invalid or result in forfeiture of any of the Liquidating Trust’s legal and economic entitlement, the Liquidating Trust’s interest shall be a lien upon and security interest in such Liquidating Trust Assets, in trust, nevertheless, for the sole use and purposes set forth in Section 1.1 hereto, and this Agreement shall be deemed a security agreement granting and perfecting such interest thereon without need to file financing statements or mortgages. Notwithstanding anything to the contrary in the Plan, including, for the avoidance of doubt, this Article VII.E and Article IV.H of the Plan, the Confirmation Order, or any Restructuring Documents, the Non-Acquired Reorganized Debtors shall be deemed to continue in existence for the purpose of pursuing pending adversary proceedings and/or Retained Matters, as applicable, as of the Effective Date that such Debtors are a party to, and the Liquidating Trust shall not be deemed to be substituted as the party-in-lieu of such applicable Debtor in any such adversary proceedings and/or Retained Matters, as applicable; *provided* that the proceeds of any such adversary proceedings and/or Retained Matters, as applicable, if any, shall vest in the Liquidating Trust, as successor in interest to the Non-Acquired Reorganized Debtors, to the same extent as such proceeds would have vested into the applicable Non-Acquired Reorganized Debtor.

1.4 Funding of the Trust. The Liquidating Trust shall be funded, on the Effective Date of the Plan, with the Wind-Down Reserve, as provided for in the Plan and in the Confirmation Order.

1.5 Acceptance by Liquidating Trustees. Each Liquidating Trustee hereby accepts (a) his, her or its appointment to serve as a Liquidating Trustee and (b) the trust imposed on his, her or it by this Agreement and created for the benefit of the Beneficiaries and agrees to observe and perform that trust on and subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation Order. In connection with and in furtherance of the purposes of the Liquidating Trust, the Liquidating Trustees hereby accept the transfer of the Liquidating Trust Assets and the Liquidating Trust Obligations. The Liquidating Trustees also agree to receive and disburse all monies actually received by him, her or it constituting part of the Liquidating Trust Assets pursuant to the terms of this Agreement, the Plan and the Confirmation Order.

1.6 No Reversion to Debtors. In no event shall any part of the Liquidating Trust Assets revert to or be distributed for the benefit of any Debtor.

1.7 Name of the Liquidating Trust. The Liquidating Trust established hereby shall be known as the “PES Liquidating Trust.”

1.8 Offices.

(a) The principal office of the Liquidating Trust, and such additional offices as the Liquidating Trust Board may determine to establish, shall be located at such place or places inside or outside the State of Delaware as the Liquidating Trust Board may designate from time to time.

(b) Service of process upon a Liquidating Trust may be made by service upon the Delaware Trustee. The principal office of the Delaware Trustee in the State of Delaware is located at [•].

ARTICLE II THE LIQUIDATING TRUST BOARD

2.1 Appointment. The affairs of the Liquidating Trust shall be managed by, or under the direction of, the board consisting of the Liquidating Trustees (the “Liquidating Trust Board”), which shall have such powers and authority as are provided in this Article II and as elsewhere set forth in this Agreement and in the Delaware Act. In accordance with the Plan, as of the Effective Date, the Liquidating Trust Board shall consist of five (5) members (and for the avoidance of doubt, each of the members is a Liquidating Trustee as defined above): one (1) member to be designated by Credit Suisse Asset Management (the “CSAM Designee”) who shall initially be _____; one (1) member to be designated by Bardin Hill Investment Partners, LP (the “BHIP Designee”) who shall initially be _____; one (1) member to be designated by the Ad Hoc Committee of Term Loan Lenders or, if no longer in existence, by the Required Term Loan Lenders (collectively with the CSAM and BHIP Designees, the “Term Loan Designees”), who shall initially be _____; one (1) member to be designated by the Intermediation Provider (the “ICBCS Designee”), who shall initially be _____; and one (1) individual to be jointly designated by the Intermediation Provider and the Ad Hoc Committee of Term Loan Lenders or, if such committee is no longer in existence, by the Required Term Loan Lenders (the “Independent Designee” and, together with the ICBCS Designee and the Term Loan Designees, the “Designees” and each a “Designee”), and who shall be an individual

with significant insurance claims adjustment expertise. Each person or entity described in the preceding sentence entitled to appoint a member of the Liquidating Trust Board shall be considered a “Nominating Party” as used herein. Upon the satisfaction of the Allowed Term Loan Claims pursuant to Article VIII.I of the Plan, the Term Loan Designees and the Independent Designee shall be deemed to resign from the Liquidating Trust Board and shall not be replaced. Upon the satisfaction of the Allowed Intermediation Claims pursuant to the Plan, the ICBCS Designee and the Independent Designee shall be deemed to resign from the Liquidating Trust Board. Each person appointed as a Liquidating Trustee shall be deemed a trustee under the Delaware Act, with all privileges and immunities appurtenant thereto, and, as necessary or applicable, shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. For the avoidance of doubt, only a Nominating Party may appoint a Liquidating Trustee.

2.2 Term of Service. Each Liquidating Trustee shall serve until (a) the termination of the Trust in accordance with this Agreement or (b) such Liquidating Trustee’s, resignation, incapacity, death, dissolution, removal, or liquidation.

2.3 Services. The Liquidating Trustees shall be entitled to engage in such other activities as they deem appropriate which are not in conflict with the Plan, this Agreement, the purpose of the Liquidating Trust as set forth herein or the interests of the Beneficiaries in respect of the Plan. The Liquidating Trustees shall devote such time as is reasonably necessary to fulfill all of their duties as Liquidating Trustees.

2.4 Liquidating Trustees are Fiduciaries. The Liquidating Trustees are acting as fiduciaries pursuant to section 3301(d) of chapter 33 of title 12 of the Delaware Code, and will owe to the Trust and all Beneficiaries the same fiduciary duties (and only such fiduciary duties) as are owed by directors of corporations to such corporations and their stockholders under the Delaware General Corporation Law; *provided*, that the exercise of the Term Loan Designees’ right to terminate expenditures pursuant to section 2.19 shall not be subject to any fiduciary standard with respect to beneficiaries other than holders of Term Loan Secured Claims, and any fiduciary duty to such beneficiaries that would conflict with the exercise of such right is expressly disclaimed. For the avoidance of doubt, the Liquidating Trustee’s fiduciary duties shall not include an obligation to fund the Liquidating Trust in any manner.

2.5 Resignation, Death, Dissolution or Removal of Liquidating Trustees. The Liquidating Trustees, or any of them, may resign at any time upon 30 days’ written notice (or as otherwise provided in the terms of the Plan) to the Liquidating Trust Board and such Liquidating Trustee’s Nominating Party, if any. Such resignation may become effective prior to the expiration of such 30 day (or as otherwise provided in the terms of the Plan) notice period upon the appointment of successor Liquidating Trustee in accordance with section 2.1 hereof. A Liquidating Trustee may be removed by the Bankruptcy Court upon application for good cause shown by any party in interest. Any Nominating Party may remove the Liquidating Trustee that it appoints at any time in its sole discretion; *provided* that it may not remove its appointed Liquidating Trustee until such Nominating Party has appointed a new Liquidating Trustee effective as of such removal. In the event of any such resignation or removal, or the death, dissolution or incapacity of a Liquidating Trustee, the Nominating Party of such Liquidating Trustee may appoint a new Liquidating Trustee. No successor Liquidating Trustee hereunder

shall in any event have any liability or responsibility for the acts or omissions of any of his, her or its predecessors. Every successor Liquidating Trustee appointed pursuant to the terms hereof shall execute, acknowledge and deliver to the Intermediation Provider and the Term Loan Administrative Agent an instrument in writing accepting such appointment hereunder, and thereupon such successor Liquidating Trustee, without any further act, shall become fully vested with all of the rights, powers, duties and obligations of his, her or its predecessor.

2.6 Compensation. The Liquidating Trustees and any successor Liquidating Trustees shall be entitled to receive compensation as described in the Plan Supplement, which compensation may from time to time be adjusted by agreement between such Designee(s) and the Nominating Party with the right to select such Designee(s) as set forth in section 2.1 and 2.13 hereof, and shall be reimbursed for all reasonable expenses in connection with the performance of his, her or its duties as a Liquidating Trustee hereunder. Such compensation and expenses shall be expenses of the Liquidating Trust and may be paid without prior approval of the Bankruptcy Court; *provided*, that, (x) unless all Allowed Intermediation Claims have been paid in full in cash, the Term Loan Designees shall be paid solely from Term Loan Priority Collateral; and (y) unless all Allowed Term Loan Secured Claims have been paid in full in cash, the ICBCS Designee shall be paid solely from Intermediation Priority Collateral or SOA Separate Assets and Collateral.

2.7 General Powers. The Liquidating Trustees shall have all duties, obligations, rights, and benefits assumed by, assigned to, or vested in the Liquidating Trust under the Plan, the Confirmation Order, the Tax Refund Agreement and the Litigation Control Agreement (as such terms are defined in the Confirmation Order), this Agreement, and any other agreement entered into pursuant to or in connection with the Plan; *provided*, that any agreements of the Liquidating Trust negotiated and filed as part of Exhibit A to the Liquidating Trust Agreement prior to the Effective Date will be effective with respect to the Liquidating Trust on and after the Effective Date. For the avoidance of doubt, the Liquidating Trustees' exercise of all of the powers, duties, obligations, rights and benefits of the Liquidating Trustees vested herein shall be subject in all respects to (i) the availability of and reasonable likelihood of recovery of Liquidating Trust Assets; (ii) consideration of the extent of any reasonable benefit to be realized by the Beneficiaries in light of the nature of the Liquidating Trust Assets and terms of the Plan; and (iii) the provisions of this Agreement, including, for the avoidance of doubt, the simple majority vote requirement in section 2.9 hereof. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, the Liquidating Trustees may control and exercise authority over the Liquidating Trust Assets, over the acquisition, management, and disposition thereof, and over the management and conduct of the business of the Liquidating Trust and fulfilling the Liquidating Trust Obligations. No person dealing with the Liquidating Trust shall be obligated to inquire into the Liquidating Trustees' authority in connection with the acquisition, management, or disposition of Liquidating Trust Assets. Without limiting the generality of the foregoing, but subject to the Plan, the Confirmation Order, and other provisions of this Agreement, the Liquidating Trustees shall be expressly authorized to, with respect to the Liquidating Trust and the Liquidating Trust Assets:

(a) Exercise all 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 with respect to the Liquidating Trust Assets or the

Liquidating Trust Obligations, by any officer, director, shareholder, or other party acting in the name of the Debtors or their Estates with like effect as if duly authorized, exercised, and taken by action of such officers, directors, shareholders, or other party.

(b) Open and maintain bank accounts on behalf of or in the name of the Liquidating Trust, calculate and make distributions, 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 Liquidating Trust.

(c) Receive, manage, invest, supervise, and protect the Liquidating Trust Assets, subject to the limitations provided herein.

(d) Hold legal title to or, in the case of the Retained Matters (as defined in the Confirmation Order) beneficial interest in, any and all Liquidating Trust Assets.

(e) Subject to the applicable provisions of the Plan and the Confirmation Order, collect and liquidate all Liquidating Trust Assets and, as appropriate, dissolve any corporate entities.

(f) Transfer proceeds of Liquidating Trust Assets from time to time to any Distribution Reserve Account in accordance with the Plan and the Confirmation Order.

(g) Review and, where appropriate, object to claims, and, subject to the terms of the Plan, supervise and administer the resolution, settlement and payment of all Disputed Claims, and the distribution to the Beneficiaries and creditors of the Liquidating Trust, in accordance with this Agreement, the Plan, and the Confirmation Order; *provided*, that the Liquidating Trustees shall not resolve, settle or pay Disputed Claims until all Term Loan Secured Claims and Intermediation Secured Claims have been paid in full in accordance with the terms of the Plan and Confirmation Order.

(h) Investigate, analyze, compromise, adjust, arbitrate, sue on or defend, pursue, prosecute, abandon, or otherwise deal with and settle, in accordance with the terms set forth in this Agreement, any and all Causes of Action and claims in favor of or against the Debtors, the Debtors' Estates, the Liquidating Trust Assets or the Liquidating Trust that have not been released under the Plan or otherwise as the Liquidating Trustee shall deem advisable, including, but not limited to, subject to the Litigation Trust Agreement, any Retained Matters.

(i) Pursue, commence, prosecute, compromise, settle, dismiss, release, waive, withdraw, abandon, or resolve all Claims and Causes of Action identified on the Retained Causes of Action List other than, solely to the extent set forth in the Purchase Agreement, Claims and Causes of Action vested in the Acquired Reorganized Debtors, including, for the avoidance of doubt, and subject to the Litigation Control Agreement, any Retained Matters; *provided*, further that the Liquidating Trust shall not be deemed to be substituted as the party-in-lieu of such applicable Debtor in any pending adversary proceedings and/or Retained Matters identified in (1) through (3) of Schedule 1 to the Litigation Control Agreement as of the Effective Date that such Debtors are a party to, as applicable.

(j) Protect and enforce the rights to the Liquidating Trust Assets vested in the Liquidating Trust by this Agreement and the Plan by any method the Liquidating Trustees deem appropriate, including, without limitation, by judicial proceedings or otherwise.

(k) (i) Seek a determination of tax liability under section 505 of the Bankruptcy Code, subject to the terms of the Plan; (ii) file, if necessary, any and all tax and information returns required with respect to the Liquidating Trust; (iii) make tax elections for and on behalf of the Liquidating Trust; and (iv) pay taxes, if any, payable for and on behalf of the Liquidating Trust.

(l) Pay all lawful, expenses, debts, charges, taxes, and liabilities of the Liquidating Trust, including for the avoidance of doubt, (i) all Restructuring Expenses and all other expenses due to the Term Loan Administrative Agent pursuant to the terms of the Term Loan Credit Agreement, but, until all Allowed Intermediation Secured Claims are paid in full in cash, solely from Term Loan Priority Collateral; and (ii) to the extent set forth in the Plan, obligations arising under the Management Incentive Plan and the KERP Documents.

(m) Make distributions to the Beneficiaries, and to creditors of the Liquidating Trust as provided for, or contemplated by, the Plan, the Confirmation Order, and this Agreement.

(n) Withhold from the amount distributable to any person such amount as may be sufficient to pay any tax or other charge which the Liquidating Trustees have determined, in their sole discretion, may be required to be withheld therefrom under the income tax laws of the United States, any foreign country, or of any state, local, or political subdivision of either.

(o) Enter into any agreement or execute any document or instrument required to be executed by the Liquidating Trust to give effect to the Plan, the Confirmation Order, or this Agreement and perform all obligations thereunder.

(p) If any of the Liquidating Trust Assets are situated in any state or other jurisdiction in which no Liquidating Trustee is qualified to act as trustee, subject to all other provisions of this Agreement (including, but not limited to, Section 2.4) nominate and appoint a person 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 Liquidating Trustees in their discretion; confer on such trustee all the rights, powers, privileges, and duties of the Liquidating Trustees hereunder, subject to the conditions and limitations of this Agreement, except as modified or limited by the Liquidating Trustees 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 Liquidating Trustees 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 Liquidating Trustees of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal.

(q) Purchase and carry all insurance policies and pay all insurance premiums and costs from Liquidating Trust Assets it deems reasonably necessary or advisable.

(r) Appoint officers and other representative agents of the Liquidating Trust, including a Liquidating Trust manager and a secretary, establish employment and compensation arrangements for such officers and other representative agents, and delegate any and all powers and authority hereunder as the Liquidating Trustees consider desirable to such officers and other representative agents, provided that such delegation of power or authority by the Liquidating Trustees shall not cause any Liquidating Trustee to cease to be a Liquidating Trustee or cause such officer or other representative agent to be a Liquidating Trustee.

(s) Employ, without further order of the Bankruptcy Court, attorneys, accountants, appraisers, expert witnesses, insurance adjusters, or other persons whose services may be reasonably necessary or advisable (including, in each case, those previously retained by the Debtors), to advise or assist in the administration, prosecution and distribution of the Liquidating Trust Assets.

(t) 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 Agreement relating to the Liquidating Trust, the Liquidating Trust Assets, the Liquidating Trust Obligations, or the Liquidating Trustees.

(u) Invest in demand and time deposits in banks or savings institutions, or temporary investments such as short term certificates of deposit or Treasury bills or other investments that a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations or any modification in the Internal Revenue Services ("IRS") guidelines, whether set forth in IRS rulings, revenue procedures, other IRS pronouncements or otherwise.

(v) Take all other actions consistent with the provisions of the Plan that the Liquidating Trustees deems reasonably necessary or desirable to administer the Liquidating Trust in accordance with the Plan, the Confirmation Order, and this Agreement.

(w) To the extent applicable, assert, enforce, release, or waive any privilege or any defense on behalf of the Liquidating Trust (including as to any Privilege that the Debtors held prior to the Effective Date).

2.8 Limitations on the Liquidating Trustees. Notwithstanding anything under applicable law, this Agreement, or the Plan to the contrary, no Liquidating Trustee shall do or undertake any of the following:

(a) Take any action that would jeopardize treatment of the Liquidating Trust as a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d) for federal income tax purposes.

(b) Take any action that is inconsistent with the Plan or the Confirmation Order.

(c) Receive transfers of any listed stocks or securities, or any readily marketable securities, except as is absolutely necessary or required under the Plan and the

Confirmation Order; provided, however, that in no event shall such Liquidating Trustee receive any such investment that would jeopardize treatment of the Liquidating Trust as a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) for federal income tax purposes.

(d) Retain cash or cash equivalents in excess of a reasonable amount necessary to satisfy any liabilities of the Liquidating Trust and to establish and maintain the reserves contemplated by the Plan.

(e) Exercise any investment power other than the power to invest in demand and time deposits in banks or savings institutions, or other temporary liquid investments, such as short-term certificates of deposit or Treasury bills or other investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations or any IRS guidelines, whether set forth in IRS rulings, IRS revenue procedures, other IRS pronouncements, or otherwise.

(f) Receive or retain any operating assets of an ongoing 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.

(g) Accept or take on, directly or indirectly, any obligation or other liability, monetary or otherwise, on behalf of the Liquidating Trust, including but not limited to the assumption or assignment of any Executory Contract or Unexpired Lease, as provided in the Plan unless such obligation or other liability would not jeopardize treatment of the Liquidating Trust as a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) for federal income tax purposes.

(h) Notwithstanding any of the foregoing, the Liquidating Trustees shall not be prohibited from engaging in any trade or business on its own account, provided that such activity does not interfere with such Liquidating Trustee’s administration of the Liquidating Trust.

2.9 Action of the Liquidating Trust Board. If at any time more than one Liquidating Trustee is in office, it shall take a simple majority vote of the Liquidating Trustees to take any action on behalf of the Liquidating Trust with respect to any matters or to exercise any discretion conferred upon the Liquidating Trustees with respect to such matter. The taking of any action that has been approved by the Liquidating Trustees as contemplated hereby, including, without limitation, the execution and delivery of any contract, agreement, instrument, certificate, filing or other document by any Liquidating Trustee, acting singly, shall be sufficient to bind the Liquidating Trust; *provided that*, subject to section 2.13, any exercise of the power and authority of the Liquidating Trust pursuant to section 2.7 hereof in respect of Claims or Causes of Action to recover the June 21 Business Interruption Insurance Proceeds shall be subject to the direction of the Business Interruption Litigation Committee acting by majority consent; *provided*, that the appointment of officers of the Liquidating Trust shall also require a simple majority vote of the Liquidating Trustees. If at any time there is only one Liquidating Trustee in office, subject to the provisions of this Agreement, the taking of any lawful action by the Liquidating Trustee, including, without limitation, the execution and delivery of any contract,

agreement, instrument, certificate, filing or other document by such Liquidating Trustee on behalf of the Trust, shall conclusively constitute and evidence the due authorization of such document or other action on behalf of the Liquidating Trust and shall be sufficient to bind the Liquidating Trust. Any action which may be taken by the Liquidating Trustees by vote may be taken without a meeting if that number of the Liquidating Trustees, or members of a committee, as the case may be, required for approval of such action by vote consent to the action in writing and the written consent is filed with the records of the meetings of the Liquidating Trust Board. Such consent shall be treated for all purposes as a vote taken at a meeting of the Liquidating Trust Board; *provided* that notwithstanding anything in this Agreement, the Liquidating Trust Board shall not have the authority to take any action with respect to Intermediation Priority Collateral or SOA Separate Assets and Collateral and such authority shall be reserved to the Business Interruption Litigation Committee. The Liquidating Trust Board shall not have the authority to dissolve the Business Interruption Litigation Committee.

2.10 Wind-Down Reserve. The Liquidating Trustees shall establish, fund, and administer the Wind-Down Reserve, which shall initially be funded with Cash equal to the Wind-Down Reserve Amount, and which shall be used to satisfy its anticipated future operating expenses of the Liquidating Trustees as determined in accordance with Section 6.3. From time to time, the amount required to be held in the Wind-Down Reserve may be increased or reduced in accordance with Section 6.3. Any excess funds held in the Wind-Down Reserve shall be transferred to the General Account for distribution to holders of Allowed Claims in accordance with Section 6.2. In no event shall the Wind-Down Reserve be used to pay Intermediation Secured Claims unless all Term Loan Secured Claims have been paid in full in Cash.

2.11 Accounts. The Liquidating Trustees shall establish the General Account and the Distribution Reserve Accounts in accordance with the Plan.

2.12 Meetings of the Liquidating Trust Board. The Liquidating Trust Board shall hold regular meetings, at such time and at such place as shall from time to time be determined by a simple majority of the Liquidating Trustees, but in no event shall such meetings be held less frequently than quarterly. Announcements of the date and place of any meeting shall be sent via first class mail or via electronic transmission to each Liquidating Trustee on not less than three (3) business days' notice. Meetings shall be held in person or by telephonic conference call (or other means by which all persons participating in the meeting can hear each other) or by a combination provided however, that professionals for the Liquidating Trust and the Liquidating Trustees shall be permitted to attend. Special meetings of the Liquidating Trust Board may be held whenever and wherever called for by the Liquidating Trustee or any member of the Liquidating Trust Board, subject to reasonable notice. Prior notice of a meeting may be waived in writing by any Liquidating Trustee either before or after a meeting. The attendance of a Liquidating Trustee at a meeting shall constitute a waiver of notice of such meeting except where a member of the Liquidating Trustee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been properly called or convened. In the event the June 21 Business Interruption Insurance Proceeds or Litigation is to be discussed at any meeting, regular or special, by the Liquidating Trust Board, the Liquidating Trust Board shall provide notice pursuant to the methods described in this section to each member of the Business Interruption Litigation Committee on no less than three (3) business days' notice; and the Business Interruption Litigation Committee or any member thereof may,

but is not required, to participate in any such meeting.

