

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:	)	
	)	Chapter 11
	)	
ASPC Corp., f/k/a AcuSport Corporation,	)	Case No. 18-52736
	)	
Debtor.	)	Hon. John E. Hoffman, Jr.
_____	)	

**AGREED FIRST AMENDED PLAN OF LIQUIDATION OF  
DEBTOR AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Dated: ~~October 2,~~December 4, 2018

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**AGREED PLAN OF LIQUIDATION OF DEBTOR AND  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

ASPC Corp., f/k/a AcuSport Corporation, as debtor and debtor-in-possession (the “*Debtor*”) and the Official Committee of Unsecured Creditors (the “*Committee*”), hereby submit this Agreed [First Amended](#) Plan of Liquidation of Debtor (the “*Plan*”) pursuant to section 1123 of the Bankruptcy Code:

**ARTICLE I**

**Definitions**

The following terms, when used in the Plan shall, unless the context otherwise requires, have the following meanings, respectively:

1.1 “**Administrative Claim**” shall mean a Claim of a Creditor of the kind specified in section 503(b) of the Bankruptcy Code that is entitled to priority under section 507(a)(2) of the Bankruptcy Code, and shall include: (i) any actual and necessary costs and expenses incurred by the Debtor after the Petition Date with respect to preserving the Estate and operating the Debtor’s business; (ii) any Professional Fee Claims approved by the Bankruptcy Court pursuant to section 330 of the Bankruptcy Code; and (iii) all UST Fees.

1.2 “**Administrative Claims Bar Date**” shall have the meaning set forth in Section 5.1.2 of the Plan.

1.3 “**Advisory Committee**” shall mean the committee created pursuant to the Creditor Trust Agreement, which shall provide advice and consultation to the Creditor Trustee in the manner set forth in the Creditor Trust Agreement.

1.4 “**Agent**” shall mean Wells Fargo Bank, N.A., in its capacity as administrative agent for the Pre-Petition Lenders under the Pre-Petition Loan Documents.

1.5 “**Allowed Claim**” or “**Allowed . . . Claim**” shall mean a Claim, proof of which is filed by the General Bar Date or the Governmental Bar Date, as applicable, pursuant to the procedures established pursuant to the Bar Date Order, or that has been, or is hereafter, scheduled by the Debtor as liquidated in amount and not disputed or contingent, and to which no objection to allowance thereof has been raised by the Debtor, Creditor Trustee or filed within any applicable period fixed by the Bankruptcy Court, or as to which a Final Order allowing such Claim has been entered.

1.6 “**Avoidance Action**” shall mean causes of action against Persons arising under sections 502, 510, 541, 542, 544, 545, 547 through 551 and 553 of the Bankruptcy Code, or under related state or federal statutes and common law, including fraudulent transfer laws, whether or not litigation is commenced before or after the Confirmation Date to prosecute such Avoidance Actions.

1.7 “**Ballot**” shall mean the form distributed to each Holder of an impaired Claim on which is to be indicated acceptance or rejection of the Plan.

1.8 “**Bankruptcy Code**” shall mean title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*

1.9 “**Bankruptcy Court**” shall mean the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division, located in Columbus, Ohio, or any court having jurisdiction over this Case or a proceeding arising in, or arising under or related to this Case.

1.10 “**Bankruptcy Rules**” shall mean the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, as now in effect.

1.11 “**Bar Date Order**” shall mean that certain Order Establishing Bar Date and Approving Form and Manner of Notice Thereof (Docket No. 191).

1.12 “**Beneficiaries**” shall mean the beneficiaries of the Creditor Trust; specifically, Holders of Allowed Administrative Claims, Allowed Priority Tax [Claims, Allowed Class 1 Secured](#) Claims, Allowed Class 2 Priority Claims, and Allowed Class 3 General Unsecured Claims that are entitled to receive a Distribution from the Creditor Trust under the terms of the Plan and the Creditor Trust Agreement.

1.13 “**Case**” shall mean the case commenced under chapter 11 of the Bankruptcy Code by the Debtor on the Petition Date, styled *In re ASPC Corp., f/k/a AcuSport Corporation*, Case No. 18-52736, currently pending before the Bankruptcy Court.

1.14 “**Cash**” shall mean legal tender of the United States of America and equivalents thereof.