2.13 Business Interruption Litigation Committee. The Liquidating Trust Board shall form a committee (the “Business Interruption Litigation Committee”), which shall be comprised of (a) one (1) Term Loan Designee, who shall initially be _____ and may subsequently be removed or replaced by the Ad Hoc Term Loan Lenders Committee or, if such committee is no longer in existence, the Required Term Loan Lenders; (b) the ICBCS Designee; and (c) the Independent Designee. The Business Interruption Litigation Committee shall be vested with the approval rights set forth in section 2.1 hereof; *provided that*, upon determination by a Final Order that the June 21 Business Interruption Insurance Proceeds (x) constitute Term Loan Priority Collateral, the Independent Designee shall be deemed to have resigned therefrom and the Term Loan Designee thereon shall be given two votes (to one vote of the ICBCS Designee) in exercising the powers and rights of the Liquidating Trustees under section 2.7 of this Agreement with respect to the June 21 Business Interruption Insurance Proceeds or (y) constitute Intermediation Priority Collateral, the Independent Designee shall be deemed to have resigned therefrom and the ICBCS Designee shall be given two votes (to one vote of the Term Loan Designee thereon) in exercising the powers and rights of the Liquidating Trustees under section 2.7 of this Agreement with respect to the June 21 Business Interruption Insurance Proceeds; *provided, further that* in the event that any proposed settlement between the Liquidating Trust and the insurers with respect to any claims or Causes of Action in respect of the June 21 Business Interruption Insurance Proceeds is not acceptable to all members of the Business Interruption Litigation Committee, and so long as at such time the dissenting Designee is funding 50% of the pursuit of the June 21 Business Interruption Insurance Proceeds, the Liquidating Trust shall file a motion with the Bankruptcy Court for approval of such settlement pursuant to the standard set forth in Federal Rule of Bankruptcy Procedure 9019.

2.14 [Reserved.]

2.15 Meetings of the Business Interruption Litigation Committee. The Business Interruption Litigation Committee shall hold regular meetings, at such time and at such place as shall from time to time be determined by a simple majority of the members of the Business Interruption Litigation Committee, but in no event shall such meetings be held less frequently than quarterly. Announcements of the date and place of any meeting shall be sent via first class mail or via electronic transmission to each member of the Business Interruption Litigation Committee on not less than three (3) business days’ notice. Meetings shall be held in person or by telephonic conference call (or other means by which all persons participating in the meeting can hear each other) or by a combination provided however, that professionals for the members Business Interruption Litigation Committee shall be permitted to attend. Special meetings of the Business Interruption Litigation Committee may be held whenever and wherever called for by any member of the Business Interruption Litigation Committee, subject to reasonable notice. Prior notice of a meeting may be waived in writing by any member of the Business Interruption Litigation Committee either before or after a meeting. The attendance of a member of the Business Interruption Litigation Committee at a meeting shall constitute a waiver of notice of such meeting except where a member of the Business Interruption Litigation Committee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been properly called or convened.

2.16 Liquidating Trust Continuance. The death, dissolution, resignation, incapacity or removal of a Liquidating Trustee shall not terminate the Liquidating Trust or revoke any existing agency created by the Liquidating Trustee pursuant to this Agreement or invalidate any action theretofore taken by such Liquidating Trustee, and the successor Liquidating Trustee agrees that the provisions of this Agreement shall be binding and inure to the benefit of the successor Liquidating Trustee and all its successors or assigns.

2.17 Insurance Recovery Surcharge. The Insurance Recovery Surcharge shall continue in favor of the Holders of Allowed Term Loan Claims as set forth in the Plan. If the Insurance Recovery Surcharge has not been determined by Final Order, upon the Liquidating Trust's receipt of SOA Priority June 21 Insurance Proceeds or a determination by Final Order that Disputed June 21 Insurance Proceeds held by the Liquidating Trust constitute SOA Priority June 21 Insurance Proceeds, the ICBCS Designee and a Term Loan Designee shall agree in good faith on the maximum amount of the Insurance Recovery Surcharge that shall be held in a reserve pending a determination by Final Order of the Insurance Recovery Surcharge and distribute the balance of the SOA Priority Business Interruption Insurance Proceeds to Holders of Allowed Intermediation Secured Claims as soon as practicable. If the Holders of Allowed Term Loan Claim and the Intermediation Provider cannot agree on an amount of the Insurance Recovery Surcharge within thirty (30) days of the Liquidating Trust's receipt of the SOA Priority June 21 Business Interruption Insurance Proceeds, the Intermediation Provider may file a motion with the Bankruptcy Court seeking a determination as to the amount of the Insurance Recovery Surcharge.

2.18 Liquidating Trust Expenditures. Notwithstanding anything to the contrary herein, all Liquidating Trust Expenditures shall be funded from the Wind-Down Reserve; *provided*, that, at all times, each of the ICBCS Designee and a simple majority of the Term Loan Designees may elect to fund no less than 50% of the costs of pursuing the June 21 Business Interruption Insurance Proceeds from, as applicable, Intermediation Priority Collateral or Term Loan Priority Collateral.

2.19 Use of Term Loan Priority Collateral. At any time, a simple majority of the Term Loan Designees may determine that no Term Loan Priority Collateral (including Term Loan Priority Collateral in the Wind-Down Reserve) shall be expended to preserve, pursue or recover (a) any June 21 Business Interruption Insurance Proceeds or (b) for any other Liquidating Trust Expenditures, including for pursuit, preservation or recovery of any Intermediation Priority Collateral, Disputed June 21 Insurance Proceeds, or any unencumbered assets, other than such amounts as are necessary to carry out the Liquidating Trust's statutory obligations under applicable law (to the extent there are no other Liquidating Trust Assets available therefor); *provided* that, in the case of clause (a), upon such a determination the ICBCS Designee shall receive the vote of the Term Loan Designee on the Business Interruption Litigation Committee, and shall otherwise exercise exclusive control preservation, pursuit and recovery of the June 21 Business Interruption Insurance Proceeds; *provided, further* in the event that the Term Loan Designees make such a determination, (i) the Liquidation Trustees that are not Term Loan Designees may seek to surcharge the Term Loan Priority Collateral for subsequent Liquidating Trust Expenditures of funds or assets that do not constitute Term Loan Priority Collateral but directly result in and are allocable to the recovery and distribution of additional Term Loan Priority Collateral based on the same standard as the Insurance Recovery

Surcharge.

ARTICLE III

LIABILITY OF LIQUIDATING TRUSTEES

3.1 Standard of Care; Exculpation. None of the Liquidating Trustees, nor any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust shall be liable for losses, claims, damages, liabilities, or expenses in connection with the affairs or property of the Liquidating Trust to any Beneficiary of the Liquidating Trust, or any other person, for the acts or omissions of the Liquidating Trustees, or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust; *provided, however,* that the foregoing limitation shall not apply as to any losses, claims, damages, liabilities or expenses suffered or incurred by any Beneficiary that are found by a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from the fraud, gross negligence, or willful misconduct of such person or entity. Every act done, power exercised or obligation assumed by the Liquidating Trust, the Liquidating Trustees, or any director, officer, affiliate, employee, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust pursuant to the provisions of this Agreement shall be held to be done, exercised, or assumed, as the case may be, by the Liquidating Trust, the Liquidating Trustees, or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust acting for and on behalf of the Liquidating Trust and not otherwise; *provided, however,* that none of the foregoing Entities or Persons are deemed to be responsible for any other such Entities' or Persons' actions or inactions outside of the scope of the authority provided by the Liquidating Trust. Every Beneficiary, Person, firm, corporation or other Entity contracting or otherwise dealing with or having any relationship with the Liquidating Trust, the Liquidating Trustees, or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust shall have recourse only to the Liquidating Trust Assets for payment of any liabilities or other obligations arising in connection with such contracts, dealings, or relationships and the Liquidating Trust, the Liquidating Trustees, any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust shall not be individually liable therefor. For the avoidance of doubt, the Liquidating Trustees, each in its capacity as such, shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Debtors. In no event shall the Liquidating Trust, the Liquidating Trustees, or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust be liable for indirect, punitive, special, incidental, or consequential damage or loss (including but not limited to lost profits) whatsoever, even if such person or entity has been informed of the likelihood of such loss or damages and regardless of the form of action. The Liquidating Trustees, to the extent applicable, shall have the right at any time to seek instructions from the Bankruptcy Court concerning the administration or disposition of the Liquidating Trust Assets and the Causes of Action administered by the Liquidating Trust. The Liquidating Trust, the Liquidating Trustees, or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust shall not be liable for any act or omission that has been approved by the

Bankruptcy Court, and all such actions or omissions shall conclusively be deemed not to constitute fraud, gross negligence, or willful misconduct.

3.2 Indemnification.

(a) Except as otherwise set forth in the Plan or Confirmation Order, the Liquidating Trustees, and any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust (collectively, the “Indemnified Parties”) shall be defended, held harmless, and indemnified from time to time by the Liquidating Trust against any and all losses, claims, damages, liabilities, penalties, obligations, and expenses, including the costs for counsel or others in investigating, preparing, or defending any action or claim, whether or not in connection with litigation in which any Indemnified Party is a party, or enforcing this Agreement (including these indemnity provisions), as and when incurred, caused by, relating to, based on, or arising out of (directly or indirectly) exercise and performance or nonperformance of any power, obligation, or duties of such person, or entity in accordance with this Agreement, the Plan, or the Confirmation Order; *provided, however,* such indemnity shall not apply to any such loss, claim, damage, liability, or expense to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from the fraud, gross negligence, or willful misconduct of such person or entity and such recourse results in payment of such loss, claim, damage, liability, or expense. Satisfaction of any obligation of the Liquidating Trust arising pursuant to the terms of this Section shall be payable only from the Liquidating Trust Assets, may be advanced prior to the conclusion of such matter, and such right to payment shall be prior and superior to any other rights to receive a distribution of the Liquidating Trust Assets.

(b) Subject to the available Liquidating Trust Assets and outstanding liabilities and expenses of the Liquidating Trust, the Liquidating Trust shall promptly pay expenses reasonably incurred by any Indemnified Party in defending, participating in, or settling any action, proceeding, or investigation in which such Indemnified Party is a party or is threatened to be made a party or otherwise is participating in connection with the Agreement or the duties, acts, or omissions of such Entity or Person, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Indemnified Party hereby undertakes, and the Liquidating Trust hereby accepts its undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified therefor under this Agreement.

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

successor Liquidating Trustee for any events or occurrences subsequent to the cessation of its role as a Liquidating Trustee.

3.4 No Personal Liability. No Liquidating Trustee shall be subject in such capacity to any personal liability whatsoever to any Person¹ in connection with Liquidating Trust Assets or the acts, obligations or affairs of the Liquidating Trust. No Liquidating Trustee or officer of the Liquidating Trust shall be subject in such capacity to any personal liability whatsoever to any Person; and, all such Persons shall look solely to the Liquidating Trust Assets for satisfaction of claims of any nature arising in connection with the affairs of the Liquidating Trust.

3.5 Reliance by Liquidating Trustees on Documents or Advice of Counsel.

Except as otherwise provided in this Agreement, the Liquidating Trustees, any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust may rely, and shall be protected from liability for acting, on any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by such Entity or Person to be genuine and to have been presented by an authorized party. The Liquidating Trustees, any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust shall not be liable for any action taken or suffered by such Entity or Person in reasonable reliance upon the advice of counsel or other professionals engaged by the Liquidating Trustees or the Liquidating Trust in accordance with this Agreement.

3.6 No Liability for Good Faith Error of Judgement. No Liquidating Trustee shall be liable for any error of judgment made in good faith, unless it shall be finally determined by a final judgment of a court of competent jurisdiction (not subject to further appeal or review) that such Liquidating Trustee was grossly negligent or engaged in willful misconduct in ascertaining the pertinent facts.

3.7 Insurance for the Liquidating Trust Board. The Liquidating Trustees may purchase, using the Liquidating Trust Assets, and carry all insurance policies and pay all insurance premiums and costs that the Liquidating Trustees 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, the Confirmation Order, or this Liquidating Trust Agreement.

3.8 Survival. The provisions of this Article III shall be contractual rights and shall survive the termination of this Agreement and shall continue as to any Entity or Person who has ceased in such role to which such rights were conferred and shall inure to the benefit of such Entity's or Person's successors, heirs, executors and administrators. Any amendment, alteration or repeal of this Article III that adversely affects any right of any Entity or Person or their successors shall be prospective only and shall not limit, eliminate, or impair any such right with

¹ “Person” shall mean and include individuals, corporations, partnerships, trusts, limited liability companies, associations, joint ventures and other entities, whether or not legal entities, and governments and agencies and political subdivisions thereof.

respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

ARTICLE IV GENERAL PROVISIONS CONCERNING ADMINISTRATION OF THE LIQUIDATING TRUST

4.1 Register of Beneficiaries. The Liquidating Trust shall maintain at all times a register of the names, mailing addresses, amounts of Claims, and the Pro Rata interests in the Liquidating Trust of the Beneficiaries (the “Register”). The Register shall be limited to those Beneficiaries who are determined by the Liquidating Trust Board as of the Effective Date of the Plan to be entitled to at least a Minimum Distribution (as provided in Section 6.6 herein below) (each a “Minimum Distributee”). The Liquidating Trust Board shall cause the Register to be kept at its office or at such other place or places as may be designated by the Liquidating Trust Board from time to time. The initial Register shall be delivered to the Liquidating Trust Board by the Debtors and shall be based on the list of holders of Claims maintained by Omni Management Group as of the Effective Date of the Plan and prepared in accordance with the provisions of the Plan and the Confirmation Order. All references in this Liquidating Trust Agreement to holders of beneficial interests in the Liquidating Trust shall be read to mean holders of record as set forth in the Register maintained by the Liquidating Trust Board and shall exclude any beneficial owner not recorded on such Register.

4.2 Books and Records. The Liquidating Trust also shall maintain in respect of the Liquidating Trust and the Beneficiaries books and records relating to the Liquidating Trust Assets and any income realized therefrom and the payment of expenses of and claims against or assumed by the Liquidating 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. Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, or as may be required by applicable law (including securities law), nothing in this Agreement is intended to require the Liquidating Trust to file any accounting or seek approval of any court with respect to the administration of the Liquidating Trust, or as a condition for making any payment or distribution out of the Liquidating Trust Assets. Beneficiaries shall have the right upon thirty (30) days’ prior written notice delivered to the Liquidating Trust Board to inspect the Liquidating Trust’s books and records, including the Register, provided such Beneficiary shall have entered into a confidentiality agreement in form and substance reasonably satisfactory to the Liquidating Trust Board. Satisfaction of the foregoing condition notwithstanding, if (a) the Liquidating Trust Board determines in good faith that the inspection of the Liquidating Trust’s books and records, including the Register, by any Beneficiary would be detrimental to the Liquidating Trust or (b) such Beneficiary is a defendant (or potential defendant) in a pending (or potential) action or contested matter brought by or against the Liquidating Trust, the Liquidating Trust may deny such request for inspection. The Bankruptcy Court shall resolve any dispute between any Beneficiary and the Liquidating Trust Board under this Section 4.2.

4.3 Filing of Interim Reports. The Liquidating Trust shall file with the Bankruptcy Court quarterly reports regarding the liquidation or other administration of the Liquidating Trust Assets. The Liquidating Trust Board shall prepare quarterly budgets, which set forth, among other things, fees and expenses of the Liquidating Trust Board (including fees and expenses of

retained professionals) expected to be incurred over the budgeted period. The Liquidating Trust shall prepare and provide monthly reports which set forth (i) a comparison of actual expenditures against the prior budget period; (ii) information regarding amounts in the Wind Down Reserve; and (iii) a summary of the primary actions that the Liquidating Trust Board intends to take during the next monthly period.

4.4 Reporting of Insurance Carrier Correspondence. The Liquidating Trustees and the employees or agents of the Liquidating Trust shall share with all other Liquidating Trustees, and the Business Interruption Litigation Committee, any material written correspondence to or from the insurance carriers, loss adjuster, or other representative handling the insurance claims (the “Carrier”) and inform all other Liquidating Trustees and the members of the Business Interruption Litigation Committee promptly of any material development in the claim. The Liquidating Trustees shall copy counsel to the Intermediation Provider on any written correspondence to the Carrier that relates to the ICBCS Direct Claim (as defined in the Final DIP Order) and an Intermediation Provider representative shall be permitted to attend any meeting arranged by the Debtors, Reorganized Debtors, and/or the Liquidating Trust with the Carrier wherein the ICBCS Direct Claim will be discussed. Discussions and negotiations in the ordinary course with respect to the ICBCS Direct Claim shall proceed in parallel, to the extent reasonably practicable, with the Liquidating Trust’s claims under the Business Interruption and Property Damage Insurance Policies, to avoid causing any delay to either claim.

4.5 Final Accounting of Liquidating Trust Board. The Liquidating Trust Board shall within ninety (90) days after the termination of the Liquidating Trust or the death, dissolution, resignation, or removal of a Liquidating Trustee, render an accounting containing at least the following information:

- (a) A description of the Liquidating Trust Assets;
- (b) A summarized accounting in sufficient detail of all gains, losses, receipts, disbursements, and other transactions in connection with the Liquidating Trust and the Liquidating Trust Assets during such Liquidating Trustee’s term of service, including their source and nature and whether such Liquidating Trust Assets constitute proceeds of Intermediation Priority Collateral, SOA Separate Assets and Collateral or Term Loan Priority Collateral;
- (c) Separate entries for all receipts of principal and income;
- (d) The ending balance of all Liquidating 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 Liquidating Trust; and
- (f) All pending actions.

4.6 Filing of Accounting. The accounting described in Section 4.3 shall be filed with the Bankruptcy Court and all Beneficiaries shall thereby have notice that the final accounting has

been filed and an opportunity to have a hearing on the approval of the accounting and, to the extent applicable, the discharge and release of the Liquidating Trust Board.

4.7 Filing of Tax Returns. The Liquidating Trust shall be responsible for filing all federal, state, local, and foreign tax returns for the Liquidating Trust (but not for the Debtors).

4.8 Privilege. To effectively acquire, dispose, liquidate, manage, and conduct the business of the Liquidating Trust and the Liquidating Trust Assets, including, but not limited to, any and all Causes of Action identified on the Retained Causes of Action List, the Liquidating Trust and its counsel and representatives require full access to all documents and information in the possession of the Debtors and must be able to obtain such information from the Debtors and Reorganized Debtors on a confidential basis and in common interest without being restricted by or waiving any Privileges. Accordingly, on or prior to the Effective Date, all of the Non-Acquired Debtors' books, records, and information, including, without limitation, (i) all information relating to the Debtors' claims and Causes of Action under the Business Interruption and Property Damage Insurance Policies, and (ii) any other information necessary to operate the Liquidating Trust, shall be transferred to the Liquidating Trust, and the Liquidating Trust shall have the rights to copies and access to similar information in the possession of the Acquired Reorganized Debtors as provided in the Purchase Agreement, in each case without waiving, and instead expressly preserving, any of the Privileges that may apply to such transferred information. As of the Effective Date, all Privileges held by the Debtors and Reorganized Debtors (including the board of directors or any committee of the board of directors of any of the Debtors and Reorganized Debtors) in connection with such information shall transfer to, and vest exclusively in, the Liquidating Trust. If, at any time after the Effective Date, the Debtors and/or Reorganized Debtors discover the existence of any other information or records, the Entity discovering such information or records shall promptly inform the Liquidating Trust Board of their existence and transfer such information to the Liquidating Trust.

4.9 Transfer. The transfer of information to the Liquidating Trust in accordance with this Liquidating Trust Agreement shall not result in the destruction or waiver of any applicable Privileges. Further, with respect to any Privileges: (i) they are transferred to the Liquidating Trust to enable the Trust Board and/or Business Interruption Litigation Committee to perform its duties to administer the Trust and for no other reason, (ii) they shall be preserved and not waived (except as the Liquidating Trust may elect to waive such Privileges), and (iii) no information subject to a Privilege shall be publicly disclosed by the Liquidating Trust or communicated to any Person not entitled to receive such information or in a manner that would diminish the protected status of any such information, except following a waiver of such Privilege pursuant to (iii) above or pursuant to the specific terms of the Plan and the Confirmation Order and this Liquidating Trust Agreement.

ARTICLE V

BENEFICIAL INTERESTS AND BENEFICIARIES

5.1 Trust Beneficial Interests. The following Holders of Claims shall be entitled to distributions as beneficiaries of the Liquidating Trust (collectively, the "Beneficiaries") as set forth below and in the Plan:

- (a) Holders of Allowed DIP Claims;
- (b) Holders of Allowed Administrative Claims;
- (c) Holders of Allowed Other Secured Claims;
- (d) Holders of Allowed Other Priority Claims;
- (e) Holders of Allowed Term Loan Adequate Protection Claims;
- (f) the Holder of the SOA Adequate Protection Claim;
- (g) Holders of Allowed Term Loan Secured Claims;
- (h) Holders of Allowed Intermediation Secured Claims;
- (i) Holders of Allowed Term Loan Deficiency Claims;
- (j) the Holder of the Intermediation Deficiency Claim;
- (k) Holders of Allowed General Unsecured Claims that have made the Distribution Proceeds Election;
- (l) the Holder of the Allowed Subordinated Remaining Volume Claim; and
- (m) Holders of Allowed Interests in PES Energy and each PES Ultimate Interests.

5.2 Interest Beneficial Only. Ownership of a beneficial interest in the Liquidating Trust shall not entitle any Beneficiary to any title in or to the Liquidating Trust Assets or to any right to call for a partition or division of the Liquidating Trust Assets or to require an accounting.

5.3 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Liquidating Trust shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Liquidating Trust by the Liquidating Trust Board, which may be the Register.

5.4 Exemption from Registration. The parties hereto intend that the rights of the holders of the beneficial interests arising under this Liquidating Trust Agreement shall not be “securities” under applicable laws, but none of the parties hereto represents or warrants that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemption from registration provided by section 1145 of the Bankruptcy Code and by other applicable law to apply to their issuance under the Plan.

5.5 Transfers of Beneficial Interests. The Liquidating Trust Board, after consultation with counsel, shall establish procedures to govern the registration and transfer of beneficial interests (such procedures, a “Permitted Transfer”). Once such procedures have been established, the Liquidating Trust Board shall notify all holders of beneficial interests of such

procedures. Notwithstanding the foregoing, a transfer of a beneficial interest shall be not be permitted by the Liquidating Trust Board if such transfer would be contrary to maintaining the Liquidating Trust as a liquidating trust for federal income tax purposes in accordance with Treasury Regulation § 301.7701-4(d) and as one or more “grantor trusts” subject to the provisions of Chapter 1, Subchapter J, Part I, Subpart E of the IRC.

5.6 Absolute Owners. The Liquidating Trust Board may deem and treat the persons who are Beneficiaries (as determined in accordance with the Plan) as the absolute owners of the beneficial interests in the Liquidating Trust for the purpose of receiving distributions and payments thereof, or on account thereof, and for all other purposes whatsoever. Unless the Liquidating Trust Board receives actual written notice of a Permitted Transfer from the duly authorized transferee not less than thirty (30) days prior to a distribution made pursuant to the terms of this Agreement, and subject to the applicable provisions of Bankruptcy Rule 3001(e), the Liquidating Trust Board shall have no duty or obligation to make or direct any distributions or payments to such transferee of a Permitted Transfer.

5.7 Change of Address. A Beneficiary may, after the Effective Date of the Plan, select an alternative mailing address by notifying the Liquidating Trust in writing of such alternative Distribution Address. Absent such notice, the Liquidating Trust Board shall not recognize any such change of address. Such notification shall be effective only upon receipt by the Liquidating Trust Board.