1.15 “**Cash Collateral Order**” shall mean that certain Final Order Authorizing Debtor to: (A) Use Cash Collateral; and (B) Grant Adequate Protection and Other Relief to Wells Fargo Bank, N.A., as Agent, and to Debtor’s Lenders (Docket No. 129).

1.16 “**Causes of Action**” shall mean any claim, cause of action, chose in action, action, suit, demand, and any other debt, obligation, right, damage, remedy, controversy, agreement, promise, lien, variance, trespass, power, privilege, license, franchise, judgment, third-party claim, subrogation claim, guaranty claim, contribution claim, reimbursement claim, indemnity claim, counterclaim, right of setoff or recoupment, crossclaim, claim objection, defense to claim, and liability whatsoever of any kind or character relating to any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertable directly or derivatively, existing or hereafter arising, in law, equity, or otherwise. Cause of Action also includes: (a) any right of setoff, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity belonging to the Estate; (b) any claim pursuant to sections 362, 502, and 510 of the Bankruptcy Code and any analogous provisions of applicable state law belonging to the Estate; (c) any claim, right or cause of action related to any and all Avoidance Actions; (d) any claim or defense including, but not limited to fraud, mistake, duress, and usury and any other defenses belonging to the Estate pursuant to section 558 of the Bankruptcy Code; and (e) any claim, right, or cause of action against any Insiders, officers, directors, recipient of a fraudulent

transfer, and/or related entities. For the avoidance of doubt, Causes of Action shall include Fiduciary Duty Causes of Action and Other Potential Insider Actions.

1.17 “**Claim**” ~~means any right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, as defined by~~ shall have the meaning set forth in section 101(5) of the Bankruptcy Code.

1.18 “**Class**” shall mean a class of Holders of Claims as described in the Plan.

1.19 “**Committee**” shall mean the Official Committee of Unsecured Creditors appointed in this Case on May 10, 2018, pursuant to section 1102 of the Bankruptcy Code, as amended by the *Amended Notice of Appointment of Unsecured Creditors Committee* filed on July 25, 2018 [Dkt. No. 277].

1.20 “**Confirmation Date**” shall mean the date of entry of the Confirmation Order.

1.21 “**Confirmation Hearing**” shall mean the date on which the Bankruptcy Court holds a hearing pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan in accordance with section 1129 of the Bankruptcy Code, as the same may be adjourned from time to time.

1.22 “**Confirmation Order**” shall mean the order confirming this Plan.

1.23 “**Creditor**” shall ~~mean any creditor of the Debtor holding Claims for debts, liabilities, demands or other Claims of any character whatsoever~~ have the meaning set forth in [section 101\(10\) of the Bankruptcy Code](#).

1.24 “**Creditor Trust**” shall mean a common law grantor trust to be established pursuant to the Plan, the Creditor Trust Agreement and the Confirmation Order for the sole and exclusive benefit of the Beneficiaries. The Creditor Trust shall liquidate and distribute the Creditor Trust Assets, in accordance with the Creditor Trust Agreement.

1.25 “**Creditor Trust Agreement**” shall mean the agreement to be executed by no later than the Effective Date among the Debtor, the Committee and the Creditor Trustee, which shall govern the obligations of the Creditor Trustee with respect to oversight of the distribution of the Net Proceeds of the Creditor Trust Assets, as further set forth in the Creditor Trust Agreement and the Plan.

1.26 “**Creditor Trust Assets**” shall mean those assets to be transferred to and vested in the Creditor Trust pursuant to this Plan and the Confirmation Order, plus all proceeds, earnings and replacements arising from or relating to these assets and all assets acquired by the Creditor Trust at any time. The Creditor Trust Assets shall include (but not be limited to): (i) all Cash held by the Debtor (less any Cash paid or to be paid on account of unpaid Allowed Professional Fee Claims); (ii) the Debtor’s remaining property, including accounts or any other tangible or intangible personal property and any and all proceeds thereof; (iii) the Debtor’s outstanding accounts receivable; (iv) the Debtor’s right, title and interest in and to all Causes of Action and any proceeds therefrom; and (v) all books and records related to the Debtor or its Estate. The



Creditor Trust Assets shall not include any carve-outs from collateral of the Lenders, including without limitation amounts held by Professionals as carve-outs from the Lenders' collateral to be used to compensate Professionals for their fees and expenses.

1.27 “**Creditor Trustee**” shall mean Laurence V. Goddard, or any successor designated by the Advisory Committee, subject to approval by the Bankruptcy Court, to serve as custodian for the Creditor Trust and to oversee the liquidation and distribution of the Creditor Trust Assets held therein for the benefit of the Beneficiaries, pursuant to the Plan, the Confirmation Order and the Creditor Trust Agreement.

1.28 “**De Minimis Distribution**” shall mean any Distribution in an amount less than fifty dollars (\$50.00).

1.29 “**Debtor**” shall mean ASPC Corp., f/k/a AcuSport Corporation, an Ohio corporation.

1.30 “**Disclosure Statement**” shall mean the Second Amended Disclosure Statement filed by the Debtor and the Committee and approved by the Bankruptcy Court.

1.31 “**Disputed Claim**” or “**Disputed . . . Claim**” shall mean ~~any Claim which is either:~~

(a) a Claim that has not been scheduled listed by the Debtor in its Schedules or has been listed in the Schedules at zero, or has been listed in the Schedules as contingent, unliquidated or disputed, or a Claim and for which is the subject of a no proof of claim which Claim has been timely filed with the Bankruptcy Court, as to which the Debtor, the Committee or the Creditor Trustee have indicated a dispute, or as to which scheduled or filed Claim a timely objection to the allowance thereof has been filed by a party entitled to make such an objection, but as to which the Bankruptcy Court has not yet entered;

(b) if a proof of Claim or request for payment of an Administrative Claim has been filed: (i) a Claim for which no corresponding Claim is listed on the Debtor's books and records or in its Schedules or (ii) a Claim for which corresponding Claim is listed in the Debtor's books and records, but the nature or amount of the Claim as asserted in the filed proof of Claim varies from the nature and amount of such Claim as it is listed on in the Debtor's books and record or its Schedules;

(c) a Claim for which the Debtor has received a written notice advising it that the Holder of such Claim disagrees with the Debtor's books and records or its Schedules with respect to the Allowed amount of such Holder's Claim; or

(d) (i) a Claim otherwise subject to a formal objection filed in the Case, a request for estimation filed in the Case, or otherwise disputed (in writing delivered to the Holder of such Claim) by the Debtor or any party-in-interest, in accordance with applicable law; and (ii) which such written objection has not been withdrawn, resolved or overruled by a Final Order of the Bankruptcy Court.

For the avoidance of doubt, the Debtor, the Committee and the Creditor Trustee reserve the right to object to any Claim not otherwise Allowed by Final Order of the Court in accordance with the Plan, the Creditor Trust Agreement, the Bankruptcy Code and the Bankruptcy Rules.

1.32 “**Distribution**” shall mean the Cash or other value distributed to holders of Allowed Claims or Beneficiaries, as applicable, pursuant to the Plan and/or the Creditor Trust Agreement.

1.33 “**Effective Date**” shall mean a date selected by the Plan Proponents, which shall be a Business Day after the Confirmation Date on which all conditions specified in Section 9.3 herein have been satisfied (or waived in accordance therewith); provided, however, that if a stay of the Confirmation Order is in effect on such day, then the Effective Date shall be the first day thereafter on which, if the Confirmation Order has not been vacated, no stay of the Confirmation Order is in effect.

1.34 “**Equity Security**” shall have the meaning provided by section 101(16) of the Bankruptcy Code.

1.35 “**Equity Security Holder**” shall have the meaning provided by section 101(17) of the Bankruptcy Code.

1.36 “**Estate**” shall mean the estate of the Debtor created in this Case pursuant to section 541 of the Bankruptcy Code.

1.37 “**Exculpated Party**” shall mean, collectively, and in each case in its capacity as such: (a) the Debtor and its Estate; (b) the Committee and its individual members; (c) the Debtor’s and the Committee’s Professionals; ~~(d) the Creditor Trust, the Creditor Trustee, and the Creditor Trustee’s Professionals;~~ (e) with respect to each of the foregoing entities in clauses (a) through (d), each such entity’s current and former affiliates, direct and indirect subsidiaries, and direct and indirect equity holders and/or partners; and (f) with respect to each of the foregoing entities in clauses (a) through (e), each of their respective current and former directors, officers, equity holders, employees, partners, managers, independent contractors, agents, representatives, principals, professionals, consultants, financial advisors, attorneys, accountants, trustees, investment bankers, and other professional advisors (with respect to clause (f), each solely in their capacity as such).