5.8 Effect of Death, Dissolution, Incapacity or Bankruptcy of Beneficiary. The death, dissolution, incapacity, or bankruptcy of a Beneficiary during the term of the Liquidating Trust shall not operate to terminate the Liquidating Trust during the term of the Liquidating Trust nor shall it entitle the representative or creditors of the deceased, dissolved, incapacitated, or bankrupt Beneficiary to an accounting or to take any action in any court or elsewhere for the distribution of the Liquidating Trust Assets or for a partition thereof, nor shall it otherwise affect the rights and obligations of the Beneficiary under this Agreement or in the Liquidating Trust.

5.9 Standing. Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, a Beneficiary does not have standing to direct the Liquidating Trust Board to do or not to do any act or to institute any action or proceeding at law or in equity against any party (other than against the Liquidating Trust Board to the extent provided in this Agreement) with respect to the Liquidating Trust Assets.

5.10 Requirement of Undertaking. A Liquidating Trustee may request the Bankruptcy Court to require, in any suit for the enforcement of any right or remedy under this Agreement, or in any suit against a Liquidating Trustee for any action taken or omitted by it as a Liquidating Trustee, that the filing party litigant in such suit pay the costs of such suit, including reasonable attorneys' fees, against any party litigant in such suit; *provided, however,* that the provisions of this Section 5.10 shall not apply to any suit by a Liquidating Trustee.

ARTICLE VI DISTRIBUTIONS

6.1 Distributions to Beneficiaries from Liquidating Trust Assets. All payments to

be made by the Liquidating Trust to any Beneficiary shall be made only in accordance with the Plan, the Confirmation Order, and this Agreement and from the Liquidating Trust Assets, and only to the extent that the Liquidating Trust has sufficient Liquidating Trust Assets (or income and proceeds realized from the Liquidating Trust Assets, including in applicable Distribution Reserve Accounts) to make such payments in accordance with and to the extent provided for in the Plan, the Confirmation Order, and this Agreement.

6.2 Distribution Procedures.

(a) The Liquidating Trust Board shall make distributions to Holders of Allowed Administrative Claims, Holders of Allowed Other Secured Claims, and Holders of Allowed Other Priority Claims, to the extent such Claims were not previously satisfied pursuant to the Plan, in accordance with the Plan as soon as practicable after each such Claim becomes an Allowed Claim (or the date that such Claim becomes due and payable, to the extent applicable, if later).

(b) The Liquidating Trust Board shall make distributions to Holders of Allowed DIP Claims as soon as practicable and until the DIP Claims are paid in full in cash, from the General Account and all other Liquidating Trust Assets other than (i) amounts held in the Disputed Claims Reserve; (ii) amounts required to be held in the Wind-Down Reserve; and (iii) prior to the repayment of the Allowed Intermediation Secured Claims, with respect to June 21 Business Interruption Insurance Proceeds constituting Disputed Priority June 21 Insurance Proceeds or Intermediation Priority Collateral, amounts in excess of \$25 million and; provided that the holders of DIP Claims may decline such distributions (and, for the avoidance of doubt, so declining distributions shall not reduce the DIP Claims or prejudice the rights of the holders of DIP Claims to receive future Distribution Proceeds.)

(c) The Liquidating Trust Board shall make distributions to Holders of Allowed Existing Term Loan Adequate Protection Claims as soon as practicable and until the Existing Term Loan Adequate Protection Claims are paid in full in cash, from the General Account and all other Liquidating Trust Assets other than (i) amounts held in the Disputed Claims Reserve; (ii) amounts required to be held in the Wind-Down Reserve; and (iii) prior to the repayment of the Allowed Intermediation Secured Claims, Disputed Priority June 21 Insurance Proceeds, Intermediation Priority Collateral, or SOA Separate Assets and Collateral; *provided* that the holders of Existing Term Loan Adequate Protection Claims may decline such distributions (and, for the avoidance of doubt, so declining distributions shall not reduce the Existing Term Loan Adequate Protection Claims or prejudice the rights of the holders of Existing Term Loan Adequate Protection Claims to receive future Distribution Proceeds).

(d) The Liquidating Trust Board shall make distributions to the Holders of Allowed Term Loan Secured Claims, in accordance with the terms of the Plan, as soon as practicable and until the Allowed Term Loan Secured Claims are paid in full in cash, from the General Account and all other Liquidating Trust Assets other than from (i) amounts held in the Disputed Claims Reserve; (ii) amounts required to be held in the Wind-Down Reserve; and (iii) prior to the repayment of the Allowed Intermediation Secured Claims in full, Disputed Priority June 21 Insurance Proceeds; *provided*, that notwithstanding any dispute, if all Allowed DIP Claims are paid in full in cash on the Effective Date, the following shall be distributed to

Allowed Term Loan Secured Claims from June 21 Business Interruption Insurance Proceeds (other than Encumbrance Dispute June 21 Insurance Proceeds): \$25 million plus the Insurance Recovery Surcharge (if any); (iv) amounts used to repay DIP Claims in accordance with Section 6.2(b) *plus*, at any time, upon the determination of a majority of the Term Loan Designees and the provision of [•] days' notice, any amounts held in the Wind-Down Reserve that constitute Term Loan Priority Collateral.

(e) The Liquidating Trust Board shall make distributions to Holders of the SOA Adequate Protection Claim (if any) exclusively from the SOA Adequate Protection Escrow Account as soon as practicable following Allowance thereof in an amount not to exceed 45% of the Proceeds of the Catalyst Assets.

(f) The Liquidating Trust Board shall make distributions to Holders of Allowed Intermediation Secured Claims, in accordance with the terms of the Plan and subject to the Insurance Recovery Surcharge, as soon as practicable and until the Allowed Intermediation Secured Claims are paid in full, from (x) all Intermediation Priority Collateral (or the proceeds therefrom); (y) SOA Separate Assets and Collateral (or the proceeds therefrom); and (z) after the repayment of the Allowed Term Loan Secured Claims in full, the General Account and other Liquidating Trust Assets other than from: (i) amounts held in the Disputed Claims Reserve; (ii) amounts required to be held in the Wind-Down Reserve; and (iii) amounts used to repay DIP Claims in accordance with Section 6.2(b). Holders of Allowed Intermediation Secured Claims shall be paid by wire.

(g) The Liquidating Trust Board shall make distributions, on a pro rata basis, to Holders of Allowed Term Loan Deficiency Claims, Allowed Intermediation Deficiency Claims and Allowed General Unsecured Claims that have made the Distribution Proceeds Election in accordance with the terms of the Plan, after the repayment of Allowed Term Loan Claims and Allowed Intermediation Secured Claims in full, from the General Account and other Liquidating Trust Assets other than from: (i) amounts held in the Disputed Claims Reserve; (ii) amounts required to be held in the Wind-Down Reserve; and (iii) amounts used to repay DIP Claims in accordance with Section 6.2(b).

(h) The Liquidating Trust Board shall make distributions to the Holder of the Allowed Subordinated Remaining Volume Claim pursuant to the Plan, after the repayment of all Holders of Allowed Intermediation Claims, Allowed Term Loan Claims and Allowed General Unsecured Claims that have made the Distribution Proceeds Election, in full, pursuant to the Plan, from all of the Liquidating Trust Assets other than from: (i) amounts held in the Disputed Claims Reserve; (ii) amounts required to be held in the Wind-Down Reserve; and (iii) amounts used to repay DIP Claims in accordance with Section 6.2(b).

(i) The Liquidating Trust Board shall make distributions to Holders of Allowed Interests in PES Energy and each PES Ultimate Interests pursuant to the Plan and, after the repayment to the Holder of the Allowed Subordinated Remaining Volume Claim in full, from all of the Liquidating Trust Assets other than from: (i) amounts held in the Disputed Claims Reserve; (ii) amounts required to be held in the Wind-Down Reserve; and (iii) amounts used to repay DIP Claims in accordance with Section 6.2(b).

6.3 Distributions; Withholding. The Liquidating Trust Board shall make distributions to Holders of Allowed Claims in accordance with the Plan and section 6.2 hereto at such times and in such amounts as the Liquidating Trust Board may determine in its sole discretion; *provided* that the Liquidating Trust Board shall retain and adjust from time to time the funds placed in the Wind-Down Reserve in an amount determined by the Liquidating Trust Board (a) as is reasonably necessary to meet contingent liabilities to maintain the value of the Liquidating Trust Assets during the term of the Liquidating Trust; (b) to 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, and disbursing agent fees and expenses) of the Liquidating Trustees and the Delaware Trustee in connection with the performance of its duties in connection with this Agreement; and (c) to satisfy Liquidating Trust Obligations and all other liabilities and claims of creditors of the Liquidating Trust incurred or assumed in respect of the Liquidating Trust (or to which the Liquidating Trust Assets are otherwise subject), including Restructuring Expenses (which shall be paid solely from Term Loan Priority Collateral), in accordance with the Plan, the Confirmation Order, and this Agreement. All such distributions shall be made as provided, and subject to any withholding or reserve, in this Agreement, the Plan, or the Confirmation Order. The Liquidating Trust Board may withhold from amounts distributable to any Beneficiary any and all amounts, determined in the Liquidating Trust Board's sole discretion, to be required by any law, regulation, rule, ruling, directive, or other governmental requirement.

6.4 No Distribution Pending Allowance. No payment or distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim, except for distributions into a Disputed Claims Reserve in accordance with the Plan, Confirmation Order, and this Agreement.

6.5 Distributions After Allowance. Distributions to each Holder of a Disputed Claim, to the extent that such Claim ultimately becomes an Allowed Claim, shall be made in accordance with the provisions of the Plan governing the Class of Claims to which such Holder of a Claim belongs.

6.6 Undeliverable Distributions. If any Distribution is returned as undeliverable, the Liquidating Trust may, in its sole discretion (but with no obligation to do so), make such efforts to determine the current address of the holder of the Claim with respect to which the Distribution was made as the Liquidating Trust deems appropriate, but no Distribution to any holder shall be made unless and until the Liquidating Trust has determined the then-current address of the holder, at which time the Distribution to such holder shall be made to the holder without interest. Amounts in respect of any undeliverable Distributions made by the Liquidating Trust shall be returned to, and held in trust by, the Liquidating Trust until the Distributions are claimed or are deemed to be unclaimed property under section 347(b) of the Bankruptcy Code and the Plan at the expiration of six months from the date the distribution is made ("Unclaimed Property").

6.7 Unclaimed Property. In the event that any distribution to any Beneficiary becomes Unclaimed Property, such distributions will revert to the Liquidating Trust as an asset

of the Liquidating Trust; *provided* that, pursuant to the Plan, the Liquidating Trust Board shall not be required to make distributions of less than \$100.00 (a “Minimum Distribution”) and if after administering all Liquidating Trust Assets and collecting all amounts which may be payable to and for the Beneficiaries, the amount held by the Liquidating Trust for the Beneficiaries is less than \$10,000.00, the Liquidating Trust Board, in its sole discretion, may donate the remaining funds to a charitable institution that is exempt from federal income tax pursuant to IRC Section 501(c)(3). Neither available Cash nor any Claim or any unclaimed property attributable to such Claim, shall escheat to any federal, state, or local government or other entity.

6.8 Time Bar to Cash Payments by Check. Checks issued by the Liquidating Trust on account of Allowed Claims shall be null and void if not negotiated within 90 days after the date of issuance thereof. Requests for the reissuance of any check that becomes null and void pursuant to the Plan and this Section 6.8 shall be made directly to the Liquidating Trust Board by the holder of the Allowed Claim to whom the check was originally issued. Any Claim in respect of such voided check shall be made in writing on or before the later of the first anniversary of the Effective Date of the Plan or the first anniversary of the date on which the Claim at issue became an Allowed Claim. After that date, all Claims in respect of void checks shall be discharged and forever barred and the proceeds of those checks shall revert in and become property of the Liquidating Trust as Unclaimed Property.

6.9 Withholding Taxes. Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from distributions hereunder and to the extent of knowledge and records available to the Liquidating Trust. All Beneficiaries shall be required to provide the Liquidating Trust Board with any information necessary in connection with the withholding of such taxes. In addition, all distributions under the Plan shall be net of the actual and reasonable costs of making such distributions.

6.10 Distributions on Non-Business Days. Any distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

6.11 No Distribution in Excess of Allowed Amount of Claim. Notwithstanding anything to the contrary in the Plan, no Beneficiary shall receive in respect of such Claims held by the Beneficiary any distribution in excess of the Allowed amount of such Claim, plus postpetition interest thereon to the extent allowed by the Plan. Upon a Beneficiary’s recovering the full amount of its Allowed Claim from another source, it thereafter shall no longer have any entitlement to receive distributions under the Plan.

6.12 Setoff and Recoupment. The Liquidating Trust may, but shall not be required to, setoff against, or recoup from, any Claim and the Distribution to be made pursuant to the Plan in respect thereof, any claims or defenses of any nature whatsoever that the Debtor, the Estates or the Liquidating 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 Debtor, the Estates or the Liquidating Trust of any claim, defense, right of setoff, or recoupment that any of them may have against the holder of any Claim.

6.13 Objections to Distributions. The Intermediation Provider shall have the right to object to any Distribution by the Liquidating Trust on the basis that (i) the allocation of proceeds

from the Sale Transaction to the Intermediation Priority Collateral and SOA Separate Assets and Collateral was insufficient compensate the Intermediation Provider for the value of the Intermediation Priority Collateral and SOA Separate Assets and Collateral, and (ii) a distribution to any Allowed Claim to the extent that such Distribution improperly includes Intermediation Priority Collateral and SOA Separate Assets and Collateral, or the proceeds of either Intermediation Priority Collateral or SOA Separate Assets and Collateral. The UCC Ombudsman shall have the right to object, subject (in the case of any expenditure of Term Loan Priority Collateral) to the UCC Ombudsman Budget, to (x) any Distribution by the Liquidation Trust on the basis that such distribution improperly includes Encumbrance Dispute June 21 Insurance Proceeds (including such Encumbrance Dispute June 21 Insurance Proceeds that have been released to the GUC Distribution Reserve) or (y) the Allowance of any Term Loan Adequate Protection Claim.

6.14 Disputed Priority June 21 Insurance Proceeds. Upon the receipt of any Disputed Priority June 21 Insurance Proceeds, the Liquidating Trust shall segregate and hold such funds strictly in accordance with the Final DIP Order, until such time as the relative priority of Term Loan Secured Claims and Intermediation Secured Claims has been determined by Final Order or by agreement of the parties to Adv. Pro. No. 19-50282 (KG).

ARTICLE VII TAXES

7.1 Income Tax Status. Consistent with Revenue Procedure 94-45, 1994-2 C. B. 684, the Liquidating Trust shall be treated as a liquidating trust pursuant to Treasury Regulation Section 301.7701-4(d) and as a grantor trust pursuant to IRC Sections 671-677. As such, the Beneficiaries will be treated as both the grantors and the deemed owners of the Liquidating Trust, except with respect to the Disputed Claims Reserves. Any items of income, deduction, credit, and loss of the Liquidating Trust, except with respect to the Disputed Claims Reserves, shall be allocated for federal income tax purposes to the Beneficiaries.

7.2 Tax Treatment of Transfer of Assets to the Liquidating Trust. For all federal income tax purposes, all parties (including, without limitation, the Debtors, the Liquidating Trustees, and the Beneficiaries) shall treat the transfer of Liquidating Trust Assets to the Liquidating Trust, except with respect to the Disputed Claims Reserves, as set forth in Sections 1.2, 1.3 and 1.4 of this Agreement and in accordance with the Plan, as a transfer of such Liquidating Trust Assets (net of any applicable liabilities) to the Beneficiaries (to the extent of the value of their respective interests in such Liquidating Trust Assets) and a transfer of such Liquidating Trust Assets (net of any applicable liabilities) by the Beneficiaries (to the extent of the value of their respective interests in such Liquidating Trust Assets) to the Liquidating Trust.

7.3 Tax Returns. In accordance with Treasury Regulation Section 1.671-4(a), the Liquidating Trust Board shall file with the IRS annual tax returns for the Liquidating Trust as a grantor trust on IRS Form 1041. In addition, the Liquidating Trust Board shall file in a timely manner such other tax returns, including any state and local tax returns, as are required by applicable law and pay any taxes shown as due thereon. The Liquidating Trust Board shall send to each Holder of a beneficial interest appearing on the Register who is a Minimum Distributee

during such year, a separate statement setting forth such Holder's share of items of income, gain, loss, deduction, or credit and each such Holder shall report such items on their federal income tax returns; *provided, however,* that no such statement need be sent to any Beneficiaries that are not expected to receive any distribution from the Liquidating Trust as a Minimum Distributee. The Liquidating Trust Board may provide each such Holder of a beneficial interest with a copy of the IRS Form 1041 for the Liquidating Trust (without attaching any other Holder's Schedule K-1 or other applicable information form) along with such Holder's Schedule K-1 or other applicable information form in order to satisfy the foregoing requirement.

7.4 The Liquidating Trust shall allocate the taxable income, gain, loss, deduction or credit of the Liquidating Trust with respect to each Holder of a beneficial interest to the extent required by applicable law.

7.5 Notwithstanding anything to the contrary herein, with respect to the Tax Refund Claims and the Excluded Tax Refund Asset (as such terms are defined in the Tax Refund Agreement), the Liquidating Trustees shall not take any position that is inconsistent with the intended tax treatment described in Sections 1 and 2 of the Tax Refund Agreement whether on a Tax Return or in a Tax audit, examination, or other proceeding, inconsistent with such intended tax treatment, except as otherwise required by applicable Law.

7.6 Withholding of Taxes and Reporting Related to Liquidating Trust Operations. In connection with the Plan and all distributions thereunder, the Liquidating Trust Board shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all distributions thereunder shall be subject to any such withholding and reporting requirements. The Liquidating Trust Board is authorized by the Plan to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. The Liquidating Trust Board may require any Beneficiary to furnish to the Liquidating Trust Board its social security number or employer or taxpayer identification number as assigned by the IRS and the Liquidating Trust Board may condition any distribution to any Beneficiary upon the receipt of such identification number. The Debtors shall provide a copy of IRS form W-9 and request other applicable withholding information and give notice (in form reasonably acceptable to Liquidating Trust Board) of this provision, its requirements and this Agreement to Beneficiaries, together with the notice of the Effective Date of the Plan.

7.7 Valuations. As soon as possible after the Effective Date, the Liquidating Trust Board, in consultation with any financial advisors it deems appropriate, shall make a good faith valuation of the Liquidating Trust Assets, and such valuation shall be used consistently by all parties (including, without limitation, the Liquidating Trust and the Beneficiaries) for all federal income tax purposes; *provided, however,* that such valuation shall not be binding on the Liquidating Trust Board or any other party for any other purposes, including without limitation in regard to the liquidation of the Trust Assets, whether by disposition, liquidation, litigation, settlement, or otherwise. The Liquidating Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any governmental unit.

7.8 Treatment of Disputed Claims Reserves. The Liquidating Trust shall file all

income tax returns with respect to any income attributable to the Disputed Claims Reserves and shall pay the federal, state, and local income taxes attributable to the Disputed Claims Reserves, based on the items of income, deduction, credit, or loss allocable thereto. All Beneficiaries shall report, for income tax purposes, consistent with the foregoing. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserves is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (i) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (ii) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the Liquidating Trust as a result of the resolutions of such Disputed Claims.

7.9 Expedited Determination of Taxes. The Liquidating Trust may request an expedited determination of taxes of the Debtors and of the Liquidating Trust (and, at Plan Sponsor's request, taxes of the Acquired Reorganized Debtors), including the Disputed Claims Reserves, under Bankruptcy Code Section 505(b) for all returns filed for, or on behalf of, the Debtors and the Liquidating Trust (or, if applicable pursuant to Plan Sponsor's request, the Acquired Reorganized Debtors) for all taxable periods through the termination of the Liquidating Trust.

ARTICLE VIII TERMINATION OF LIQUIDATING TRUST

8.1 Termination of Liquidating Trust. The Liquidating Trustees shall be discharged and the Liquidating Trust shall be terminated, at such time as: (A) (i) all of the Liquidating Trust Assets have been liquidated and all Liquidating Trust Obligations have been fulfilled, (ii) all duties and obligations of the Liquidating Trust Board hereunder have been fulfilled, (iii) all distributions required to be made by the Liquidating Trust Board under the Plan and this Agreement have been made, and (iv) the Chapter 11 Cases of the Debtors have been closed; or (B) the Liquidating Trust Board unanimously determines in its reasonable judgment that the Liquidating Trust lacks sufficient assets and financial resources, after reasonable collection efforts, to complete the duties and powers assigned to him or her under the Plan, the Confirmation Order and/or this Agreement.

8.2 Maximum Term. The term of the Liquidating Trust shall end no later than the fifth (5th) anniversary of the Effective Date of the Plan (the "Initial Liquidating Trust Term"); *provided* that the Liquidating Trust Board shall, if the pursuit of recoveries on the Liquidating Trust's (and the Debtors') claims under the Business Interruption and Property Damage Insurance Policies and my, subject to the further provisions of this Section 8.2, extend the term of the Liquidating Trust for such additional period of time as is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets as follows: within the six (6) month period prior to the termination of the Initial Liquidating Trust Term, the Liquidating Trust may file a notice of intent to extend the term of the Liquidating Trust with the Bankruptcy Court and upon approval of the Bankruptcy Court of such extension, the term of the Liquidating Trust shall be so extended. The Liquidating 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 Liquidating Trust (all such extensions, collectively, the "Supplemental Liquidating Trust Term"). Notwithstanding anything to the contrary in this Section 8.2, however,

Supplemental Liquidating Trust Term may not exceed three (3) years without a favorable letter ruling from the IRS that any further extension would not adversely affect the status of the Liquidating Trust as a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) for federal income tax purposes. In addition, the provisions of this Section 8.2 shall be without prejudice to the right of any party in interest under Bankruptcy Code Section 1109 to petition the Bankruptcy Court, for cause shown, to shorten the Supplemental Liquidating Trust Term.

8.3 Events Upon End of Term Termination. At the conclusion of the term of the Liquidating Trust, the Liquidating Trust Board shall distribute the remaining Liquidating Trust Assets, if any, to the Beneficiaries (or charity), in accordance with the Plan, the Confirmation Order, and this Agreement.

8.4 Winding Up and Discharge of the Liquidating Trustees. For the purposes of winding up the affairs of the Liquidating Trust at the conclusion of its term, each Liquidating Trustees shall continue to act as Liquidating Trustee until its duties under this Agreement have been fully discharged or its role as a Liquidating Trustee is otherwise terminated under this Agreement and the Plan. Upon a motion by a Liquidating Trustee, the Bankruptcy Court may enter an order relieving such Liquidating Trustee, its agents, and employees of any further duties, discharging such Liquidating Trustee and releasing its bond, if any.