1.38 “**Executory Contract**” shall mean an executory contract or unexpired lease, the assumption, rejection and assignment of which are governed by, *inter alia*, section 365 of the Bankruptcy Code.

1.39 “**Fiduciary Duty Cause of Action**” shall mean any claims and Causes of Action against any current or former Insider of the Debtor based on a breach of such Insider’s fiduciary duties, as defined under applicable law, to the Debtor, its Estate, stakeholders or creditors.

1.40 “**Final Order**” shall mean an order or judgment as to which the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing is pending.

1.41 “**General Bar Date**” shall mean July 27, 2018, the bar date by which a proof of Claim must be filed, except for: (a) claims of governmental units; (b) claims resulting from a subsequent amendment to the Schedules; and (c) claims based on the Debtor’s rejection of an Executory Contract, as established by the Bar Date Order.

1.42 “**General Unsecured Claim**” shall mean any Unsecured Claim, arising prior to the Petition Date, that is not a Professional Fee Claim, Other Administrative Expense Claim, Unsecured Priority Tax Claim, Class 1 (Secured Claims), Class 2 Claim (Priority Claims) or Class 4 Interest (Equity Security Interests).

1.43 “**Governmental Bar Date**” shall mean October 29, 2018, the bar date by which a proof of Claim of a governmental unit must be filed, as established by the Bar Date Order.

1.44 “**Holder**” shall mean any Person owning or holding a Claim or Equity Interest.

1.45 “**Impaired**” shall mean any Class, or any Claim or Interest in a Class, that is impaired within the meaning of section 1124 of the Bankruptcy Code, and shall include, without limitation, Class 3 General Unsecured Claims and Class 4 Equity Security Interests.

1.46 “**Insider**” shall have the meaning provided by section 101(31) of the Bankruptcy Code.

1.47 “**Insider Cause of Action Termination Date**” shall be the date that is one-hundred eighty (180) days from the Effective Date, as may be extended in accordance with Section 8.8.4 of this Plan.

1.48 “**Insider Causes of Action**” shall mean all Causes of Action against a current or former Insider of the Debtor, including, without limitation, Avoidance Actions, Fiduciary Duty Causes of Action, and Other Potential Insider Actions.

1.49 “**Interest**” shall mean the legal, equitable, contractual and other rights of the Holders of any Equity Security in the Debtor, including the rights of any entity to purchase or demand the issuance of any Equity Securities, including: (i) conversion, exchange, voting, participation and dividend rights; (ii) liquidation preferences; (iii) stock options, warrants and put rights; and (iv) share-appreciation rights.

1.50 “**Lenders**” shall mean the Agent and the Pre-Petition Lenders.

1.51 “**Lien**” shall have the meaning provided by section 101(37) of the Bankruptcy Code.

1.52 “**Net Proceeds**” shall mean the Cash proceeds received by the Creditor Trustee from time to time from the liquidation or other disposition of the Creditor Trust Assets, net of the reasonable or necessary costs of such sale or other disposition, including reasonable fees and expenses of the Creditor Trustee’s legal counsel and other Professionals incurred in connection therewith.

1.53 “**Other Administrative Expense Claim**” shall mean an Administrative Claim that is not a Professional Fee Claim.

1.54 “**Other Potential Insider Actions**” shall mean any claims and Causes of Action, excluding Avoidance Actions and Fiduciary Duty Causes of Action, held by the Debtor, the Estate, the Committee or the Creditor Trustee against any current or former Insider of the Debtor.

1.55 “**Person**” ~~shall mean an~~ means a “person” as defined in [Bankruptcy Code section 101\(41\)](#) and shall include, *inter alia*, any individual, corporation, [general partnership](#), ~~joint venture~~[limited partnership](#), [limited liability partnership](#), [limited liability company](#), association, joint stock company, ~~limited liability company~~, ~~limited liability partnership~~, ~~trust~~, ~~estate~~, ~~unincorporated organization or other entity~~[joint venture](#), [government or political subdivision](#), [official committee appointed by the United States Trustee](#), [unofficial committee of creditors or equity holders](#), or other entity (as defined in [section 101\(15\) of the Bankruptcy Code](#)).

1.56 “**Petition Date**” shall mean the date of the filing of the Debtor’s Case, or May 1, 2018.

1.57 “**Plan**” shall mean this Agreed [First Amended](#) Plan of Liquidation of Debtor and the Official Committee of Unsecured Creditors as set forth herein or as it may be modified or amended.

1.58 “**Plan Proponents**” shall mean the Debtor and the Committee.

1.59 “**Pre-Petition Lenders**” shall mean Wells Fargo Bank, N.A., Huntington National Bank, N.A., Regions Bank, N.A., and Citizens Bank, N.A.

1.60 “**Pre-Petition Loan Documents**” shall mean all loan and security agreements, and any related agreements, governing the lending relationship between the Lenders and the Debtor, including, but not limited to, that certain Credit Agreement dated June 4, 2015 by and among the Debtor and the Lenders (as amended, modified or supplemented from time to time).

1.61 “**Priority Claim**” shall mean a Claim, other than an Administrative Claim or Priority Tax Claim, that is entitled to priority in payment under section 507(a) of the Bankruptcy Code. With respect to the Claims of employees or former employees, such Claims shall constitute Priority Claims only to the extent permissible under sections 507(a)(4) and (a)(5) of the Bankruptcy Code or prior order of the Bankruptcy Court.

1.62 “**Priority Tax Claims**” shall mean a Claim of a governmental unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

1.63 “**Professional Fee Claims**” shall mean Claims of Professional Persons for compensation for services rendered in this Case prior to the Confirmation Date pursuant to sections 327, 328, 330, 331, 363, 503 or 1103 of the Bankruptcy Code.

1.64 “**Professional Fee Carve Out Funds**” shall mean such Cash held by the Debtor to compensate Professionals for the Debtor and the Committee, as described more fully in the Cash Collateral Order, for such Professionals’ Allowed Professional Fee Claims.

1.65 “**Professional**” or “**Professional Persons**” shall mean persons, including attorneys, accountants, investment bankers, financial advisors and other professional advisors

retained by the Debtor, the Committee or the Creditor Trustee, or to be compensated pursuant to sections 327, 328, 330, 331, 363, 503 or 1103 of the Bankruptcy Code.

1.66 “**Pro Rata**” shall mean proportionately so that the ratio of the amount of the distribution made on account of a particular Allowed Claim to the distribution made on account of all Allowed Claims of the Class in which the particular Allowed Claim is included is the same as the ratio of the amount a particular Allowed Claim to the total amount of the Allowed Claims of the Class of which a particular Allowed Claim is included.

1.67 “**Released Party**” shall mean, collectively, and in each case in its capacity as such: (a) the Debtor and its Estate; (b) the Committee and its individual members; (c) the Debtor’s and the Committee’s Professionals; (d) the Creditor Trust, the Creditor Trustee, and the Creditor Trustee’s Professionals.

1.68 “**Releases**” shall mean the releases described in Article 10.5 the Plan.

1.69 “**Sale Order**” shall mean that certain Order (I) Approving and Authorizing Sale of Certain of Debtor’s Assets Pursuant to Successful Bidder’s Asset Purchase Agreement, Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (II) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (III) Granting Related Relief (Docket No. 230) entered by the Bankruptcy Court on June 28, 2018.

1.70 “**Schedules**” shall mean the schedules of assets and liabilities and the statement of financial affairs filed by the Debtor in accordance with section 521 of the Bankruptcy Code and the Official Bankruptcy Forms of the Bankruptcy Rules as such schedules and statements have been or may be supplemented or amended.

1.71 “**Secured Claim**” shall mean :(a) any Claim of a Creditor that is secured by a Lien on property of the Estate that has not been satisfied in full prior to the Effective Date in which the Estate has an interest, which Liens are valid, perfected and enforceable under applicable law or by reason of a Final Order, or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the Estate’s interest in such Creditor’s interest in property of the Estate, property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; and (b) any Claim which is Allowed under the Plan as a Secured Claim..

1.72 “**Secured Creditor**” shall mean the Holder of a Secured Claim.