ARTICLE IX

DELAWARE TRUSTEE

9.1 Delaware Trustee.

(a) The Delaware Trustee shall constitute one of the trustees of the Liquidating Trust for the sole and limited purpose of Section 3807(a) of the Delaware Act, shall have only the duties (including fiduciary duties), rights, obligations and liabilities specifically provided for in this Agreement and the Delaware Act, and shall have no implied duties (including fiduciary duties), rights, obligations or liabilities with respect to the business and affairs of the Liquidating Trust. The Delaware Trustee shall not participate in any decisions relating to, or possess any authority independently to manage or control, the business and affairs of the Liquidating Trust. The Delaware Trustee may, and hereby is authorized to, take such action or refrain from taking such action under this Agreement as may be directed in writing by the Liquidating Trust Board from time to time; provided, however, that the Delaware Trustee shall not be required to take or refrain from taking any such action if it shall have determined, or shall have been advised by counsel, that such action is reasonably likely to subject the Delaware Trustee to personal liability or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Liquidating Trust or the Delaware Trustee is a party or is otherwise contrary to law.

(b) So long as required by the Delaware Act, there shall be one (1) Delaware Trustee who or which shall be (i) a natural person who is a resident of the State of Delaware or (ii) if not a natural person, an entity that has its principal place of business in the State of Delaware, otherwise meets the requirements of applicable law and shall act through one or more

persons authorized to bind such entity.

(c) The Delaware Trustee may resign or be removed by the Liquidating Trust Board at any time and, if at any time the Delaware Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately, by giving written notice thereof to the Liquidating Trust Board. If the Delaware Trustee shall resign or be removed, the Liquidating Trust Board shall promptly appoint a successor Delaware Trustee, and such successor Delaware Trustee and the resigning or removed Delaware Trustee shall execute and deliver an instrument to effect such change in identity of the Delaware Trustee, and thereupon the resignation of the resigning or removed Delaware Trustee shall become effective and the successor Delaware Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and obligations of the predecessor Delaware Trustee. If no successor Delaware Trustee shall have been so appointed and have accepted appointment within forty-five (45) days after the giving of a notice of resignation, a resigning Delaware Trustee may, at the expense of the Liquidating Trust Board, petition any court of competent jurisdiction for the appointment of a successor Delaware Trustee. Upon the appointment of a successor Delaware Trustee, such successor Delaware Trustee shall file a certificate of amendment to the Certificate of Trust of the Liquidating Trust in accordance with Section 3810 of the Delaware Act.

9.2 Limitation of Delaware Trustee Liability. The Delaware Trustee shall not be liable for the acts or omissions of the Liquidating Trust, any Liquidating Trustee or any other person or entity, nor shall the Delaware Trustee be liable for supervising or monitoring the performance of the duties of the Liquidating Trustees or the Liquidating Trust or of any other person or entity under this Agreement or any related document. The Delaware Trustee shall not be personally liable under any circumstances, except for its own gross negligence, fraud, or willful misconduct. In particular, but not by way of limitation:

(a) The Delaware Trustee shall not be personally liable for any error or judgment made by a responsible officer or other authorized officer of the Delaware Trustee in good faith;

(b) No provision of this Agreement shall require the Delaware Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its duties hereunder;

(c) Under no circumstance shall the Delaware Trustee, in its individual capacity or in its capacity as Delaware Trustee, or any member, partner, shareholder, director, officer, employee, agent, affiliate or advisor of the Delaware Trustee or their respective affiliates be personally liable for any representation, warranty, covenant, agreement, liability or indebtedness of the Liquidating Trust, as all such representations, warranties, covenants, agreements, liabilities or indebtedness of the Liquidating Trust are those of the Liquidating Trust as an entity;

(d) The recitals contained herein shall not be taken as the statements of the Delaware Trustee, and the Delaware Trustee does not assume any responsibility for their correctness. The Delaware Trustee shall not be personally responsible for or in respect of, and

the Delaware Trustee makes no representations as to, the title to, or value or condition of, the property of the Liquidating Trust or any part thereof, including the Liquidating Trust Assets, nor as to the validity or sufficiency of this Agreement or any related certificate, instrument or other document;

(e) The Delaware Trustee may conclusively rely and shall be fully protected, and shall incur no liability to anyone, in acting or refraining from acting in good faith and in reliance upon any signature, instrument, notice, resolution, request, instruction, direction, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. The Delaware Trustee may accept a certified copy of a resolution of any governing body of any person as conclusive evidence that such resolution has been duly adopted by such person and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein or whenever the Delaware Trustee shall deem it desirable that a fact or matter be proved or established prior to taking, suffering or omitting any action hereunder (including, direction by the Liquidating Trust Board with respect to such action), the Delaware Trustee may for all purposes hereof rely on a certificate, signed by any officer of the party delivering the certificate or, in the case of the Liquidating Trust Board, signed by a Liquidating Trustee, as to such fact or matter, and such certificate shall constitute full protection to the Delaware Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(f) In the exercise or administration of its duties hereunder, the Delaware Trustee (A) may act directly or through agents or attorneys pursuant to agreements entered into with any of them, and the Delaware Trustee shall not be liable for the default or misconduct of such agents or attorneys if such agents or attorneys shall have been selected by the Delaware Trustee in good faith and (B) may consult with counsel, accountants and other skilled persons to be selected in good faith and employed by it, and it shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons; and

(g) In accepting and performing its duties hereunder the Delaware Trustee acts solely as trustee hereunder and not in its individual capacity, and all persons having any claim against the Delaware Trustee or the Liquidating Trust by reason of the transactions contemplated by this Agreement shall look only to the Liquidating Trust Assets for payment or satisfaction thereof.

9.3 Compensation and Expenses of Delaware Trustee. The Delaware Trustee shall be entitled to receive, and the Liquidating Trust shall pay the Delaware Trustee, compensation as set forth in a written agreement between the Liquidating Trustees and the Delaware Trustee. The Delaware Trustee and any director, officer, affiliate, employee, employer, professional, agent or representative of the Delaware Trustee shall be advanced expenses, defended, held harmless and indemnified from time to time by the Liquidating Trust against any and all losses, claims, costs, expenses and liabilities to which such indemnified parties may be subject arising hereunder or in connection herewith; *provided, however,* that the indemnification obligations arising pursuant to this Section 9.3 shall indemnify neither the Delaware Trustee nor any director, officer, affiliate, employee, employer, professional, agent or

representative of the Delaware Trustee for any actions taken by such indemnified parties which constitute gross negligence, fraud, or willful misconduct. Satisfaction of any obligation of the Liquidating Trust arising pursuant to the terms of this Section 9.3 shall be payable only from the Liquidating Trust Assets and such right to payment shall be prior and superior to the Beneficiaries' rights to receive distributions from the Liquidating Trust. The provisions of this Section 9.3 shall survive the termination of this Agreement and the removal or resignation of any Delaware Trustee.

ARTICLE X MISCELLANEOUS PROVISIONS

10.1 Amendments.

(a) The Liquidating Trust Board, upon unanimous consent, may direct the Liquidating Trustees, or any of them, to execute a supplement or amendment hereto for the purpose of adding provisions to, or changing or eliminating provisions of, this Agreement, or amendments thereto, as specified in such vote or consent; *provided, however,* that no such supplement or amendment shall (i) require any Beneficiary to furnish or advance funds to the Liquidating Trust Board or shall entail any additional personal liability or the surrender of any individual right on the part of any Beneficiary except with the written consent of such Beneficiary; (ii) without the prior written consent of the holder of an Allowed Administrative Claim, Allowed Other Secured Claim, Allowed Other Priority Claim, Allowed Term Loan Secured Claim, Allowed Intermediation Secured Claim, Allowed Subordinated Remaining Volume Claim, or Allowed Interests in PES Energy and PES Ultimate disproportionately affect, change or modify the right and obligations with respect to such Claim, including, without limitation, provisions for payment of such Claim; (iii) without the prior written consent of the Delaware Trustee, modify, supplement or amend any provisions of this Agreement that affect the Delaware Trustee's duties, obligations, rights, privileges or protections hereunder; or (iv) affect, change, modify, or amend whatsoever any provisions of this Agreement that affect the June 21 Business Insurance Proceeds without unanimous approval of such supplement or amendment by the Business Insurance Litigation Committee. In no event shall this Agreement be amended so as to be inconsistent with the Plan, the Tax Refund Agreement, the Litigation Control Agreement, or the Confirmation Order.

(b) If, in the reasonable opinion of the Liquidating Trust Board, any document required to be executed pursuant to the terms of Section 10.1 hereof materially and adversely affects any immunity or indemnity in favor of the Liquidating Trustees under this Agreement, the Liquidating Trustees may in their discretion decline to execute such document.

(c) A copy of each amendment or supplement (or a fair summary thereof) shall be furnished to the Beneficiaries promptly after the execution thereof, except that with respect to any proposed amendment or supplement for which the consent of certain Beneficiaries is required pursuant to Section 10.1 hereof, the form of such proposed supplement or amendment (or a fair summary thereof) shall be furnished to the applicable Beneficiaries prior to the Liquidating Trust Board's seeking the approval thereof by vote or consent of such necessary parties.

(d) Upon the execution of any declaration of amendment or supplement, this Agreement shall be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Agreement of the Liquidating Trustees and the Beneficiaries shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such amendment or supplement shall be thereby deemed to be part of the terms and conditions of this Agreement for any and all purposes.

10.2 Confidentiality. The Liquidating Trustees and each successor Liquidating Trustee and each officer, representative agent, attorney, accountant, appraiser, expert witnesses, insurance adjusters, or any and all other persons employed to advise or assist in the administration, prosecution and distribution of the Liquidating Trust Assets, shall, during the period that they serve in such capacity under this Liquidating Trust Agreement and following either the termination of this Liquidating Trust Agreement or such individual's removal, incapacity, or resignation hereunder, hold strictly confidential any material, non-public information of or pertaining to any Person to which any of the Liquidating Trust Assets relates 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 Liquidating Trust Board reasonably promptly (unless prohibited by law) so that the Liquidating Trust Board may seek an appropriate protective order or other appropriate remedy or, in its discretion, waive compliance with the terms of this Section 10.2. In the event that no such protective order or other remedy is obtained, or that the Liquidating Trust Board waives compliance with the terms of this Section 10.2, and that 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 Liquidating Trust Committee notice (unless prohibited by law) of the Information to be disclosed as far in advance as practicable and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information. Notwithstanding the foregoing, the Term Loan Designees shall be permitted to make any disclosure of material non-public information if, had such information been provided by a Loan Party (as defined in the Term Loan Credit Agreement), such disclosure would have been permitted to the Administrative Agent or a Lender under the confidentiality provisions of the Term Loan Credit Agreement..

10.3 Waiver. No failure by the Liquidating Trust, a Liquidating Trustee or the Delaware 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.

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

10.5 Reservation of Rights. Nothing contained in this Agreement shall prevent any Liquidating Trustee from exercising (or omitting to exercise) or seeking (or omitting to seek) to enforce or protect any of its rights as an individual creditor or party in interest in the Chapter 11

Cases.

10.6 No Bond Required. Notwithstanding any state law to the contrary, the Liquidating Trustees (including any successor Liquidating Trustee) and the Delaware Trustee (including any successor Delaware Trustee) shall be exempt from giving any bond or other security in any jurisdiction.

10.7 Irrevocability. This Agreement and the Liquidating Trust formed hereunder shall be irrevocable, except as otherwise expressly provided in this Agreement.

10.8 Relationship to the Plan. The principal purpose of this Agreement is to aid in the implementation of the Plan and, therefore, this Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In the event that any provision of this Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order, the provisions of the Plan or the Confirmation Order, as applicable, shall control. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, the Plan or the Confirmation Order, and consistent with Article IX.B. of the Plan, the Liquidating Trust Board shall have the right to review and, where appropriate, object to any and all Claims, and, subject to the terms of the Plan, supervise and administer the resolution, settlement and payment of Claims, and the distribution to the Beneficiaries and creditors of the Liquidating Trust, in accordance with this Agreement, the Plan, and the Confirmation Order.

10.9 Division of Liquidating Trust. Under no circumstances shall the Liquidating Trust Board have the right or power to divide the Liquidating Trust unless authorized to do so by the Bankruptcy Court.

10.10 Applicable Law. The Liquidating Trust is made in the State of Delaware, and the Liquidating Trust and this Agreement, and the rights and obligations of the Liquidating Trustees is to be governed by and construed and administered according to the laws of the State of Delaware; *provided, however,* that, except as expressly provided in this Agreement, there shall not be applicable to the Liquidating Trust or this Agreement (a) the provisions of Section 3540 of the Delaware Act; or (b) any provisions of the laws (statutory or common) of the State of Delaware pertaining to trusts which relate to or regulate: (i) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges; (ii) affirmative requirements to post bonds for trustees, officers, agents, or employees of a trust; (iii) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property; (iv) fees or other sums payable to trustees, officers, agents or employees of a trust; (v) the allocation of receipts and expenditures to income or principal; (vi) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding of trust assets; or (vii) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees, which are inconsistent with the limitations or liabilities or authorities and powers of the Liquidating Trustees set forth or referenced in this Agreement.

10.11 Retention of Jurisdiction. Notwithstanding the Effective Date of the Plan, and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction

over the Liquidating Trust after the Effective Date of the Plan, including, without limitation, jurisdiction to resolve any and all controversies, suits, and issues that may arise in connection therewith, including, without limitation, this Agreement, or any entity's obligations incurred in connection herewith, including without limitation, any action against the Liquidating Trustees or any professional retained by the Liquidating Trustees. Each party to this Agreement and each beneficiary of the Liquidating Trust hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret, or construe any provision of this Agreement or of any other agreement or document delivered in connection with this 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 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 Agreement.

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

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

10.14 Notices. All notices, requests, demands, consents, and other communication hereunder shall be in writing and shall be deemed to have been duly given to a person, if delivered in person or if sent by overnight mail, registered mail, certified mail or regular mail, with postage prepaid, to the following addresses:

If to the Liquidating Trust Board:

[•]
c/o [•]
[•]
Email: [•]

If to the ICBCS Designee

ICBCS
20 Gresham Street
London EC2V 7JE,
United Kingdom
Attn: Steve Branchflower
Paul Chelsom

E-Mail: Steve.Branchflower@icbcstandard.com
Paul.Chelsom@icbcstandard.com

-and-

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attn: David N. Griffiths
Bryan R. Podzus
Phone: (212) 310-8000
E-Mail: david.griffiths@weil.com
bryan.podzus@weil.com

If to the Delaware Trustee:

[•]
c/o [•]
[•]
Email: [•]

If to a Beneficiary:

To the name and mailing address set forth in the Register with respect to such Beneficiary.

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

10.15 Integration. This Agreement, the Plan, and the Confirmation Order constitute the entire agreement with, by, and among the parties thereto, and there are no representations, warranties, covenants, or obligations except as set forth herein, in the Plan, and in the Confirmation Order. This 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 Agreement, the Plan, or Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Agreement. To the extent there is an inconsistency between the Plan and this Agreement, the Plan shall control.

10.16 Interpretation. The enumeration and Section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this 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 Agreement as a whole and not to any particular Section or subsection hereof unless the context requires otherwise. Any reference to the "Liquidating Trustees" shall be deemed to include a reference to the "Liquidating Trust" and any reference to the "Liquidating Trust" shall be deemed to include a reference to the "Liquidating Trustees" except for the references in Sections 3.1 and 3.2, and such other provisions in which the context otherwise requires.

10.17 Counterparts. This Agreement may be signed by the parties hereto in counterparts, which, when taken together, shall constitute one and the same document.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

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

PES Holdings, LLC

By: _____
Name: [•]
Title: [•]
[•]

The Liquidating Trustees

By: _____
Name: [•]

The Delaware Trustee

By: _____
Name: [•]

EXHIBIT A

Material Contracts of the Liquidating Trust

EXHIBIT G-1

**Redline of Exhibit G to
Exhibit G of the Third Plan Supplement**

LIQUIDATING TRUST AGREEMENT

This liquidating trust agreement (this “Agreement”) is made this [•]th day of [•], 2020 by and among PES Holdings, LLC and its affiliated debtors (together, with its successors or assigns, the “Debtors”), [•] as trustee, [•] as trustee, [•] as trustee, [•] as trustee, and [•] as trustee (collectively, the “Liquidating Trustees” and each, individually, a “Liquidating Trustee”), and [•], as Delaware Trustee (the “Delaware Trustee”), for the purpose of forming a statutory trust under and pursuant to the provisions of the Delaware Statutory Trust Act, 12 Del. C. §§ 3801, et seq. (as amended, the “Delaware Act”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan (as defined below).

RECITALS

WHEREAS, on July 21, 2019, each of the Debtors filed a voluntary Chapter 11 petition with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

WHEREAS, on [•], 2020, the Bankruptcy Court entered an order [Docket No. [•]] (the “Confirmation Order”) confirming the *Second Amended Joint Chapter 11 Plan of Reorganization of PES Holdings, LLC and Its Debtor Affiliates* (the “Plan”);

WHEREAS, the Plan contemplates, on the Effective Date of the Plan, (a) the formation of a liquidating trust (the “Liquidating Trust”) and the creation of the beneficial interests in the Liquidating Trust of the Beneficiaries identified herein and in accordance with the Plan, and (b) that the Liquidating Trust will (i) be vested with the Liquidating Trust Assets, to be liquidated and distributed to the Beneficiaries, and (ii) fulfill the Liquidating Trust Obligations, as set forth herein and in accordance with the Plan and the Confirmation Order;

WHEREAS, the Plan contemplates that, pursuant to Treasury Regulation Section 301.7701-4(d), the Liquidating Trust shall be created for the primary purpose of liquidating the Liquidating Trust Assets in an expeditious but orderly manner for the benefit of the Beneficiaries, 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 liquidating purpose of the Liquidating Trust; and

WHEREAS, the Liquidating Trust is intended to qualify as a “grantor trust” for U.S. federal income tax purposes, pursuant to Sections 671-677 of the Internal Revenue Code of 1986, as amended (the “IRC”), with the Beneficiaries to be treated as the grantors of the Liquidating Trust and deemed to be the owners of the Liquidating Trust Assets, and, consequently, the transfer of the Liquidating Trust Assets to the Liquidating Trust shall be treated as a deemed transfer of those assets from the Debtors and the Estates to the Beneficiaries (to the extent of the value of their respective interests in such assets) followed by a deemed transfer by such Beneficiaries (to the extent of the value of their respective interests in such assets) to the Liquidating Trust for federal income tax purposes.

NOW, THEREFORE, pursuant to the Plan and the Confirmation Order, in consideration of the mutual agreements of the parties contained herein, and for other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the parties hereby agree as follows:

ARTICLE I DECLARATION OF TRUST

1.1 Formation and Purpose of the Liquidating Trust. The Debtors and the Liquidating Trustees hereby form the Liquidating Trust as a statutory trust under the Delaware Act for the primary purpose of collecting, holding, liquidating, and distributing the Liquidating Trust Assets to the Beneficiaries in accordance with their respective entitlements under the Plan, the Confirmation Order, and applicable tax statutes, rules, and regulations, and in an expeditious but orderly manner, 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 liquidating purpose of the Liquidating Trust and the Plan. In particular, the Liquidating Trustees shall (a) make continuing efforts to collect and reduce the Liquidating Trust Assets to Cash, (b) fulfill the Liquidating Trust Obligations, (c) make timely distributions, including by transferring proceeds of Liquidating Trust Assets to any Distribution Reserve Account in accordance with the Plan and the Confirmation Order, and not unduly prolong the duration of the Liquidating Trust, and (d) take such steps as are reasonably necessary to accomplish such purpose, all as more fully provided in, and subject to the terms and provisions of, the Plan, the Confirmation Order and this Agreement. The Liquidating Trust shall also be entitled to exercise the rights of the Sellers pursuant to the Purchase Agreement, and any surviving obligations of the Plan Sponsor or the Acquired Reorganized Debtors to the Sellers shall be deemed obligations to the Liquidating Trust. Promptly following execution of this Agreement, the Liquidating Trustees shall cause an appropriate form of Certificate of Trust of the Liquidating Trust to be filed in the Office of the Secretary of State of the State of Delaware in accordance with the applicable provisions of the Delaware Act.

1.2 Declaration of Trust. In order to declare the terms and conditions hereof, and in consideration of the confirmation of the Plan, the Debtors, the Liquidating Trustees and the Delaware Trustee have executed this Agreement, which shall constitute the governing instrument of the Liquidating Trust, and, effective on the Effective Date of the Plan, the Debtors hereby absolutely and irrevocably transfer to the Liquidating Trust, all of the right, title, and interests of the Debtors in and to the Liquidating Trust Assets, to have and to hold unto the Liquidating Trust and its successors and assigns forever, under and subject to the terms of the Plan and the Confirmation Order, for the benefit of the Beneficiaries (to the extent of their respective legal entitlements) and their successors and assigns as provided for in this Agreement and in the Plan and Confirmation Order. The Debtors shall execute and deliver such other instruments of sale, transfer, conveyance, assignment and confirmation, and will cooperate and take such other actions as the Liquidating Trustees may deem reasonably necessary or desirable in order to more effectively transfer, convey and assign all rights, title and interests in and to the Liquidating Trust Assets to the Liquidating Trust. The Liquidating Trust hereby accepts and assumes from the Debtors, and shall pay, perform, and discharge when due, all of the Liquidating Trust Obligations. The Liquidating 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 any of the Trustees or the Beneficiaries for any purpose be, or be deemed to be or be treated in any way whatsoever to be, liable or responsible hereunder as

partners or joint venturers. The relationship of the Beneficiaries to the Liquidating Trustees shall be solely that of beneficiaries of a trust and shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Liquidating Trust Agreement.

1.3 Vesting of Liquidating Trust Assets. On the Effective Date of the Plan, pursuant to the terms of the Plan, (a) each of the assets and Interest of the Non-Acquired Reorganized Debtors that are not transferred under the Purchase Agreement (including, for the avoidance of doubt, Proceeds from the Sale Transaction not actually distributed on the Effective Date); and (b) each of the Excluded Assets, including, but not limited, to (i) any Proceeds arising from, or otherwise related to the Retained Matters, including the Business Interruption and Property Damage Insurance Policies and (ii) all Claims and Causes of Action identified on the Retained Causes of Action List other than Claims and Causes of Action vested in the Acquired Reorganized Debtors including, for the avoidance of doubt, the Retained Matters (collectively, the “Liquidating Trust Assets”), and (c) all work product, attorney-client, or other privilege (the “Privileges”) shall be vested in the Liquidating Trust, which also shall be authorized to obtain, liquidate, and collect all of the Liquidating Trust Assets not in its possession. Subject to the provisions of the Plan and the Confirmation Order, all Liquidating Trust Assets shall be delivered to the Liquidating Trust free and clear of Liens, Claims, and Interests of any kind to the maximum extent permitted by applicable law except as expressly provided in the Plan. On the Effective Date, the Liquidating Trust shall stand in the shoes of the Debtors for all purposes with respect to the Liquidating Trust Assets and administration of the Causes of Action identified on the Retained Causes of Action List as being vested in the Liquidating Trust. To the extent (i) any law or regulation prohibits the transfer of ownership of any of the Liquidating Trust Assets from the Debtors to the Liquidating Trust (the “Transfer”) and such law is not superseded by the Bankruptcy Code or (ii) any other facts or circumstances that renders any such Transfer to be invalid or result in forfeiture of any of the Liquidating Trust’s legal and economic entitlement, the Liquidating Trust’s interest shall be a lien upon and security interest in such Liquidating Trust Assets, in trust, nevertheless, for the sole use and purposes set forth in Section 1.1 hereto, and this Agreement shall be deemed a security agreement granting and perfecting such interest thereon without need to file financing statements or mortgages. Notwithstanding anything to the contrary in the Plan, including, for the avoidance of doubt, this Article VII.E and Article IV.H of the Plan, the Confirmation Order, or any Restructuring Documents, the Non-Acquired Reorganized Debtors shall be deemed to continue in existence for the purpose of pursuing pending adversary proceedings and/or Retained Matters, as applicable, as of the Effective Date that such Debtors are a party to, and the Liquidating Trust shall not be deemed to be substituted as the party-in-lieu of such applicable Debtor in any such adversary proceedings and/or Retained Matters, as applicable; *provided* that the proceeds of any such adversary proceedings and/or Retained Matters, as applicable, if any, shall vest in the Liquidating Trust, as successor in interest to the Non-Acquired Reorganized Debtors, to the same extent as such proceeds would have vested into the applicable Non-Acquired Reorganized Debtor.

1.4 Funding of the Trust. The Liquidating Trust shall be funded, on the Effective Date of the Plan, with the Liquidating Trust Assets Wind-Down Reserve, as provided for in the Plan and in the Confirmation Order.

1.5 Acceptance by Liquidating Trustees. Each Liquidating Trustee hereby accepts (a) his, her or its appointment to serve as a Liquidating Trustee and (b) the trust imposed on his, her or it by this Agreement and created for the benefit of the Beneficiaries and agrees to observe and perform that trust on and subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation Order. In connection with and in furtherance of the purposes of the Liquidating Trust, the Liquidating Trustees hereby accept the transfer of the Liquidating Trust Assets and the Liquidating Trust Obligations. The Liquidating Trustees also agree to receive and disburse all monies actually received by him, her or it constituting part of the Liquidating Trust Assets pursuant to the terms of this Agreement, the Plan and the Confirmation Order.

1.6 No Reversion to Debtors. In no event shall any part of the Liquidating Trust Assets revert to or be distributed for the benefit of any Debtor.

1.7 Name of the Liquidating Trust. The Liquidating Trust established hereby shall be known as the “PES Liquidating Trust.”

1.8 Offices.

(a) The principal office of the Liquidating Trust, and such additional offices as the Liquidating Trust Board may determine to establish, shall be located at such place or places inside or outside the State of Delaware as the Liquidating Trust Board may designate from time to time.

(b) Service of process upon a Liquidating Trust may be made by service upon the Delaware Trustee. The principal office of the Delaware Trustee in the State of Delaware is located at [•].

ARTICLE II THE LIQUIDATING TRUST BOARD

2.1 Appointment. The affairs of the Liquidating Trust shall be managed by, or under the direction of, the board consisting of the Liquidating Trustees (the “Liquidating Trust Board”), which shall have such powers and authority as are provided in this Article II and as elsewhere set forth in this Agreement and in the Delaware Act. In accordance with the Plan, as of the Effective Date, the Liquidating Trust Board shall consist of five (5) members (and for the avoidance of doubt, each of the members is a Liquidating Trustee as defined above): one (1) member to be designated by Credit Suisse Asset Management (the “CSAM Designee”) who shall initially be _____; one (1) member to be designated by Bardin Hill Investment Partners, LP (the “BHIP Designee”) who shall initially be _____; one (1) member to be designated by the Ad Hoc Committee of Term Loan Lenders or, if no longer in existence, by the Required Term Loan Lenders (collectively with the CSAM and BHIP Designees, the “Term Loan Designees”), who shall initially be _____; one (1) member to be designated by the Creditors’ Committee (the “UCC Designee”), who shall initially be _____; and one (1) member to be designated by the Intermediation Provider (the “ICBCS Designee”), who shall initially be _____; and one (1) individual to be jointly designated by the Intermediation Provider and the Ad Hoc Committee of Term Loan Lenders or, if such committee is no longer in existence, by the Required Term Loan Lenders (the “Independent Designee” and, together with the ICBCS

Designee and the Term Loan Designees, the “Designees” and each a “Designee”), and who shall be an individual with significant insurance claims adjustment expertise. Each person or entity described in the preceding sentence entitled to appoint a member of the Liquidating Trust Board shall be considered a “Nominating Party” as used herein. Upon the satisfaction of the Allowed Term Loan ~~Secured~~-Claims pursuant to Article VIII.I of the Plan, the Term Loan Designees and the Independent Designee shall be deemed to resign from the Liquidating Trust Board and ~~the ICBCS Designee shall receive the governance rights of the Term Loan Designees shall not be replaced~~. Upon the satisfaction of the Allowed Intermediation ~~Secured~~-Claims pursuant to the Plan, the ~~Intermediation Provider shall no longer have a designation right with respect to the Independent Designee (as defined below). Upon satisfaction of all Allowed Term Loan Secured Claims and all Allowed Intermediation Secured Claims, the Term Loan Designees~~ICBCS Designee and the Independent Designee shall be deemed to have resigned from ~~the Liquidating Trust and~~ the Liquidating Trust Board ~~shall thereafter consist of a single member who shall be the UCC Designee~~. Each person appointed as a Liquidating Trustee shall be deemed a trustee under the Delaware Act, with all privileges and immunities appurtenant thereto, and, as necessary or applicable, shall be deemed appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. For the avoidance of doubt, only a Nominating Party may appoint a Liquidating Trustee.

2.2 Term of Service. Each Liquidating Trustee shall serve until (a) the termination of the Trust in accordance with this Agreement or (b) such Liquidating Trustee’s, resignation, incapacity, death, dissolution, removal, or liquidation.

2.3 Services. The Liquidating Trustees shall be entitled to engage in such other activities as they deem appropriate which are not in conflict with the Plan, this Agreement, the purpose of the Liquidating Trust as set forth herein or the interests of the Beneficiaries in respect of the Plan. The Liquidating Trustees shall devote such time as is reasonably necessary to fulfill all of their duties as Liquidating Trustees.

2.4 Liquidating Trustees are Fiduciaries. The Liquidating Trustees and the Independent Designee are acting as fiduciaries pursuant to section 3301(d) of chapter 33 of title 12 of the Delaware Code, and will owe to the Trust and all Beneficiaries the same fiduciary duties (and only such fiduciary duties) as are owed by directors of corporations to such corporations and their stockholders under the Delaware General Corporation Law; *provided*, that the exercise of the Term Loan Designees’ right to terminate expenditures pursuant to section 2.19 shall not be subject to any fiduciary standard with respect to beneficiaries other than holders of Term Loan Secured Claims, and any fiduciary duty to such beneficiaries that would conflict with the exercise of such right is expressly disclaimed. For the avoidance of doubt, the Liquidating Trustee’s fiduciary duties shall not include an obligation to fund the Liquidating Trust in any manner.

2.5 Resignation, Death, Dissolution or Removal of Liquidating Trustees. The Liquidating Trustees, or any of them, may resign at any time upon 30 days’ written notice (or as otherwise provided in the terms of the Plan) to the Liquidating Trust Board and such Liquidating Trustee’s Nominating Party, if any. Such resignation may become effective prior to the expiration of such 30 day (or as otherwise provided in the terms of the Plan) notice period upon the appointment of successor Liquidating Trustee in accordance with section 2.1 hereof. A

Liquidating Trustee may be removed by the Bankruptcy Court upon application for good cause shown by any party in interest. Any Nominating Party may remove the Liquidating Trustee that it appoints at any time in its sole discretion; *provided* that it may not remove its appointed Liquidating Trustee until such Nominating Party has appointed a new Liquidating Trustee effective as of such removal. In the event of any such resignation or removal, or the death, dissolution or incapacity of a Liquidating Trustee, the Nominating Party of such Liquidating Trustee may appoint a new Liquidating Trustee. No successor Liquidating Trustee hereunder shall in any event have any liability or responsibility for the acts or omissions of any of his, her or its predecessors. Every successor Liquidating Trustee appointed pursuant to the terms hereof shall execute, acknowledge and deliver to the ~~Creditors' Committee, the~~ Intermediation Provider and the Term Loan Administrative Agent an instrument in writing accepting such appointment hereunder, and thereupon such successor Liquidating Trustee, without any further act, shall become fully vested with all of the rights, powers, duties and obligations of his, her or its predecessor.

2.6 Compensation. The Liquidating Trustees, and any successor Liquidating Trustees, ~~and the Independent Designee (as defined in section 2.13 hereof)~~ shall be entitled to receive compensation as described in the Plan Supplement, which compensation may from time to time be adjusted by agreement between such Designee(s) and the Nominating Party with the right to select such Designee(s) as set forth in section 2.1 and 2.13 hereof, and shall be reimbursed for all reasonable expenses in connection with the performance of his, her or its duties as a Liquidating Trustee ~~or as an Independent Designee~~ hereunder. Such compensation and expenses shall be expenses of the Liquidating Trust and may be paid without prior approval of the Bankruptcy Court; *provided*, that, ~~(w) nothing herein shall preclude a party from seeking to include any payment to the Independent Designee as part the Insurance Recovery Surecharge (as defined in the Plan, and to the extent provided therein) of, (x) the UCC Designee shall be paid solely from (i) the GUC Distribution Reserve or (ii) to the extent no funds are available in the GUC Distribution Reserve at the time for payment of such compensation, the Term Loan Priority Collateral, and in the case of clause (ii) in an amount not to exceed \$50,000 per quarter and \$400,000 in the aggregate (the "UCC Ombudsman Budget"), (y) unless all Allowed Intermediation Claims have been paid in full in cash, the Term Loan Designees shall be paid solely from Term Loan Priority Collateral (z, and (y) unless all Allowed Term Loan Secured Claims have been paid in full in cash, the ICBCS Designee (as defined herein) shall be paid solely from Intermediation Priority Collateral or SOA Separate Assets and Collateral.~~

2.7 General Powers. The Liquidating Trustees shall have all duties, obligations, rights, and benefits assumed by, assigned to, or vested in the Liquidating Trust under the Plan, the Confirmation Order, the Tax Refund Agreement and the Litigation Control Agreement (as such terms are defined in the Confirmation Order), this Agreement, and any other agreement entered into pursuant to or in connection with the Plan; *provided*, that any agreements of the Liquidating Trust negotiated and filed as part of Exhibit A to the Liquidating Trust Agreement prior to the Effective Date will be effective with respect to the Liquidating Trust on and after the Effective Date. For the avoidance of doubt, the Liquidating Trustees' exercise of all of the powers, duties, obligations, rights and benefits of the Liquidating Trustees vested herein shall be subject in all respects to (i) the availability of and reasonable likelihood of recovery of Liquidating Trust Assets; (ii) consideration of the extent of any reasonable benefit to be realized by the Beneficiaries in light of the nature of the Liquidating Trust Assets and terms of the Plan;

and (iii) the provisions of this Agreement, including, for the avoidance of doubt, the simple majority vote requirement in section 2.9 hereof. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, the Liquidating Trustees may control and exercise authority over the Liquidating Trust Assets, over the acquisition, management, and disposition thereof, and over the management and conduct of the business of the Liquidating Trust and fulfilling the Liquidating Trust Obligations. No person dealing with the Liquidating Trust shall be obligated to inquire into the Liquidating Trustees' authority in connection with the acquisition, management, or disposition of Liquidating Trust Assets. Without limiting the generality of the foregoing, but subject to the Plan, the Confirmation Order, and other provisions of this Agreement, the Liquidating Trustees shall be expressly authorized to, with respect to the Liquidating Trust and the Liquidating Trust Assets:

(a) Exercise all 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 with respect to the Liquidating Trust Assets or the Liquidating Trust Obligations, by any officer, director, shareholder, or other party acting in the name of the Debtors or their Estates with like effect as if duly authorized, exercised, and taken by action of such officers, directors, shareholders, or other party.

(b) Open and maintain bank accounts on behalf of or in the name of the Liquidating Trust, calculate and make distributions, 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 Liquidating Trust.

(c) Receive, manage, invest, supervise, and protect the Liquidating Trust Assets, subject to the limitations provided herein.

(d) Hold legal title to or, in the case of the Retained Matters (as defined in the Confirmation Order) beneficial interest in, any and all Liquidating Trust Assets.

(e) Subject to the applicable provisions of the Plan and the Confirmation Order, collect and liquidate all Liquidating Trust Assets and, as appropriate, dissolve any corporate entities.

(f) Transfer proceeds of Liquidating Trust Assets from time to time to any Distribution Reserve Account in accordance with the Plan and the Confirmation Order.

(g) Review and, where appropriate, object to claims, and, subject to the terms of the Plan, supervise and administer the resolution, settlement and payment of all Disputed Claims, and the distribution to the Beneficiaries and creditors of the Liquidating Trust, in accordance with this Agreement, the Plan, and the Confirmation Order; *provided*, that the Liquidating Trustees shall not resolve, settle or pay ~~General Unsecured Claims that are~~ Disputed Claims until all Term Loan Secured Claims and Intermediation Secured Claims have been paid in full in accordance with the terms of the Plan and Confirmation Order.

(h) Investigate, analyze, compromise, adjust, arbitrate, sue on or defend, pursue, prosecute, abandon, or otherwise deal with and settle, in accordance with the terms set

forth in this Agreement, any and all Causes of Action and claims in favor of or against the Debtors, the Debtors' Estates, the Liquidating Trust Assets or the Liquidating Trust that have not been released under the Plan or otherwise as the Liquidating Trustee shall deem advisable, including, but not limited to, subject to the Litigation Trust Agreement, any Retained Matters; *provided that notwithstanding anything to the contrary in this Agreement, any settlement between the Liquidating Trust and the insurers with respect to claims or Causes of Action arising from the Business Interruption and Property Damage Insurance Policies shall require approval of the Bankruptcy Court pursuant to Federal Rule of Bankruptcy Procedure 9019, and the UCC Designee shall be deemed to have been granted standing to object to any such settlement acting in its capacity as a representative for unsecured creditors (and not as a Liquidation Trustee) (in such capacity, the "UCC Ombudsman"); provided however, that no such approval shall be required if a Final Order has been entered finding that the June 21 Business Interruption Proceeds are subject to validly perfected liens held by the Term Loan Lenders and the Intermediation Provider.*

(i) Pursue, commence, prosecute, compromise, settle, dismiss, release, waive, withdraw, abandon, or resolve all Claims and Causes of Action identified on the Retained Causes of Action List other than, solely to the extent set forth in the Purchase Agreement, Claims and Causes of Action vested in the Acquired Reorganized Debtors, including, for the avoidance of doubt, and subject to the Litigation Control Agreement, any Retained Matters; *provided that notwithstanding anything to the contrary in this Agreement, the UCC Ombudsman shall be deemed to have been granted standing to object to any such settlement between the Liquidating Trust and the insurers with respect to claims or Causes of Action arising from the Business Interruption and Property Damage Insurance Policies to the extent that such settlement requires approval of the Bankruptcy Court pursuant to the terms of this Agreement, subject (in the case of any expenditure of Term Loan Priority Collateral) to the UCC Ombudsman Budget; provided*, further that the Liquidating Trust shall not be deemed to be substituted as the party-in-lieu of such applicable Debtor in any pending adversary proceedings and/or Retained Matters identified in (1) through (3) of Schedule 1 to the Litigation Control Agreement as of the Effective Date that such Debtors are a party to, as applicable, *and the UCC Ombudsman shall be deemed to have been granted standing to continue to prosecute any pending adversary proceedings on behalf of the Committee, subject (in the case of any expenditure of Term Loan Priority Collateral) to the UCC Ombudsman Budget.*

(j) Protect and enforce the rights to the Liquidating Trust Assets vested in the Liquidating Trust by this Agreement and the Plan by any method the Liquidating Trustees deem appropriate, including, without limitation, by judicial proceedings or otherwise.

(k) (i) Seek a determination of tax liability under section 505 of the Bankruptcy Code, subject to the terms of the Plan; (ii) file, if necessary, any and all tax and information returns required with respect to the Liquidating Trust; (iii) make tax elections for and on behalf of the Liquidating Trust; and (iv) pay taxes, if any, payable for and on behalf of the Liquidating Trust.

(l) Pay all lawful, expenses, debts, charges, taxes, and liabilities of the Liquidating Trust, including for the avoidance of doubt, (i) all Restructuring Expenses and all other expenses due to the Term Loan Administrative Agent pursuant to the terms of the Term

Loan Credit Agreement, but, until all Allowed Intermediation Secured Claims are paid in full in cash, solely from Term Loan Priority Collateral; and (ii) to the extent set forth in the Plan, obligations arising under the Management Incentive Plan and the KERP Documents.

(m) Make distributions to the Beneficiaries, and to creditors of the Liquidating Trust as provided for, or contemplated by, the Plan, the Confirmation Order, and this Agreement.

(n) Withhold from the amount distributable to any person such amount as may be sufficient to pay any tax or other charge which the Liquidating Trustees have determined, in their sole discretion, may be required to be withheld therefrom under the income tax laws of the United States, any foreign country, or of any state, local, or political subdivision of either.

(o) Enter into any agreement or execute any document or instrument required to be executed by the Liquidating Trust to give effect to the Plan, the Confirmation Order, or this Agreement and perform all obligations thereunder.

(p) If any of the Liquidating Trust Assets are situated in any state or other jurisdiction in which no Liquidating Trustee is qualified to act as trustee, subject to all other provisions of this Agreement (including, but not limited to, Section 2.4) nominate and appoint a person 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 Liquidating Trustees in their discretion; confer on such trustee all the rights, powers, privileges, and duties of the Liquidating Trustees hereunder, subject to the conditions and limitations of this Agreement, except as modified or limited by the Liquidating Trustees 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 Liquidating Trustees 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 Liquidating Trustees of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal.

(q) Purchase and carry all insurance policies and pay all insurance premiums and costs from Liquidating Trust Assets it deems reasonably necessary or advisable.

(r) Appoint officers and other representative agents of the Liquidating Trust, including a Liquidating Trust manager and a secretary, establish employment and compensation arrangements for such officers and other representative agents, and delegate any and all powers and authority hereunder as the Liquidating Trustees consider desirable to such officers and other representative agents, provided that such delegation of power or authority by the Liquidating Trustees shall not cause any Liquidating Trustee to cease to be a Liquidating Trustee or cause such officer or other representative agent to be a Liquidating Trustee.

(s) Employ, without further order of the Bankruptcy Court, attorneys, accountants, appraisers, expert witnesses, insurance adjusters, or other persons whose services may be reasonably necessary or advisable (including, in each case, those previously retained by

the Debtors), to advise or assist in the administration, prosecution and distribution of the Liquidating Trust Assets.

(t) 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 Agreement relating to the Liquidating Trust, the Liquidating Trust Assets, the Liquidating Trust Obligations, or the Liquidating Trustees.

(u) Invest in demand and time deposits in banks or savings institutions, or temporary investments such as short term certificates of deposit or Treasury bills or other investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations or any modification in the Internal Revenue Services (“IRS”) guidelines, whether set forth in IRS rulings, revenue procedures, other IRS pronouncements or otherwise.

(v) Take all other actions consistent with the provisions of the Plan that the Liquidating Trustees deems reasonably necessary or desirable to administer the Liquidating Trust in accordance with the Plan, the Confirmation Order, and this Agreement.

(w) To the extent applicable, assert, enforce, release, or waive any privilege or any defense on behalf of the Liquidating Trust (including as to any Privilege that the Debtors held prior to the Effective Date).

2.8 Limitations on the Liquidating Trustees. Notwithstanding anything under applicable law, this Agreement, or the Plan to the contrary, no Liquidating Trustee shall do or undertake any of the following:

(a) Take any action that would jeopardize treatment of the Liquidating Trust as a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) for federal income tax purposes.

(b) Take any action that is inconsistent with the Plan or the Confirmation Order.

(c) Receive transfers of any listed stocks or securities, or any readily marketable securities, except as is absolutely necessary or required under the Plan and the Confirmation Order; provided, however, that in no event shall such Liquidating Trustee receive any such investment that would jeopardize treatment of the Liquidating Trust as a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) for federal income tax purposes.

(d) Retain cash or cash equivalents in excess of a reasonable amount necessary to satisfy any liabilities of the Liquidating Trust and to establish and maintain the reserves contemplated by the Plan.

(e) Exercise any investment power other than the power to invest in demand and time deposits in banks or savings institutions, or other temporary liquid investments, such as short-term certificates of deposit or Treasury bills or other investments that a “liquidating trust”

within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations or any IRS guidelines, whether set forth in IRS rulings, IRS revenue procedures, other IRS pronouncements, or otherwise.

(f) Receive or retain any operating assets of an ongoing 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.

(g) Accept or take on, directly or indirectly, any obligation or other liability, monetary or otherwise, on behalf of the Liquidating Trust, including but not limited to the assumption or assignment of any Executory Contract or Unexpired Lease, as provided in the Plan unless such obligation or other liability would not jeopardize treatment of the Liquidating Trust as a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) for federal income tax purposes.

(h) Notwithstanding any of the foregoing, the Liquidating Trustees shall not be prohibited from engaging in any trade or business on its own account, provided that such activity does not interfere with such Liquidating Trustee’s administration of the Liquidating Trust.

2.9 Action of the Liquidating Trust Board. If at any time more than one Liquidating Trustee is in office, it shall take a simple majority vote of the Liquidating Trustees to take any action on behalf of the Liquidating Trust with respect to any matters or to exercise any discretion conferred upon the Liquidating Trustees with respect to such matter. The taking of any action that has been approved by the Liquidating Trustees as contemplated hereby, including, without limitation, the execution and delivery of any contract, agreement, instrument, certificate, filing or other document by any Liquidating Trustee, acting singly, shall be sufficient to bind the Liquidating Trust; *provided, that unless the June 21 Business Interruption Insurance Proceeds (as defined in the Final DIP Order) have been determined by Final Order to constitute Term Loan Priority Collateral or Intermediation Priority Collateral, subject to section 2.13, any exercise of the power and authority of the Liquidating Trust pursuant to sections section 2.7(h), 2.7(i), or 2.7(r) hereof in respect of Claims or Causes of Action to recover the June 21 Business Interruption Insurance Proceeds shall be subject to the direction of the Business Interruption Litigation Committee acting by majority consent; provided, that the appointment of officers of the Liquidating Trust shall also require a simple majority vote of the Liquidating Trustees.* If at any time there is only one Liquidating Trustee in office, subject to the provisions of this Agreement, the taking of any lawful action by the Liquidating Trustee, including, without limitation, the execution and delivery of any contract, agreement, instrument, certificate, filing or other document by such Liquidating Trustee on behalf of the Trust, shall conclusively constitute and evidence the due authorization of such document or other action on behalf of the Liquidating Trust and shall be sufficient to bind the Liquidating Trust. Any action which may be taken by the Liquidating Trustees by vote may be taken without a meeting if that number of the Liquidating Trustees, or members of a committee, as the case may be, required for approval of such action by vote consent to the action in writing and the written consent is filed with the records of the meetings of the Liquidating Trust Board. Such consent shall be treated for all purposes as a vote taken at a meeting of the Liquidating Trust Board; *provided that notwithstanding anything in this Agreement, the Liquidating Trust Board shall not have the*

authority to take any action with respect to Intermediation Priority Collateral or SOA Separate Assets and Collateral and such authority shall be reserved to the Business Interruption Litigation Committee. The Liquidating Trust Board shall not have the authority to dissolve the Business Interruption Litigation Committee.