1.73 “**Trustee’s Expenses**” shall mean the reasonable fees, costs and expenses incurred by the Creditor Trustee and any Professionals retained by him or her in connection with the performance of his or her duties and responsibilities under the Plan and Creditor Trust Agreement, as well as any other reasonable and necessary costs of administration of the Creditor Trust, including UST Fees incurred during the post-Confirmation Date period and the reasonable fees, costs and expenses of Debtor and its Professionals for work performed at the direction of the Creditor Trustee in furtherance of the Plan or to support the efforts of the Creditor Trustee, all of which may be paid from the Creditor Trust Assets.

1.74 “**Unsecured Claim**” shall mean a Claim of a Creditor not secured by a Lien on property of the ~~Estate~~Estate or which is otherwise not a Secured Claim (including any Claim that is not subject to a right of setoff against Debtor or its Estate under section 553 of the Bankruptcy Code).

1.75 “**U.S. Trustee**” shall mean the United States Trustee.

1.76 “**UST Fees**” shall mean all fees and charges properly assessed against the Estate pursuant to 28 U.S.C. § 1930.

1.77 **Rules of Interpretation and Computation of Time.** For purposes of this Plan, unless otherwise provided herein: (i) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (ii) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (iii) any reference in this Plan to an existing document or schedule filed or to be filed means such document or schedule, as it may have been or may be amended, modified or supplemented pursuant to this Plan; (iv) any reference to any entity as a Holder of a Claim or Interest includes the entity’s successors and assigns; (v) all references in this Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to this Plan; (vi) the words “herein,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (vii) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (viii) the rules of construction set forth in section 102 of the Bankruptcy Code will apply; and (ix) in computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) will apply.

## ARTICLE II

### Unclassified Claims

Section 1123(a)(1) of the Bankruptcy Code provides that Administrative Claims and Priority Tax Claims are not to be classified under the Plan.

2.1 **Allowed Administrative Claims** include the following:

2.1.1 **Allowed Administrative Claims of any Professional Person** shall include Allowed Professional Fee Claims.

2.1.2 **Allowed Other Administrative Expense Claims** shall include Allowed Other Administrative Claims.

2.2 **Priority Tax Claims** shall include Allowed unsecured Priority Tax Claims.

## ARTICLE III

### Designation of Classified Claims and Interests

Pursuant to section 1123(a)(1) of the Bankruptcy Code, Claims and Interests are classified as follows:

- 3.1 **Class 1 Claims** shall consist of all Allowed Secured Claims.
- 3.2 **Class 2 Claims** shall consist of all Allowed Priority Claims (other than unsecured Priority Tax Claims).
- 3.3 **Class 3 Claims** shall consist of the Allowed General Unsecured Claims.
- 3.4 **Class 4 Interests** shall consist of the Interests of Equity Security Holders.

## ARTICLE IV

### Impairment of Classes

4.1 **Impaired Classes of Claims Entitled To Vote.** Except as otherwise provided in order(s) of the Bankruptcy Court pertaining to solicitation of votes on this Plan, Class 3 is Impaired and Holders of Allowed Claims in that Class shall be entitled to vote to accept or reject this Plan.

4.2 **Classes Deemed To Accept the Plan.** Class 1 and 2 Claims are unimpaired by this Plan and Holders of such Allowed Claims are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. The votes of Creditors holding these Claims will therefore not be solicited.

4.3 **Classes Deemed To Reject the Plan.** Holders of Interests in Class 4 will not receive or retain any distribution under the Plan on account of their Interests. Pursuant to section 1126(g) of the Bankruptcy Code, Class 4 is Impaired and is conclusively presumed to have rejected this Plan, and the votes of Equity Security Holders holding Class 4 Interests therefore will not be solicited.

4.4 **Cram Down.** The Debtor and the Committee will request confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code with respect to Class 4, which is deemed to have rejected the Plan.