2.10 Wind-Down Reserve. The Liquidating Trustees shall establish, fund, and administer the Wind-Down Reserve, which shall initially be funded with Cash equal to the Wind-Down Reserve Amount, and which shall be used to satisfy its anticipated future operating expenses of the Liquidating Trustees as determined in accordance with Section 6.3. From time to time, the amount required to be held in the Wind-Down Reserve may be increased or reduced in accordance with Section 6.3. Any excess funds held in the Wind-Down Reserve shall be transferred to the General Account for distribution to holders of Allowed Claims in accordance with Section 6.2. In no event shall the Wind-Down Reserve be used to pay Intermediation Secured Claims unless all Term Loan Secured Claims have been paid in full in Cash. ~~In no event shall the Wind Down Reserve be used to pay General Unsecured Claims unless all Intermediation Secured Claims and Term Loan Secured Claims have been paid in full in Cash.~~

2.11 Accounts. The Liquidating Trustees shall establish the General Account and the Distribution Reserve Accounts in accordance with the Plan.

2.12 Meetings of the Liquidating Trust Board. The Liquidating Trust Board shall hold regular meetings, at such time and at such place as shall from time to time be determined by a simple majority of the Liquidating Trustees, but in no event shall such meetings be held less frequently than quarterly. Announcements of the date and place of any meeting shall be sent via first class mail or via electronic transmission to each Liquidating Trustee on not less than three (3) business days' notice. Meetings shall be held in person or by telephonic conference call (or other means by which all persons participating in the meeting can hear each other) or by a combination provided however, that professionals for the Liquidating Trust and the Liquidating Trustees shall be permitted to attend. Special meetings of the Liquidating Trust Board may be held whenever and wherever called for by the Liquidating Trustee or any member of the Liquidating Trust Board, subject to reasonable notice. Prior notice of a meeting may be waived in writing by any Liquidating Trustee either before or after a meeting. The attendance of a Liquidating Trustee at a meeting shall constitute a waiver of notice of such meeting except where a member of the Liquidating Trustee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been properly called or convened. In the event the June 21 Business Interruption Insurance Proceeds or Litigation is to be discussed at any meeting, regular or special, by the Liquidating Trust Board, the Liquidating Trust Board shall provide notice pursuant to the methods described in this section to each member of the Business Interruption Litigation Committee on no less than three (3) business days' notice; and the Business Interruption Litigation Committee or any member thereof may, but is not required, to participate in any such meeting.

2.13 Business Interruption Litigation Committee. The Liquidating Trust Board shall form a committee (the "Business Interruption Litigation Committee"), which shall be comprised of (a) one (1) Term Loan Designee, who shall initially be _____ and may subsequently be removed or replaced by the Ad Hoc Term Loan Lenders Committee or, if such committee is no longer in existence, the Required Term Loan Lenders; (b) the ICBCS Designee; and (c) ~~one (1)~~

~~individual to be jointly designated by the Intermediation Provider and the Ad Hoc Committee of Term Loan Lenders or, if such committee is no longer in existence, by the Required Term Loan Lenders (the “the Independent Designee”), who shall initially be _____ (which member shall not be a Liquidating Trustee and shall have no other power or authority in connection with the Liquidating Trust).~~ The Business Interruption Litigation Committee shall be vested with the approval rights set forth in section ~~[2.8]~~2.1 hereof; *provided, however that*, upon determination by a Final Order that the June 21 Business Interruption Insurance Proceeds (x) constitute Term Loan Priority Collateral, the ~~Business Interruption Litigation Committee shall dissolve.~~ Upon entry of a Final Order determining that the June 21 Business Interruption Insurance Proceeds are Intermediation Priority Collateral, the Business Interruption Litigation Committee shall continue to have the sole and exclusive right to pursue, settle, control, and direct any Claims or Causes of Action related ~~Independent Designee~~ shall be deemed to have resigned therefrom and the Term Loan Designee thereon shall be given two votes (to one vote of the ICBCS Designee) in exercising the powers and rights of the Liquidating Trustees under section 2.7 of this Agreement with respect to the June 21 Business Interruption Insurance Proceeds; *provided or (y) constitute Intermediation Priority Collateral, the* Independent Designee shall be deemed to have resigned from therefrom and the ICBCS Designee shall be given two votes (to one vote of the Term Loan Designee thereon) in exercising the powers and rights of the Liquidating Trustees under section 2.7 of this Agreement with respect to the June 21 Business Interruption Insurance Proceeds, subject to section 2.14. ~~The Business Interruption Litigation Committee and shall have sole and exclusive control over any Intermediation Priority Collateral and SOA Separate Assets and Collateral For the avoidance of doubt, at all times any;~~ *provided, further that* in the event that any proposed settlement between the Liquidating Trust and the insurers with respect to any claims or Causes of Action arising from in respect of the June 21 Business Interruption Insurance Proceeds is not acceptable to all members of the Business Interruption and Property Damage Insurance Policies shall require approval of Litigation Committee, and so long as at such time the dissenting Designee is funding 50% of the pursuit of the June 21 Business Interruption Insurance Proceeds, the Liquidating Trust shall file a motion with the Bankruptcy Court for approval of such settlement pursuant to the standard set forth in Federal Rule of Bankruptcy Procedure 9019, and the UCC Ombudsman shall be deemed to have been granted standing to object to any such settlement; *provided further,* that no such approval shall be required if a Final Order has been entered finding that the June 21 Business Interruption Proceeds are subject to validly perfected liens held by the Term Loan Lenders and the Intermediation Provider.

2.14 [Reserved.]

2.15 Meetings of the Business Interruption Litigation Committee. The Business Interruption Litigation Committee shall hold regular meetings, at such time and at such place as shall from time to time be determined by a simple majority of the members of the Business Interruption Litigation Committee, but in no event shall such meetings be held less frequently than quarterly. Announcements of the date and place of any meeting shall be sent via first class mail or via electronic transmission to each member of the Business Interruption Litigation Committee on not less than three (3) business days' notice. Meetings shall be held in person or by telephonic conference call (or other means by which all persons participating in the meeting can hear each other) or by a combination provided however, that professionals for the members Business Interruption Litigation Committee shall be permitted to attend. Special meetings of the Business Interruption Litigation Committee may be held whenever and wherever called for by

any member of the Business Interruption Litigation Committee, subject to reasonable notice. Prior notice of a meeting may be waived in writing by any member of the Business Interruption Litigation Committee either before or after a meeting. The attendance of a member of the Business Interruption Litigation Committee at a meeting shall constitute a waiver of notice of such meeting except where a member of the Business Interruption Litigation Committee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been properly called or convened.

2.16 Liquidating Trust Continuance. The death, dissolution, resignation, incapacity or removal of a Liquidating Trustee shall not terminate the Liquidating Trust or revoke any existing agency created by the Liquidating Trustee pursuant to this Agreement or invalidate any action theretofore taken by such Liquidating Trustee, and the successor Liquidating Trustee agrees that the provisions of this Agreement shall be binding and inure to the benefit of the successor Liquidating Trustee and all its successors or assigns.

2.17 Insurance Recovery Surcharge. The Insurance Recovery Surcharge shall continue in favor of the Holders of Allowed Term Loan Claims as set forth in the Plan. If the Insurance Recovery Surcharge has not been determined by Final Order, upon the Liquidating Trust's receipt of SOA Priority June 21 Insurance Proceeds or a determination by Final Order that Disputed June 21 Insurance Proceeds held by the Liquidating Trust constitute SOA Priority June 21 Insurance Proceeds, the ICBCS Designee and a Term Loan Designee shall agree in good faith on an upper estimate the maximum amount of the Insurance Recovery Surcharge that shall be held in a reserve pending a determination by Final Order of the Insurance Recovery Surcharge and distribute the balance of the SOA Priority Business Interruption Insurance Proceeds to Holders of Allowed Intermediation Secured Claims as soon as practicable. If the Holders of Allowed Term Loan Claim and the Intermediation Provider cannot agree on an amount of the Insurance Recovery Surcharge within thirty (30) days of the Liquidating Trust's receipt of the SOA Priority June 21 Business Interruption Insurance Proceeds, the Intermediation Provider may file a motion with the Bankruptcy Court seeking a determination as to the amount of the Insurance Recovery Surcharge.

2.18 Liquidating Trust Expenditures. Notwithstanding anything to the contrary herein, all Liquidating Trust Expenditures shall be funded ~~first from the Encumbrance Dispute June 21 Insurance Proceeds Reserve (unless such funds also constitute Disputed June 21 Insurance Proceeds or Intermediation Priority Collateral) to the extent funds are available therein; [provided that upon the Liquidating Trust's receipt of SOA Priority June 21 Insurance Proceeds or a determination by Final Order that Disputed June 21 Insurance Proceeds held by the Liquidating Trust constitute SOA Priority June 21 Insurance Proceeds, all future Liquidating Trust Expenditures allocable to the preservation, preparation, pursuit and/or recovery of any SOA Priority June 21 Insurance Proceeds (and the Debtors' claims thereto) shall, subject to the approval of the Business Interruption Litigation Committee, be funded exclusively from from the Wind-Down Reserve; provided, that, at all times, each of the ICBCS Designee and a simple majority of the Term Loan Designees may elect to fund no less than 50% of the costs of pursuing the June 21 Business Interruption Insurance Proceeds from, as applicable, Intermediation Priority Collateral or SOA Separate Assets and Term Loan Priority Collateral held by the Liquidating Trust.~~

2.19 Use of Term Loan Priority Collateral. At any time, a simple majority of the Term Loan Designees may determine that no Term Loan Priority Collateral (including Term Loan Priority Collateral in the Wind-Down Reserve) shall be expended to preserve, pursue or recover (a) any June 21 Business Interruption Insurance Proceeds or (b) for any other Liquidating Trust Expenditures, including for pursuit, preservation or recovery of any Intermediation Priority Collateral, Disputed June 21 Insurance Proceeds, ~~Encumbrance Dispute June 21 Insurance Proceeds or (to the extent that it is determined by Final Order in the Insurance Priority Dispute Adversary Proceeding that any Encumbrance Dispute June 21 Insurance Proceeds are unencumbered) any unencumbered assets or any unencumbered assets, other than such amounts as are necessary to carry out the Liquidating Trust's statutory obligations under applicable law (to the extent there are no other Liquidating Trust Assets available therefor); provided that, in the case of clause (a), upon such a determination the ICBCS Designee shall receive the vote of the Term Loan Designee on the Business Interruption Litigation Committee, and shall otherwise exercise exclusive control preservation, pursuit and recovery of the June 21 Business Interruption Insurance Proceeds; provided, further in the event that the Term Loan Designees make such a determination, (i) the Liquidation Trustees that are not Term Loan Designees may seek to surcharge the Term Loan Priority Collateral for subsequent Liquidating Trust Expenditures of funds or assets that do not constitute Term Loan Priority Collateral but directly result in and are allocable to the recovery and distribution of additional Term Loan Priority Collateral based on the same standard as the Insurance Recovery Surcharge.~~

ARTICLE III LIABILITY OF LIQUIDATING TRUSTEES

3.1 Standard of Care; Exculpation. None of the Liquidating Trustees ~~nor the Independent Designee~~, nor any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust shall be liable for losses, claims, damages, liabilities, or expenses in connection with the affairs or property of the Liquidating Trust to any Beneficiary of the Liquidating Trust, or any other person, for the acts or omissions of the Liquidating Trustees, ~~the Independent Designee~~, or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust; *provided, however*, that the foregoing limitation shall not apply as to any losses, claims, damages, liabilities or expenses suffered or incurred by any Beneficiary that are found by a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from the fraud, gross negligence, or willful misconduct of such person or entity. Every act done, power exercised or obligation assumed by the Liquidating Trust, the Liquidating Trustees, ~~the Independent Designee~~, or any director, officer, affiliate, employee, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust pursuant to the provisions of this Agreement shall be held to be done, exercised, or assumed, as the case may be, by the Liquidating Trust, the Liquidating Trustees, ~~the Independent Designee~~, or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust acting for and on behalf of the Liquidating Trust and not otherwise; *provided, however*, that none of the foregoing Entities or Persons are deemed to be responsible for any other such Entities' or Persons' actions or inactions outside of the scope of the authority provided by the Liquidating Trust. Every Beneficiary, Person, firm, corporation or other Entity contracting or otherwise dealing with or having any

relationship with the Liquidating Trust, the Liquidating Trustees, ~~the Independent Designee~~, or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust shall have recourse only to the Liquidating Trust Assets for payment of any liabilities or other obligations arising in connection with such contracts, dealings, or relationships and the Liquidating Trust, the Liquidating Trustees, ~~the Independent Designee~~, any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust shall not be individually liable therefor. For the avoidance of doubt, the Liquidating Trustees, each in its capacity as such, ~~and the Independent Designee~~ shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Debtors. In no event shall the Liquidating Trust, the Liquidating Trustees, ~~the Independent Designee~~, or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust be liable for indirect, punitive, special, incidental, or consequential damage or loss (including but not limited to lost profits) whatsoever, even if such person or entity has been informed of the likelihood of such loss or damages and regardless of the form of action. The Liquidating Trustees ~~and the Independent Designee~~, to the extent applicable, shall have the right at any time to seek instructions from the Bankruptcy Court concerning the administration or disposition of the Liquidating Trust Assets and the Causes of Action administered by the Liquidating Trust. The Liquidating Trust, the Liquidating Trustees, ~~the Independent Designee~~, or any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust shall not be liable for any act or omission that has been approved by the Bankruptcy Court, and all such actions or omissions shall conclusively be deemed not to constitute fraud, gross negligence, or willful misconduct.

3.2 Indemnification.

(a) Except as otherwise set forth in the Plan or Confirmation Order, the Liquidating Trustees, ~~the Independent Designee~~, and any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust (collectively, the “Indemnified Parties”) shall be defended, held harmless, and indemnified from time to time by the Liquidating Trust against any and all losses, claims, damages, liabilities, penalties, obligations, and expenses, including the costs for counsel or others in investigating, preparing, or defending any action or claim, whether or not in connection with litigation in which any Indemnified Party is a party, or enforcing this Agreement (including these indemnity provisions), as and when incurred, caused by, relating to, based on, or arising out of (directly or indirectly) exercise and performance or nonperformance of any power, obligation, or duties of such person, or entity in accordance with this Agreement, the Plan, or the Confirmation Order; *provided, however*, such indemnity shall not apply to any such loss, claim, damage, liability, or expense to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from the fraud, gross negligence, or willful misconduct of such person or entity and such recourse results in payment of such loss, claim, damage, liability, or expense. Satisfaction of any obligation of the Liquidating Trust arising pursuant to the terms of this Section shall be payable only from the Liquidating Trust Assets, may be advanced prior to the conclusion of such matter, and such right to payment shall be prior and superior to any other rights to receive a distribution of the Liquidating Trust Assets.

(b) Subject to the available Liquidating Trust Assets and outstanding liabilities and expenses of the Liquidating Trust, the Liquidating Trust shall promptly pay expenses reasonably incurred by any Indemnified Party in defending, participating in, or settling any action, proceeding, or investigation in which such Indemnified Party is a party or is threatened to be made a party or otherwise is participating in connection with the Agreement or the duties, acts, or omissions of such Entity or Person, upon submission of invoices therefor, whether in advance of the final disposition of such action, proceeding, or investigation or otherwise. Each Indemnified Party hereby undertakes, and the Liquidating Trust hereby accepts its undertaking, to repay any and all such amounts so advanced if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified therefor under this Agreement.

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

3.4 No Personal Liability. No Liquidating Trustee ~~nor the Independent Designee~~ shall be subject in such capacity to any personal liability whatsoever to any Person¹ in connection with Liquidating Trust Assets or the acts, obligations or affairs of the Liquidating Trust. No Liquidating Trustee or officer of the Liquidating Trust shall be subject in such capacity to any personal liability whatsoever to any Person; and, all such Persons shall look solely to the Liquidating Trust Assets for satisfaction of claims of any nature arising in connection with the affairs of the Liquidating Trust.

3.5 Reliance by Liquidating Trustees on Documents or Advice of Counsel. Except as otherwise provided in this Agreement, the Liquidating Trustees, ~~the Independent Designee~~, any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust may rely, and shall be protected from liability for acting, on any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by such Entity or Person to be genuine and to have been presented by an authorized party. The Liquidating Trustees, ~~the Independent Designee~~, any director, officer, affiliate, employee, employer, professional, agent, or representative of the Liquidating Trustees or the Liquidating Trust shall not be liable for any action taken or suffered by such Entity or Person in reasonable

¹ “Person” shall mean and include individuals, corporations, partnerships, trusts, limited liability companies, associations, joint ventures and other entities, whether or not legal entities, and governments and agencies and political subdivisions thereof.

reliance upon the advice of counsel or other professionals engaged by the Liquidating Trustees or the Liquidating Trust in accordance with this Agreement.

3.6 No Liability for Good Faith Error of Judgement. No Liquidating Trustee ~~nor the Independent Designee~~ shall be liable for any error of judgment made in good faith, unless it shall be finally determined by a final judgment of a court of competent jurisdiction (not subject to further appeal or review) that such Liquidating Trustee was grossly negligent or engaged in willful misconduct in ascertaining the pertinent facts.

3.7 Insurance for the Liquidating Trust Board. The Liquidating Trustees may purchase, using the Liquidating Trust Assets, and carry all insurance policies and pay all insurance premiums and costs that the Liquidating Trustees 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, the Confirmation Order, or this Liquidating Trust Agreement.

3.8 Survival. The provisions of this Article III shall be contractual rights and shall survive the termination of this Agreement and shall continue as to any Entity or Person who has ceased in such role to which such rights were conferred and shall inure to the benefit of such Entity's or Person's successors, heirs, executors and administrators. Any amendment, alteration or repeal of this Article III that adversely affects any right of any Entity or Person or their successors shall be prospective only and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

ARTICLE IV GENERAL PROVISIONS CONCERNING ADMINISTRATION OF THE LIQUIDATING TRUST

4.1 Register of Beneficiaries. The Liquidating Trust shall maintain at all times a register of the names, mailing addresses, amounts of Claims, and the Pro Rata interests in the Liquidating Trust of the Beneficiaries (the “Register”). The Register shall be limited to those Beneficiaries who are determined by the Liquidating Trust Board as of the Effective Date of the Plan to be entitled to at least a Minimum Distribution (as provided in Section 6.6 herein below) ~~in the event that the total amount of the General Unsecured Claims is less than or equal to \$[500,000,000]~~ (each a “Minimum Distributee”). The Liquidating Trust Board shall cause the Register to be kept at its office or at such other place or places as may be designated by the Liquidating Trust Board from time to time. The initial Register shall be delivered to the Liquidating Trust Board by the Debtors and shall be based on the list of holders of Claims maintained by Omni Management Group as of the Effective Date of the Plan and prepared in accordance with the provisions of the Plan and the Confirmation Order. All references in this Liquidating Trust Agreement to holders of beneficial interests in the Liquidating Trust shall be read to mean holders of record as set forth in the Register maintained by the Liquidating Trust Board and shall exclude any beneficial owner not recorded on such Register.

4.2 Books and Records. The Liquidating Trust also shall maintain in respect of the Liquidating Trust and the Beneficiaries books and records relating to the Liquidating Trust Assets and any income realized therefrom and the payment of expenses of and claims against or assumed by the Liquidating 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. Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, or as may be required by applicable law (including securities law), nothing in this Agreement is intended to require the Liquidating Trust to file any accounting or seek approval of any court with respect to the administration of the Liquidating Trust, or as a condition for making any payment or distribution out of the Liquidating Trust Assets. Beneficiaries shall have the right upon thirty (30) days' prior written notice delivered to the Liquidating Trust Board to inspect the Liquidating Trust's books and records, including the Register, provided such Beneficiary shall have entered into a confidentiality agreement in form and substance reasonably satisfactory to the Liquidating Trust Board. Satisfaction of the foregoing condition notwithstanding, if (a) the Liquidating Trust Board determines in good faith that the inspection of the Liquidating Trust's books and records, including the Register, by any Beneficiary would be detrimental to the Liquidating Trust or (b) such Beneficiary is a defendant (or potential defendant) in a pending (or potential) action or contested matter brought by or against the Liquidating Trust, the Liquidating Trust may deny such request for inspection. The Bankruptcy Court shall resolve any dispute between any Beneficiary and the Liquidating Trust Board under this Section 4.2.

4.3 Filing of Interim Reports. The Liquidating Trust shall file with the Bankruptcy Court quarterly reports regarding the liquidation or other administration of the Liquidating Trust Assets. The Liquidating Trust Board shall prepare quarterly budgets, which set forth, among other things, fees and expenses of the Liquidating Trust Board (including fees and expenses of retained professionals) expected to be incurred over the budgeted period. The Liquidating Trust shall prepare and provide monthly reports which set forth (i) a comparison of actual expenditures against the prior budget period; (ii) information regarding amounts in the Wind Down Reserve; and (iii) a summary of the primary actions that the Liquidating Trust Board intends to take during the next monthly period.

4.4 Reporting of Insurance Carrier Correspondence. The Liquidating Trustees and the employees or agents of the Liquidating Trust shall share with all other Liquidating Trustees, and the Business Interruption Litigation Committee, any material written correspondence to or from the insurance carriers, loss adjuster, or other representative handling the insurance claims (the “Carrier”) and inform all other Liquidating Trustees and the members of the Business Interruption Litigation Committee promptly of any material development in the claim. The Liquidating Trustees shall copy counsel to the Intermediation Provider on any written correspondence to the Carrier that relates to the ICBCS Direct Claim (as defined in the Final DIP Order) and an Intermediation Provider representative shall be permitted to attend any meeting arranged by the Debtors, Reorganized Debtors, and/or the Liquidating Trust with the Carrier wherein the ICBCS Direct Claim will be discussed. Discussions and negotiations in the ordinary course with respect to the ICBCS Direct Claim shall proceed in parallel, to the extent reasonably practicable, with the Liquidating Trust's claims under the Business Interruption and Property Damage Insurance Policies, to avoid causing any delay to either claim.

4.5 Final Accounting of Liquidating Trust Board. The Liquidating Trust Board

shall within ninety (90) days after the termination of the Liquidating Trust or the death, dissolution, resignation, or removal of a Liquidating Trustee, render an accounting containing at least the following information:

- (a) A description of the Liquidating Trust Assets;
- (b) A summarized accounting in sufficient detail of all gains, losses, receipts, disbursements, and other transactions in connection with the Liquidating Trust and the Liquidating Trust Assets during such Liquidating Trustee's term of service, including their source and nature and whether such Liquidating Trust Assets constitute proceeds of Intermediation Priority Collateral, SOA Separate Assets and Collateral or Term Loan Priority Collateral;
- (c) Separate entries for all receipts of principal and income;
- (d) The ending balance of all Liquidating 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 Liquidating Trust; and
- (f) All pending actions.

4.6 Filing of Accounting. The accounting described in Section 4.3 shall be filed with the Bankruptcy Court and all Beneficiaries shall thereby have notice that the final accounting has been filed and an opportunity to have a hearing on the approval of the accounting and, to the extent applicable, the discharge and release of the Liquidating Trust Board.

4.7 Filing of Tax Returns. The Liquidating Trust shall be responsible for filing all federal, state, local, and foreign tax returns for the Liquidating Trust (but not for the Debtors).

4.8 Privilege. To effectively acquire, dispose, liquidate, manage, and conduct the business of the Liquidating Trust and the Liquidating Trust Assets, including, but not limited to, any and all Causes of Action identified on the Retained Causes of Action List, the Liquidating Trust and its counsel and representatives require full access to all documents and information in the possession of the Debtors and must be able to obtain such information from the Debtors and Reorganized Debtors on a confidential basis and in common interest without being restricted by or waiving any Privileges. Accordingly, on or prior to the Effective Date, all of the Non-Acquired Debtors' books, records, and information, including, without limitation, (i) all information relating to the Debtors' claims and Causes of Action under the Business Interruption and Property Damage Insurance Policies, and (ii) any other information necessary to operate the Liquidating Trust, shall be transferred to the Liquidating Trust, and the Liquidating Trust shall have the rights to copies and access to similar information in the possession of the Acquired Reorganized Debtors as provided in the Purchase Agreement, in each case without waiving, and instead expressly preserving, any of the Privileges that may apply to such transferred information. As of the Effective Date, all Privileges held by the Debtors and Reorganized Debtors (including the board of directors or any committee of the board of directors of any of the

Debtors and Reorganized Debtors) in connection with such information shall transfer to, and vest exclusively in, the Liquidating Trust. If, at any time after the Effective Date, the Debtors and/or Reorganized Debtors discover the existence of any other information or records, the Entity discovering such information or records shall promptly inform the Liquidating Trust Board of their existence and transfer such information to the Liquidating Trust.

4.9 Transfer. The transfer of information to the Liquidating Trust in accordance with this Liquidating Trust Agreement shall not result in the destruction or waiver of any applicable Privileges. Further, with respect to any Privileges: (i) they are transferred to the Liquidating Trust to enable the Trust Board and/or Business Interruption Litigation Committee to perform its duties to administer the Trust and for no other reason, (ii) they shall be preserved and not waived (except as the Liquidating Trust may elect to waive such Privileges), and (iii) no information subject to a Privilege shall be publicly disclosed by the Liquidating Trust or communicated to any Person not entitled to receive such information or in a manner that would diminish the protected status of any such information, except following a waiver of such Privilege pursuant to (iii) above or pursuant to the specific terms of the Plan and the Confirmation Order and this Liquidating Trust Agreement.

ARTICLE V BENEFICIAL INTERESTS AND BENEFICIARIES

5.1 Trust Beneficial Interests. The following Holders of Claims shall be entitled to distributions as beneficiaries of the Liquidating Trust (collectively, the “Beneficiaries”) as set forth below and in the Plan:

- (a) [Holders of Allowed DIP Claims;]

|
- (b) [Holders of Allowed Administrative Claims;]²

|
- (c) Holders of Allowed Other Secured Claims;

|
- (d) Holders of Allowed Other Priority Claims;

|
- (e) Holders of Allowed Term Loan Adequate Protection Claims;

|
- (f) ~~(e)~~ Holders~~the Holder~~ of the SOA Adequate Protection Claim;

|
- (g) ~~(f)~~ Holders of Allowed Term Loan Secured Claims;

|
- (h) ~~(g)~~ Holders of Allowed Intermediation Secured Claims;

|
- (i) Holders of Allowed Term Loan Deficiency Claims;

|
- (j) the Holder of the Intermediation Deficiency Claim;

|

² [Weil team – why removed?]

(k) (4) Holders of Allowed General Unsecured Claims that have made the Distribution Proceeds Election;

(l) (4) the Holder of the Allowed Subordinated Remaining Volume Claim; and

(m) (4) Holders of Allowed Interests in PES Energy and each PES Ultimate Interests.

5.2 Interest Beneficial Only. Ownership of a beneficial interest in the Liquidating Trust shall not entitle any Beneficiary to any title in or to the Liquidating Trust Assets or to any right to call for a partition or division of the Liquidating Trust Assets or to require an accounting.

5.3 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Liquidating Trust shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Liquidating Trust by the Liquidating Trust Board, which may be the Register.

5.4 Exemption from Registration. The parties hereto intend that the rights of the holders of the beneficial interests arising under this Liquidating Trust Agreement shall not be "securities" under applicable laws, but none of the parties hereto represents or warrants that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemption from registration provided by section 1145 of the Bankruptcy Code and by other applicable law to apply to their issuance under the Plan.

5.5 Transfers of Beneficial Interests. The Liquidating Trust Board, after consultation with counsel, shall establish procedures to govern the registration and transfer of beneficial interests (such procedures, a "Permitted Transfer"). Once such procedures have been established, the Liquidating Trust Board shall notify all holders of beneficial interests of such procedures. Notwithstanding the foregoing, a transfer of a beneficial interest shall be not be permitted by the Liquidating Trust Board if such transfer would be contrary to maintaining the Liquidating Trust as a liquidating trust for federal income tax purposes in accordance with Treasury Regulation § 301.7701-4(d) and as one or more "grantor trusts" subject to the provisions of Chapter 1, Subchapter J, Part I, Subpart E of the IRC.

5.6 Absolute Owners. The Liquidating Trust Board may deem and treat the persons who are Beneficiaries (as determined in accordance with the Plan) as the absolute owners of the beneficial interests in the Liquidating Trust for the purpose of receiving distributions and payments thereof, or on account thereof, and for all other purposes whatsoever. Unless the Liquidating Trust Board receives actual written notice of a Permitted Transfer from the duly authorized transferee not less than thirty (30) days prior to a distribution made pursuant to the terms of this Agreement, and subject to the applicable provisions of Bankruptcy Rule 3001(e), the Liquidating Trust Board shall have no duty or obligation to make or direct any distributions or payments to such transferee of a Permitted Transfer.

5.7 Change of Address. A Beneficiary may, after the Effective Date of the Plan, select an alternative mailing address by notifying the Liquidating Trust in writing of such alternative Distribution Address. Absent such notice, the Liquidating Trust Board shall not

recognize any such change of address. Such notification shall be effective only upon receipt by the Liquidating Trust Board.

5.8 Effect of Death, Dissolution, Incapacity or Bankruptcy of Beneficiary. The death, dissolution, incapacity, or bankruptcy of a Beneficiary during the term of the Liquidating Trust shall not operate to terminate the Liquidating Trust during the term of the Liquidating Trust nor shall it entitle the representative or creditors of the deceased, dissolved, incapacitated, or bankrupt Beneficiary to an accounting or to take any action in any court or elsewhere for the distribution of the Liquidating Trust Assets or for a partition thereof, nor shall it otherwise affect the rights and obligations of the Beneficiary under this Agreement or in the Liquidating Trust.

5.9 Standing. Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, a Beneficiary does not have standing to direct the Liquidating Trust Board to do or not to do any act or to institute any action or proceeding at law or in equity against any party (other than against the Liquidating Trust Board to the extent provided in this Agreement) with respect to the Liquidating Trust Assets.

5.10 Requirement of Undertaking. A Liquidating Trustee may request the Bankruptcy Court to require, in any suit for the enforcement of any right or remedy under this Agreement, or in any suit against a Liquidating Trustee for any action taken or omitted by it as a Liquidating Trustee, that the filing party litigant in such suit pay the costs of such suit, including reasonable attorneys' fees, against any party litigant in such suit; *provided, however,* that the provisions of this Section 5.10 shall not apply to any suit by a Liquidating Trustee.

ARTICLE VI DISTRIBUTIONS

6.1 Distributions to Beneficiaries from Liquidating Trust Assets. All payments to be made by the Liquidating Trust to any Beneficiary shall be made only in accordance with the Plan, the Confirmation Order, and this Agreement and from the Liquidating Trust Assets, and only to the extent that the Liquidating Trust has sufficient Liquidating Trust Assets (or income and proceeds realized from the Liquidating Trust Assets, including in applicable Distribution Reserve Accounts) to make such payments in accordance with and to the extent provided for in the Plan, the Confirmation Order, and this Agreement.

6.2 Distribution Procedures.

(a) {The Liquidating Trust Board shall make distributions to Holders of Allowed Administrative Claims, Holders of Allowed Other Secured Claims, and Holders of Allowed Other Priority Claims, to the extent such Claims were not previously satisfied pursuant to the Plan, in accordance with the Plan as soon as practicable after each such Claim becomes an Allowed Claim (or the date that such Claim becomes due and payable, to the extent applicable, if later).}3

(b) {The Liquidating Trust Board shall make distributions to Holders of

3 [Weil team: Why removed?]

Allowed DIP Claims as soon as practicable and until the DIP Claims are paid in full in cash, from the General Account and all other Liquidating Trust Assets other than (i) amounts held in the Disputed Claims Reserve; (ii) amounts required to be held in the Wind-Down Reserve; and (iii) prior to the repayment of the Allowed Intermediation Secured Claims, with respect to June 21 Business Interruption Insurance Proceeds constituting Disputed Priority June 21 Insurance Proceeds or Intermediation Priority Collateral, amounts in excess of \$25 million and; provided that the holders of DIP Claims may decline such distributions (and, for the avoidance of doubt, so declining distributions shall not reduce the DIP Claims or prejudice the rights of the holders of DIP Claims to receive future Distribution ~~Proceeds~~^{Proceeds}).⁴

(c) The Liquidating Trust Board shall make distributions to Holders of Allowed Existing Term Loan Adequate Protection Claims as soon as practicable and until the Existing Term Loan Adequate Protection Claims are paid in full in cash, from the General Account and all other Liquidating Trust Assets other than (i) amounts held in the Disputed Claims Reserve; (ii) amounts required to be held in the Wind-Down Reserve; and (iii) prior to the repayment of the Allowed Intermediation Secured Claims, Disputed Priority June 21 Insurance Proceeds, Intermediation Priority Collateral, or SOA Separate Assets and Collateral; *provided* that the holders of Existing Term Loan Adequate Protection Claims may decline such distributions (and, for the avoidance of doubt, so declining distributions shall not reduce the Existing Term Loan Adequate Protection Claims or prejudice the rights of the holders of Existing Term Loan Adequate Protection Claims to receive future Distribution Proceeds.

(d) The Liquidating Trust Board shall make distributions to the Holders of Allowed Term Loan Secured Claims, in accordance with the terms of the Plan, as soon as practicable and until the Allowed Term Loan Secured Claims are paid in full in cash, from the General Account and all other Liquidating Trust Assets other than from (i) amounts held in the Disputed Claims Reserve; (ii) amounts required to be held in the Wind-Down Reserve; and (iii) prior to the repayment of the Allowed Intermediation Secured Claims in full, Disputed Priority June 21 Insurance Proceeds; *provided*, that notwithstanding any dispute, if all Allowed DIP Claims are paid in full in cash on the Effective Date, the following shall be distributed to Allowed Term Loan Secured Claims from June 21 Business Interruption Insurance Proceeds (other than Encumbrance Dispute June 21 Insurance Proceeds): \$25 million plus the Insurance Recovery Surcharge (if any); (iv) amounts used to repay DIP Claims in accordance with Section ~~Error! Reference source not found.~~^{6.2(b)} plus, at any time, upon the determination of a majority of the Term Loan Designees and the provision of [●] days' notice, any amounts held in the Wind-Down Reserve that constitute Term Loan Priority Collateral.

(e) The Liquidating Trust Board shall make distributions to Holders of the SOA Adequate Protection Claim (if any) exclusively from the SOA Adequate Protection Escrow Account as soon as practicable following Allowance thereof in an amount not to exceed 45% of the Proceeds of the Catalyst Assets.

(f) The Liquidating Trust Board shall make distributions to Holders of Allowed Intermediation Secured Claims, in accordance with the terms of the Plan and subject to

⁴ [To be removed upon settlement committee.]

the Insurance Recovery Surcharge, as soon as practicable and until the Allowed Intermediation Secured Claims are paid in full, from (x) all Intermediation Priority Collateral (or the proceeds therefrom); (y) SOA Separate Assets and Collateral (or the proceeds therefrom); and (z) after the repayment of the Allowed Term Loan Secured Claims in full, the General Account and other Liquidating Trust Assets other than from: (i) amounts held in the Disputed Claims Reserve; (ii) amounts ~~held in the GUC Distribution Reserve; (iii) amounts~~ required to be held in the Wind-Down Reserve; and (iv) amounts used to repay DIP Claims in accordance with Section ~~Error! Reference source not found.~~6.2(b). Holders of Allowed Intermediation Secured Claims shall be paid by wire.

(g) The Liquidating Trust Board shall make distributions, on a pro rata basis, to Holders of Allowed Term Loan Deficiency Claims, Allowed Intermediation Deficiency Claims and Allowed General Unsecured Claims ~~pursuant to the Plan from the GUC that have made the~~ Distribution Reserve ~~(including amounts released thereto from the Encumbrance Dispute June 21 Insurance Proceeds Reserve)~~ Election in accordance with the ~~Plan other than any amounts that may be required, in the reasonable determination of the UCC Designee, to reconcile and, if necessary, dispute the allowance of any General Unsecured Claims and terms of the Plan~~, after the repayment of ~~all~~ Allowed Term Loan ~~Secured~~ Claims and Allowed Intermediation Secured Claims in full, from ~~all of the~~ the General Account and other Liquidating Trust Assets other than from: (i) amounts held in the Disputed Claims Reserve, ~~and~~ (ii) amounts required to be held in the Wind-Down Reserve; and (iii) amounts used to repay DIP Claims in accordance with Section 6.2(b).

(h) The Liquidating Trust Board shall make distributions to the Holder of the Allowed Subordinated Remaining Volume Claim pursuant to the Plan ~~and~~, after the repayment of all Holders of Allowed Intermediation Claims, Allowed Term Loan Claims and Allowed General Unsecured Claims ~~that have made the Distribution Proceeds Election,~~ in full, pursuant to the Plan, from all of the Liquidating Trust Assets other than from: (i) amounts held in the Disputed Claims Reserve, ~~and~~ (ii) amounts required to be held in the Wind-Down Reserve; and (iii) amounts used to repay DIP Claims in accordance with Section 6.2(b).

(i) The Liquidating Trust Board shall make distributions to Holders of Allowed Interests in PES Energy and each PES Ultimate Interests pursuant to the Plan and, after the repayment to the Holder of the Allowed Subordinated Remaining Volume Claim in full, from all of the Liquidating Trust Assets other than from: (i) amounts held in the Disputed Claims Reserve, ~~and~~ (ii) amounts required to be held in the Wind-Down Reserve; and (iii) amounts used to repay DIP Claims in accordance with Section 6.2(b).

6.3 Distributions; Withholding. The Liquidating Trust Board shall make distributions to Holders of Allowed Claims in accordance with the Plan and section 6.2 hereto at such times and in such amounts as the Liquidating Trust Board may determine in its sole discretion; *provided* that the Liquidating Trust Board shall retain and adjust from time to time the funds placed in the Wind-Down Reserve in an amount determined by the Liquidating Trust Board (a) as is reasonably necessary to meet contingent liabilities to maintain the value of the Liquidating Trust Assets during the term of the Liquidating Trust; (b) to 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, and disbursing agent fees and expenses) of the Liquidating Trustees and the Delaware Trustee in connection with the performance of its duties in connection with this Agreement; and (c) to satisfy Liquidating Trust Obligations and all other liabilities and claims of creditors of the Liquidating Trust incurred or assumed in respect of the Liquidating Trust (or to which the Liquidating Trust Assets are otherwise subject), including Restructuring Expenses (which shall be paid solely from Term Loan Priority Collateral), in accordance with the Plan, the Confirmation Order, and this Agreement. All such distributions shall be made as provided, and subject to any withholding or reserve, in this Agreement, the Plan, or the Confirmation Order. The Liquidating Trust Board may withhold from amounts distributable to any Beneficiary any and all amounts, determined in the Liquidating Trust Board's sole discretion, to be required by any law, regulation, rule, ruling, directive, or other governmental requirement.

6.4 No Distribution Pending Allowance. No payment or distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim, except for distributions into a Disputed Claims Reserve in accordance with the Plan, Confirmation Order, and this Agreement.

6.5 Distributions After Allowance. Distributions to each Holder of a Disputed Claim, to the extent that such Claim ultimately becomes an Allowed Claim, shall be made in accordance with the provisions of the Plan governing the Class of Claims to which such Holder of a Claim belongs.

6.6 Undeliverable Distributions. If any Distribution is returned as undeliverable, the Liquidating Trust may, in its sole discretion (but with no obligation to do so), make such efforts to determine the current address of the holder of the Claim with respect to which the Distribution was made as the Liquidating Trust deems appropriate, but no Distribution to any holder shall be made unless and until the Liquidating Trust has determined the then-current address of the holder, at which time the Distribution to such holder shall be made to the holder without interest. Amounts in respect of any undeliverable Distributions made by the Liquidating Trust shall be returned to, and held in trust by, the Liquidating Trust until the Distributions are claimed or are deemed to be unclaimed property under section 347(b) of the Bankruptcy Code and the Plan at the expiration of six months from the date the distribution is made ("Unclaimed Property").

6.7 Unclaimed Property. In the event that any distribution to any Beneficiary becomes Unclaimed Property, such distributions will revert to the Liquidating Trust as an asset of the Liquidating Trust; *provided* that, pursuant to the Plan, the Liquidating Trust Board shall not be required to make distributions of less than \$100.00 (a "Minimum Distribution") and if after administering all Liquidating Trust Assets and collecting all amounts which may be payable to and for the ~~benefit of Holders of General Unsecured Claims~~ Beneficiaries, the amount held by the Liquidating Trust for the ~~benefit of Holders of General Unsecured Claims~~ Beneficiaries is less than \$10,000.00, the Liquidating Trust Board, in its sole discretion, may donate the remaining funds to a charitable institution that is exempt from federal income tax pursuant to IRC Section 501(c)(3). Neither available Cash nor any Claim or any unclaimed property attributable

to such Claim, shall escheat to any federal, state, or local government or other entity.

6.8 Time Bar to Cash Payments by Check. Checks issued by the Liquidating Trust on account of Allowed Claims shall be null and void if not negotiated within 90 days after the date of issuance thereof. Requests for the reissuance of any check that becomes null and void pursuant to the Plan and this Section 6.8 shall be made directly to the Liquidating Trust Board by the holder of the Allowed Claim to whom the check was originally issued. Any Claim in respect of such voided check shall be made in writing on or before the later of the first anniversary of the Effective Date of the Plan or the first anniversary of the date on which the Claim at issue became an Allowed Claim. After that date, all Claims in respect of void checks shall be discharged and forever barred and the proceeds of those checks shall revest in and become property of the Liquidating Trust as Unclaimed Property.

6.9 Withholding Taxes. Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from distributions hereunder and to the extent of knowledge and records available to the Liquidating Trust. All Beneficiaries shall be required to provide the Liquidating Trust Board with any information necessary in connection with the withholding of such taxes. In addition, all distributions under the Plan shall be net of the actual and reasonable costs of making such distributions.

6.10 Distributions on Non-Business Days. Any distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

6.11 No Distribution in Excess of Allowed Amount of Claim. Notwithstanding anything to the contrary in the Plan, no Beneficiary shall receive in respect of such Claims held by the Beneficiary any distribution in excess of the Allowed amount of such Claim, plus postpetition interest thereon to the extent allowed by the Plan. Upon a Beneficiary's recovering the full amount of its Allowed Claim from another source, it thereafter shall no longer have any entitlement to receive distributions under the Plan.

6.12 Setoff and Recoupment. The Liquidating Trust may, but shall not be required to, setoff against, or recoup from, any Claim and the Distribution to be made pursuant to the Plan in respect thereof, any claims or defenses of any nature whatsoever that the Debtor, the Estates or the Liquidating 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 Debtor, the Estates or the Liquidating Trust of any claim, defense, right of setoff, or recoupment that any of them may have against the holder of any Claim.

6.13 Objections to Distributions. The Intermediation Provider shall have the right to object to any Distribution by the Liquidating Trust on the basis that (i) the allocation of proceeds from the Sale Transaction to the Intermediation Priority Collateral and SOA Separate Assets and Collateral was insufficient compensate the Intermediation Provider for the value of the Intermediation Priority Collateral and SOA Separate Assets and Collateral, and (ii) a distribution to any Allowed Claim to the extent that such Distribution improperly includes Intermediation Priority Collateral and SOA Separate Assets and Collateral, or the proceeds of either Intermediation Priority Collateral or SOA Separate Assets and Collateral. The UCC Ombudsman shall have the right to object, subject (in the case of any expenditure of Term Loan

Priority Collateral) to the UCC Ombudsman Budget, to (x) any Distribution by the Liquidation Trust on the basis that such distribution improperly includes Encumbrance Dispute June 21 Insurance Proceeds (including such Encumbrance Dispute June 21 Insurance Proceeds that have been released to the GUC Distribution Reserve) or (y) the Allowance of any Term Loan Adequate Protection Claim ~~or SOA Adequate Protection Claim.~~

6.14 Disputed Priority June 21 Insurance Proceeds. Upon the receipt of any Disputed Priority June 21 Insurance Proceeds, the Liquidating Trust shall segregate and hold such funds strictly in accordance with the Final DIP Order, until such time as the relative priority of Term Loan Secured Claims and Intermediation Secured Claims has been determined by Final Order or by agreement of the parties to Adv. Pro. No. 19-50282 (KG).

ARTICLE VII TAXES

7.1 Income Tax Status. Consistent with Revenue Procedure 94-45, 1994-2 C. B. 684, the Liquidating Trust shall be treated as a liquidating trust pursuant to Treasury Regulation Section 301.7701-4(d) and as a grantor trust pursuant to IRC Sections 671-677. As such, the Beneficiaries will be treated as both the grantors and the deemed owners of the Liquidating Trust, except with respect to the Disputed Claims Reserves. Any items of income, deduction, credit, and loss of the Liquidating Trust, except with respect to the Disputed Claims Reserves, shall be allocated for federal income tax purposes to the Beneficiaries.

7.2 Tax Treatment of Transfer of Assets to the Liquidating Trust. For all federal income tax purposes, all parties (including, without limitation, the Debtors, the Liquidating Trustees, and the Beneficiaries) shall treat the transfer of Liquidating Trust Assets to the Liquidating Trust, except with respect to the Disputed Claims Reserves, as set forth in Sections 1.2, 1.3 and 1.4 of this Agreement and in accordance with the Plan, as a transfer of such Liquidating Trust Assets (net of any applicable liabilities) to the Beneficiaries (to the extent of the value of their respective interests in such Liquidating Trust Assets) and a transfer of such Liquidating Trust Assets (net of any applicable liabilities) by the Beneficiaries (to the extent of the value of their respective interests in such Liquidating Trust Assets) to the Liquidating Trust.