4.5 **Elimination of Vacant Classes.** Any Class of Claims that does not have a Holder of an Allowed Claim or a Claim temporarily Allowed by the Court for voting purposes as of the date of the Confirmation Hearing shall be deemed eliminated from this Plan for purposes of voting to accept or reject this Plan and for purposes of determining acceptance or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

## ARTICLE V

### Treatment of Claims and Interests

#### 5.1 Allowed Professional Fee Claims and Allowed Other Administrative Expense Claims.

5.1.1 Each Allowed Other Administrative Claim and each Allowed Professional Fee Claim (to the extent not paid from Professional Fee Carve Out Funds, or otherwise payable from the Lenders' collateral pursuant to the Cash Collateral Order) shall be paid by the Debtor (prior to the Effective Date) or the Creditor Trustee (on and after the Effective Date) (i) in full, in Cash, in such amounts as such Administrative Claim is Allowed by the Bankruptcy Court as soon as practicable after the Effective Date or the date upon which such Administrative Claim is Allowed or (ii) upon such other terms as may be agreed upon between the Holder of such Administrative Claim and the Debtor or the Creditor Trustee (as applicable). Any application for the payment of any Other Administrative Claims and any Professional Fee Claim shall be filed with the Bankruptcy Court no later than the Administrative Claims Bar Date. All fees payable pursuant to section 1930 of Title 28 of the United States Code shall be paid on the Effective Date. The Creditor Trust and Creditor Trustee shall be liable for the payment of all quarterly fees due pursuant to section 1930 of Title 28 after the Effective Date. The Creditor Trust and Creditor Trustee shall provide the United States Trustee with post-confirmation quarterly reports that shall include all of their respective disbursements for that quarter.

5.1.2 **Administrative Claims Bar Date.** All Persons requesting payment of Other Administrative Expense Claims shall file a notice of such Other Administrative Expense Claim, along with all documentation supporting such claim, no later than thirty (30) days after the Effective Date. Professional Persons requesting allowance and payment of Professional Fee Claims shall be entitled to file a final application for allowance of such claims until not later than thirty (30) days after the Effective Date. Objections to such applications for payment (whether by Professional Persons requesting payment of Professional Fee Claims or Persons requesting payment of Other Administrative Expense Claims), if any, must be written, filed with the Bankruptcy Court and served on the applicable parties within twenty-one (21) days after such application is filed. Failure by the Holder of an Other Administrative Claim to timely file a request for allowance of an Other Administrative Claim shall result in such Other Administrative Claim being disallowed and expunged in its entirety, with the affected Creditor having been deemed to waive its right to a distribution from the Estate and the Creditor Trust. Failure by a Professional to timely file a request for allowance of a Professional Fee Claim shall result in such Professional Fee Claim being disallowed and expunged in its entirety, with the affected Professional having been deemed to waive its right to a distribution from the Estate and the Creditor Trust.

#### 5.2 Priority Tax Claims.

5.2.1 Allowed Priority Tax Claims shall be paid in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, all property of the Estate shall be deposited in the Creditor Trust no later than the Effective Date, or as



otherwise provided in the Confirmation Order. The Creditor Trustee shall liquidate the Creditor Trust Assets, as applicable, and distribute the Net Proceeds in accordance with this Plan, the Confirmation Order and the Creditor Trust Agreement.

5.2.2 Distributions of the Net Proceeds from the Creditor Trust shall be made by the Creditor Trustee in accordance with the Creditor Trust Agreement (and in accordance with sections 507(a)(8) and 1129(a)(9)(C) of the Bankruptcy Code), either: (i) in full, in Cash, within forty-five (45) days of the Effective Date; or (ii) over time in accordance with section 1129(a)(9)(C)(ii) of the Bankruptcy Code, in the Creditor Trustee's discretion.

### 5.3 Class 1 Claims.

(a) Classification: Class 1 consists of all Allowed Secured Claims against the Debtor .

(b) Treatment: As soon as practicable after the Effective Date or the date on which a Secured Claim becomes an Allowed Secured Claim, each Holder of an Allowed Secured Claim shall receive (i) Cash in an amount equal to the Allowed Secured Claim, including, to the extent applicable, postpetition interest under section 506(b) of the Bankruptcy Code, (ii) the collateral securing such Allowed Secured Claim, or (iii) such other treatment as may be agreed to between the Holder and the Debtor.

(c) Voting: Class 1 is unimpaired and is deemed to accept the Plan. Holders of Class 1 Claims are not entitled to vote to accept or reject the Plan.

### 5.4 Class 2 Claims.

(a) Classification: Class 2 consists of all Allowed unsecured Priority Claims (except for Priority Tax Claims) asserted against the Debtor.