7.3 Tax Returns. In accordance with Treasury Regulation Section 1.671-4(a), the Liquidating Trust Board shall file with the IRS annual tax returns for the Liquidating Trust as a grantor trust on IRS Form 1041. In addition, the Liquidating Trust Board shall file in a timely manner such other tax returns, including any state and local tax returns, as are required by applicable law and pay any taxes shown as due thereon. The Liquidating Trust Board shall send to each Holder of a beneficial interest appearing on the Register who is a Minimum Distributee during such year, a separate statement setting forth such Holder's share of items of income, gain, loss, deduction, or credit and each such Holder shall report such items on their federal income tax returns; *provided, however,* that no such statement need be sent to any Beneficiaries that are not expected to receive any distribution from the Liquidating Trust as a Minimum Distributee. The Liquidating Trust Board may provide each such Holder of a beneficial interest with a copy of the IRS Form 1041 for the Liquidating Trust (without attaching any other Holder's Schedule K-1 or other applicable information form) along with such Holder's Schedule K-1 or other

applicable information form in order to satisfy the foregoing requirement.

7.4 The Liquidating Trust shall allocate the taxable income, gain, loss, deduction or credit of the Liquidating Trust with respect to each Holder of a beneficial interest to the extent required by applicable law.

7.5 Notwithstanding anything to the contrary herein, with respect to the Tax Refund Claims and the Excluded Tax Refund Asset (as such terms are defined in the Tax Refund Agreement), the Liquidating Trustees shall not take any position that is inconsistent with the intended tax treatment described in Sections 1 and 2 of the Tax Refund Agreement whether on a Tax Return or in a Tax audit, examination, or other proceeding, inconsistent with such intended tax treatment, except as otherwise required by applicable Law.

7.6 Withholding of Taxes and Reporting Related to Liquidating Trust Operations. In connection with the Plan and all distributions thereunder, the Liquidating Trust Board shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all distributions thereunder shall be subject to any such withholding and reporting requirements. The Liquidating Trust Board is authorized by the Plan to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. The Liquidating Trust Board may require any Beneficiary to furnish to the Liquidating Trust Board its social security number or employer or taxpayer identification number as assigned by the IRS and the Liquidating Trust Board may condition any distribution to any Beneficiary upon the receipt of such identification number. The Debtors shall provide a copy of IRS form W-9 and request other applicable withholding information and give notice (in form reasonably acceptable to Liquidating Trust Board) of this provision, its requirements and this Agreement to Beneficiaries, together with the notice of the Effective Date of the Plan.

7.7 Valuations. As soon as possible after the Effective Date, the Liquidating Trust Board, in consultation with any financial advisors it deems appropriate, shall make a good faith valuation of the Liquidating Trust Assets, and such valuation shall be used consistently by all parties (including, without limitation, the Liquidating Trust and the Beneficiaries) for all federal income tax purposes; *provided, however,* that such valuation shall not be binding on the Liquidating Trust Board or any other party for any other purposes, including without limitation in regard to the liquidation of the Trust Assets, whether by disposition, liquidation, litigation, settlement, or otherwise. The Liquidating Trust also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any governmental unit.

7.8 Treatment of Disputed Claims Reserves. The Liquidating Trust shall file all income tax returns with respect to any income attributable to the Disputed Claims Reserves and shall pay the federal, state, and local income taxes attributable to the Disputed Claims Reserves, based on the items of income, deduction, credit, or loss allocable thereto. All Beneficiaries shall report, for income tax purposes, consistent with the foregoing. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserves is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (i) reimbursed from

any subsequent Cash amounts retained on account of Disputed Claims, or (ii) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the Liquidating Trust as a result of the resolutions of such Disputed Claims.

7.9 Expedited Determination of Taxes. The Liquidating Trust may request an expedited determination of taxes of the Debtors and of the Liquidating Trust (and, at Plan Sponsor's request, taxes of the Acquired Reorganized Debtors), including the Disputed Claims Reserves, under Bankruptcy Code Section 505(b) for all returns filed for, or on behalf of, the Debtors and the Liquidating Trust (or, if applicable pursuant to Plan Sponsor's request, the Acquired Reorganized Debtors) for all taxable periods through the termination of the Liquidating Trust.

ARTICLE VIII TERMINATION OF LIQUIDATING TRUST

8.1 Termination of Liquidating Trust. The Liquidating Trustees shall be discharged and the Liquidating Trust shall be terminated, at such time as: (A) (i) all of the Liquidating Trust Assets have been liquidated and all Liquidating Trust Obligations have been fulfilled, (ii) all duties and obligations of the Liquidating Trust Board hereunder have been fulfilled, (iii) all distributions required to be made by the Liquidating Trust Board under the Plan and this Agreement have been made, and (iv) the Chapter 11 Cases of the Debtors have been closed; or (B) the Liquidating Trust Board unanimously determines in its reasonable judgment that the Liquidating Trust lacks sufficient assets and financial resources, after reasonable collection efforts, to complete the duties and powers assigned to him or her under the Plan, the Confirmation Order and/or this Agreement.

8.2 Maximum Term. The term of the Liquidating Trust shall end no later than the fifth (5th) anniversary of the Effective Date of the Plan (the "Initial Liquidating Trust Term"); *provided* that the Liquidating Trust Board may shall, if the pursuit of recoveries on the Liquidating Trust's (and the Debtors') claims under the Business Interruption and Property Damage Insurance Policies and my, subject to the further provisions of this Section 8.2, extend the term of the Liquidating Trust for such additional period of time as is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets as follows: within the six (6) month period prior to the termination of the Initial Liquidating Trust Term, the Liquidating Trust may file a notice of intent to extend the term of the Liquidating Trust with the Bankruptcy Court and upon approval of the Bankruptcy Court of such extension, the term of the Liquidating Trust shall be so extended. The Liquidating 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 Liquidating Trust (all such extensions, collectively, the "Supplemental Liquidating Trust Term"). Notwithstanding anything to the contrary in this Section 8.2, however, the Supplemental Liquidating Trust Term may not exceed three (3) years without a favorable letter ruling from the IRS that any further extension would not adversely affect the status of the Liquidating Trust as a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d) for federal income tax purposes. In addition, the provisions of this Section 8.2 shall be without prejudice to the right of any party in interest under Bankruptcy Code Section 1109 to petition the Bankruptcy Court, for cause shown, to shorten the Supplemental Liquidating

Trust Term.

8.3 Events Upon End of Term Termination. At the conclusion of the term of the Liquidating Trust, the Liquidating Trust Board shall distribute the remaining Liquidating Trust Assets, if any, to the Beneficiaries (or charity), in accordance with the Plan, the Confirmation Order, and this Agreement.

8.4 Winding Up and Discharge of the Liquidating Trustees. For the purposes of winding up the affairs of the Liquidating Trust at the conclusion of its term, each Liquidating Trustees shall continue to act as Liquidating Trustee until its duties under this Agreement have been fully discharged or its role as a Liquidating Trustee is otherwise terminated under this Agreement and the Plan. Upon a motion by a Liquidating Trustee, the Bankruptcy Court may enter an order relieving such Liquidating Trustee, its agents, and employees of any further duties, discharging such Liquidating Trustee and releasing its bond, if any.

ARTICLE IX

DELAWARE TRUSTEE

9.1 Delaware Trustee.

(a) The Delaware Trustee shall constitute one of the trustees of the Liquidating Trust for the sole and limited purpose of Section 3807(a) of the Delaware Act, shall have only the duties (including fiduciary duties), rights, obligations and liabilities specifically provided for in this Agreement and the Delaware Act, and shall have no implied duties (including fiduciary duties), rights, obligations or liabilities with respect to the business and affairs of the Liquidating Trust. The Delaware Trustee shall not participate in any decisions relating to, or possess any authority independently to manage or control, the business and affairs of the Liquidating Trust. The Delaware Trustee may, and hereby is authorized to, take such action or refrain from taking such action under this Agreement as may be directed in writing by the Liquidating Trust Board from time to time; provided, however, that the Delaware Trustee shall not be required to take or refrain from taking any such action if it shall have determined, or shall have been advised by counsel, that such action is reasonably likely to subject the Delaware Trustee to personal liability or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Liquidating Trust or the Delaware Trustee is a party or is otherwise contrary to law.

(b) So long as required by the Delaware Act, there shall be one (1) Delaware Trustee who or which shall be (i) a natural person who is a resident of the State of Delaware or (ii) if not a natural person, an entity that has its principal place of business in the State of Delaware, otherwise meets the requirements of applicable law and shall act through one or more persons authorized to bind such entity.

(c) The Delaware Trustee may resign or be removed by the Liquidating Trust Board at any time and, if at any time the Delaware Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately, by giving written notice thereof to the Liquidating Trust Board. If the Delaware Trustee shall resign or be

removed, the Liquidating Trust Board shall promptly appoint a successor Delaware Trustee, and such successor Delaware Trustee and the resigning or removed Delaware Trustee shall execute and deliver an instrument to effect such change in identity of the Delaware Trustee, and thereupon the resignation of the resigning or removed Delaware Trustee shall become effective and the successor Delaware Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and obligations of the predecessor Delaware Trustee. If no successor Delaware Trustee shall have been so appointed and have accepted appointment within forty-five (45) days after the giving of a notice of resignation, a resigning Delaware Trustee may, at the expense of the Liquidating Trust Board, petition any court of competent jurisdiction for the appointment of a successor Delaware Trustee. Upon the appointment of a successor Delaware Trustee, such successor Delaware Trustee shall file a certificate of amendment to the Certificate of Trust of the Liquidating Trust in accordance with Section 3810 of the Delaware Act.

9.2 Limitation of Delaware Trustee Liability. The Delaware Trustee shall not be liable for the acts or omissions of the Liquidating Trust, any Liquidating Trustee or any other person or entity, nor shall the Delaware Trustee be liable for supervising or monitoring the performance of the duties of the Liquidating Trustees or the Liquidating Trust or of any other person or entity under this Agreement or any related document. The Delaware Trustee shall not be personally liable under any circumstances, except for its own ~~gross negligence, fraud, or~~ willful misconduct. In particular, but not by way of limitation:

(a) The Delaware Trustee shall not be personally liable for any error or judgment made by a responsible officer or other authorized officer of the Delaware Trustee in good faith;

(b) No provision of this Agreement shall require the Delaware Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its duties hereunder;

(c) Under no circumstance shall the Delaware Trustee, in its individual capacity or in its capacity as Delaware Trustee, or any member, partner, shareholder, director, officer, employee, agent, affiliate or advisor of the Delaware Trustee or their respective affiliates be personally liable for any representation, warranty, covenant, agreement, liability or indebtedness of the Liquidating Trust, as all such representations, warranties, covenants, agreements, liabilities or indebtedness of the Liquidating Trust are those of the Liquidating Trust as an entity;

(d) The recitals contained herein shall not be taken as the statements of the Delaware Trustee, and the Delaware Trustee does not assume any responsibility for their correctness. The Delaware Trustee shall not be personally responsible for or in respect of, and the Delaware Trustee makes no representations as to, the title to, or value or condition of, the property of the Liquidating Trust or any part thereof, including the Liquidating Trust Assets, nor as to the validity or sufficiency of this Agreement or any related certificate, instrument or other document;

(e) The Delaware Trustee may conclusively rely and shall be fully protected, and shall incur no liability to anyone, in acting or refraining from acting in good faith and in reliance upon any signature, instrument, notice, resolution, request, instruction, direction, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. The Delaware Trustee may accept a certified copy of a resolution of any governing body of any person as conclusive evidence that such resolution has been duly adopted by such person and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which is not specifically prescribed herein or whenever the Delaware Trustee shall deem it desirable that a fact or matter be proved or established prior to taking, suffering or omitting any action hereunder (including, direction by the Liquidating Trust Board with respect to such action), the Delaware Trustee may for all purposes hereof rely on a certificate, signed by any officer of the party delivering the certificate or, in the case of the Liquidating Trust Board, signed by a Liquidating Trustee, as to such fact or matter, and such certificate shall constitute full protection to the Delaware Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(f) In the exercise or administration of its duties hereunder, the Delaware Trustee (A) may act directly or through agents or attorneys pursuant to agreements entered into with any of them, and the Delaware Trustee shall not be liable for the default or misconduct of such agents or attorneys if such agents or attorneys shall have been selected by the Delaware Trustee in good faith and (B) may consult with counsel, accountants and other skilled persons to be selected in good faith and employed by it, and it shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons; and

(g) In accepting and performing its duties hereunder the Delaware Trustee acts solely as trustee hereunder and not in its individual capacity, and all persons having any claim against the Delaware Trustee or the Liquidating Trust by reason of the transactions contemplated by this Agreement shall look only to the Liquidating Trust Assets for payment or satisfaction thereof.

9.3 Compensation and Expenses of Delaware Trustee. The Delaware Trustee shall be entitled to receive, and the Liquidating Trust shall pay the Delaware Trustee, compensation as set forth in a written agreement between the Liquidating Trustees and the Delaware Trustee. The Delaware Trustee and any director, officer, affiliate, employee, employer, professional, agent or representative of the Delaware Trustee shall be advanced expenses, defended, held harmless and indemnified from time to time by the Liquidating Trust against any and all losses, claims, costs, expenses and liabilities to which such indemnified parties may be subject arising hereunder or in connection herewith; *provided, however,* that the indemnification obligations arising pursuant to this Section 9.3 shall indemnify neither the Delaware Trustee nor any director, officer, affiliate, employee, employer, professional, agent or representative of the Delaware Trustee for any actions taken by such indemnified parties which constitute gross negligence, fraud, or willful misconduct. Satisfaction of any obligation of the Liquidating Trust arising pursuant to the terms of this Section 9.3 shall be payable only from the Liquidating Trust Assets and such right to payment shall be prior and superior to the Beneficiaries' rights to receive distributions from the Liquidating Trust. The provisions of this

Section 9.3 shall survive the termination of this Agreement and the removal or resignation of any Delaware Trustee.

ARTICLE X MISCELLANEOUS PROVISIONS

10.1 Amendments.

(a) The Liquidating Trust Board, upon unanimous consent, may direct the Liquidating Trustees, or any of them, to execute a supplement or amendment hereto for the purpose of adding provisions to, or changing or eliminating provisions of, this Agreement, or amendments thereto, as specified in such vote or consent; *provided, however,* that no such supplement or amendment shall (i) require any Beneficiary to furnish or advance funds to the Liquidating Trust Board or shall entail any additional personal liability or the surrender of any individual right on the part of any Beneficiary except with the written consent of such Beneficiary; (ii) without the prior written consent of the holder of an Allowed Administrative Claim, Allowed Other Secured Claim, Allowed Other Priority Claim, Allowed Term Loan Secured Claim, Allowed Intermediation Secured Claim, ~~Allowed General Unsecured Claim~~, Allowed Subordinated Remaining Volume Claim, or Allowed Interests in PES Energy and PES Ultimate disproportionately affect, change or modify the right and obligations with respect to such Claim, including, without limitation, provisions for payment of such Claim; (iii) without the prior written consent of the Delaware Trustee, modify, supplement or amend any provisions of this Agreement that affect the Delaware Trustee's duties, obligations, rights, privileges or protections hereunder; or (iv) affect, change, modify, or amend whatsoever any provisions of this Agreement that affect the June 21 Business Insurance Proceeds without unanimous approval of such supplement or amendment by the Business Insurance Litigation Committee. In no event shall this Agreement be amended so as to be inconsistent with the Plan, the Tax Refund Agreement, the Litigation Control Agreement, or the Confirmation Order.

(b) If, in the reasonable opinion of the Liquidating Trust Board, any document required to be executed pursuant to the terms of Section 10.1 hereof materially and adversely affects any immunity or indemnity in favor of the Liquidating Trustees under this Agreement, the Liquidating Trustees may in their discretion decline to execute such document.

(c) A copy of each amendment or supplement (or a fair summary thereof) shall be furnished to the Beneficiaries promptly after the execution thereof, except that with respect to any proposed amendment or supplement for which the consent of certain Beneficiaries is required pursuant to Section 10.1 hereof, the form of such proposed supplement or amendment (or a fair summary thereof) shall be furnished to the applicable Beneficiaries prior to the Liquidating Trust Board's seeking the approval thereof by vote or consent of such necessary parties.

(d) Upon the execution of any declaration of amendment or supplement, this Agreement shall be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Agreement of the Liquidating Trustees and the Beneficiaries shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms

and conditions of any such amendment or supplement shall be thereby deemed to be part of the terms and conditions of this Agreement for any and all purposes.

10.2 Confidentiality. The Liquidating Trustees and each successor Liquidating Trustee and each officer, representative agent, attorney, accountant, appraiser, expert witness, insurance adjusters, or any and all other persons employed to advise or assist in the administration, prosecution and distribution of the Liquidating Trust Assets, shall, during the period that they serve in such capacity under this Liquidating Trust Agreement and following either the termination of this Liquidating Trust Agreement or such individual's removal, incapacity, or resignation hereunder, hold strictly confidential any material, non-public information of or pertaining to any Person to which any of the Liquidating Trust Assets relates 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 Liquidating Trust Board reasonably promptly (unless prohibited by law) so that the Liquidating Trust Board may seek an appropriate protective order or other appropriate remedy or, in its discretion, waive compliance with the terms of this Section [10.2]. In the event that no such protective order or other remedy is obtained, or that the Liquidating Trust Board waives compliance with the terms of this Section [10.2], and that 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 Liquidating Trust Committee notice (unless prohibited by law) of the Information to be disclosed as far in advance as practicable and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information. Notwithstanding the foregoing, the Term Loan Designees shall be permitted to make any disclosure of material non-public information if, had such information been provided by a Loan Party (as defined in the Term Loan Credit Agreement), such disclosure would have been permitted to the Administrative Agent or a Lender under the confidentiality provisions of the Term Loan Credit Agreement..

10.3 Waiver. No failure by the Liquidating Trust, a Liquidating Trustee or the Delaware 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.

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

10.5 Reservation of Rights. Nothing contained in this Agreement shall prevent any Liquidating Trustee from exercising (or omitting to exercise) or seeking (or omitting to seek) to enforce or protect any of its rights as an individual creditor or party in interest in the Chapter 11 Cases.

10.6 No Bond Required. Notwithstanding any state law to the contrary, the Liquidating Trustees (including any successor Liquidating Trustee) and the Delaware Trustee (including any successor Delaware Trustee) shall be exempt from giving any bond or other

security in any jurisdiction.

10.7 Irrevocability. This Agreement and the Liquidating Trust formed hereunder shall be irrevocable, except as otherwise expressly provided in this Agreement.

10.8 Relationship to the Plan. The principal purpose of this Agreement is to aid in the implementation of the Plan and, therefore, this Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In the event that any provision of this Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order, the provisions of the Plan or the Confirmation Order, as applicable, shall control. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, the Plan or the Confirmation Order, and consistent with Article IX.B. of the Plan, the Liquidating Trust Board shall have the right to review and, where appropriate, object to any and all Claims, and, subject to the terms of the Plan, supervise and administer the resolution, settlement and payment of Claims, and the distribution to the Beneficiaries and creditors of the Liquidating Trust, in accordance with this Agreement, the Plan, and the Confirmation Order.

10.9 Division of Liquidating Trust. Under no circumstances shall the Liquidating Trust Board have the right or power to divide the Liquidating Trust unless authorized to do so by the Bankruptcy Court.

10.10 Applicable Law. The Liquidating Trust is made in the State of Delaware, and the Liquidating Trust and this Agreement, and the rights and obligations of the Liquidating Trustees is to be governed by and construed and administered according to the laws of the State of Delaware; *provided, however,* that, except as expressly provided in this Agreement, there shall not be applicable to the Liquidating Trust or this Agreement (a) the provisions of Section 3540 of the Delaware Act; or (b) any provisions of the laws (statutory or common) of the State of Delaware pertaining to trusts which relate to or regulate: (i) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges; (ii) affirmative requirements to post bonds for trustees, officers, agents, or employees of a trust; (iii) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property; (iv) fees or other sums payable to trustees, officers, agents or employees of a trust; (v) the allocation of receipts and expenditures to income or principal; (vi) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding of trust assets; or (vii) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees, which are inconsistent with the limitations or liabilities or authorities and powers of the Liquidating Trustees set forth or referenced in this Agreement.

10.11 Retention of Jurisdiction. Notwithstanding the Effective Date of the Plan, and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the Liquidating Trust after the Effective Date of the Plan, including, without limitation, jurisdiction to resolve any and all controversies, suits, and issues that may arise in connection therewith, including, without limitation, this Agreement, or any entity's obligations incurred in connection herewith, including without limitation, any action against the Liquidating Trustees or any professional retained by the Liquidating Trustees. Each party to this Agreement and each

beneficiary of the Liquidating Trust hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret, or construe any provision of this Agreement or of any other agreement or document delivered in connection with this 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 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 Agreement.

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

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

10.14 Notices. All notices, requests, demands, consents, and other communication hereunder shall be in writing and shall be deemed to have been duly given to a person, if delivered in person or if sent by overnight mail, registered mail, certified mail or regular mail, with postage prepaid, to the following addresses:

If to the Liquidating Trust Board:

[•]
c/o [•]
[•]
Email: [•]

If to the ICBCS Designee

ICBCS
20 Gresham Street
London EC2V 7JE,
United Kingdom
Attn: Steve Branchflower
Paul Chelsom
E-Mail: Steve.Branchflower@icbcstandard.com
Paul.Chelsom@icbcstandard.com

-and-

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attn: David N. Griffiths
Bryan R. Podzius
Phone: (212) 310-8000
E-Mail: david.griffiths@weil.com
bryan.podzius@weil.com

If to the Delaware Trustee:

[•]
c/o [•]
[•]
Email: [•]

If to a Beneficiary:

To the name and mailing address set forth in the Register with respect to such Beneficiary.

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

10.15 Integration. This Agreement, the Plan, and the Confirmation Order constitute the entire agreement with, by, and among the parties thereto, and there are no representations, warranties, covenants, or obligations except as set forth herein, in the Plan, and in the Confirmation Order. This 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 Agreement, the Plan, or Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of this Agreement. To the extent there is an inconsistency between the Plan and this Agreement, the Plan shall control.

10.16 Interpretation. The enumeration and Section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this 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 Agreement as a whole and not to any particular Section or subsection hereof unless the context requires otherwise. Any reference to the "Liquidating

Trustees" shall be deemed to include a reference to the "Liquidating Trust" and any reference to the "Liquidating Trust" shall be deemed to include a reference to the "Liquidating Trustees" except for the references in Sections 3.1 and 3.2, and such other provisions in which the context otherwise requires.

10.17 Counterparts. This Agreement may be signed by the parties hereto in counterparts, which, when taken together, shall constitute one and the same document.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

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

PES Holdings, LLC

By: _____
Name: [•]
Title: [•]
[•]

The Liquidating Trustees

By: _____
Name: [•]

The Delaware Trustee

By: _____
Name: [•]

EXHIBIT A

Material Contracts of the Liquidating Trust

Summary report:	
Litera® Change-Pro for Word 10.7.0.7 Document comparison done on 2/13/2020 12:23:49 AM	
Style name: Color Legislative Moves+Images	
Intelligent Table Comparison: Active	
Original filename: PES - Ex. G - Liquidating Trust Agreement [FILING VERSION] (66114409_37).DOCX	
Modified filename: PES - Liquidating Trust Agreement - Consolidated Comments.docx	
Changes:	
Add	92
Delete	115
Move From	14
Move To	14
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	235