(b) Treatment: No later than the later of: (i) forty-five (45) days from the Effective Date; or (ii) the date such Priority Claim becomes an Allowed Priority Claim or is otherwise payable, each Holder of an Allowed Priority Claim shall receive (i) Cash in an amount equal to the unpaid portion of the Allowed Priority Claim, or (i) such other treatment as may be agreed to between the Holder and the Debtor.

(c) Voting: Class 2 is unimpaired and is deemed to accept the Plan. Holders of Class 2 Claims are not entitled to vote to accept or reject the Plan.

### 5.5 Class 3 Claims.

(a) Classification: Class 3 consists of all Allowed General Unsecured Claims against the Debtor.

(b) Treatment: Allowed Class 3 Claims shall be paid Pro Rata in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, all property of the Estate shall be deposited in the Creditor Trust no later than the Effective Date. The Creditor Trustee shall liquidate the Creditor Trust Assets, as applicable, and

distribute the Net Proceeds from time to time on dates determined by the Creditor Trustee, following consultation with the Advisory Committee, within a reasonable time after the creation of appropriate reserves as determined by the Creditor Trustee in an amount that would be sufficient to: (i) satisfy all Administrative Claims in full; (ii) satisfy all Secured Claims in full; (iii) satisfy all Priority Tax Claims and Priority Claims in full; (iv) make a Pro Rata distribution on account of Disputed Claims that are Class 3 Allowed General Unsecured Claims; and (v) pay the Trustee's Expenses in full.

(c) Voting: Class 3 is impaired. Holders of Class 3 Claims are entitled to vote to accept or reject the Plan.

#### 5.6 **Class 4 Interests.**

(a) Classification: Class 4 consists of all Equity Securities held in the Debtor.

(b) Treatment: Holders of Class 4 Interests shall not receive a distribution under the Plan, and their Equity Securities shall be canceled and extinguished as of the Effective Date.

(c) Voting: Class 4 is impaired and deemed to reject the Plan. Holders of Class 4 Interests are not entitled to vote to accept or reject the Plan.

## ARTICLE VI

### Treatment of Executory Contracts

6.1 **Contracts Deemed Rejected.** Other than as explicitly set forth herein, each Executory Contract of the Debtor that has not expired by its own terms or been assumed prior to the Confirmation Date shall be deemed rejected pursuant to section 365 of the Bankruptcy Code on the Confirmation Date.

6.2 **Bar Date for Rejection Damages.** All proofs of claim with respect to Claims arising from the rejection of Executory Contracts pursuant to Section 6.1 of this Plan shall, unless the Bar Date Order or another order of the Bankruptcy Court provides for a different date, be filed with the Bankruptcy Court by no later than thirty (30) days after the ~~Confirmation~~Effective Date. The Claims of any Creditor arising from the rejection of Executory Contracts pursuant to Section 6.1 of this Plan that fails to timely file a proof of claim shall be released, discharged and forever barred from assertion against the Debtor, its Estate or its property or the Creditor Trust.

6.3 **Insurance Policies.** Notwithstanding anything to the contrary in this Plan or the Confirmation Order, unless any insurance policies have been expressly rejected pursuant to a separate order of the Bankruptcy Court (or through the Confirmation Order), any insurance policies of the Debtor in which the Debtor is or was an insured party (including any policies covering directors' or officers' conduct), or any related insurance agreement issued prior to the Petition Date, shall continue in effect after the Effective Date pursuant to the respective terms and conditions and shall be treated as if assumed. All rights of the Debtor under any insurance policies shall automatically become vested in the Creditor Trust without necessity for further

approvals or orders. To the extent that any insurance policies or related insurance agreements are deemed executory contracts, then, unless such policies have been rejected pursuant to a separate order of the Bankruptcy Court (or through the Confirmation Order), notwithstanding anything to the contrary in this Plan, this Plan shall constitute a motion to assume, assume and assign, permit “ride through,” or ratify such insurance policies or insurance agreements. Subject to the occurrence of the Effective Date, the entry of the Confirmation Order shall constitute both approval of such assumption pursuant to section 365 of the Bankruptcy Code and a finding by the Bankruptcy Court that such assumption is in the best interests of the Estate. Unless otherwise determined by the Bankruptcy Court pursuant to a Final Order or agreed upon by the parties prior to the Effective Date, no payments shall be required to cure any defaults of the Debtor existing as of the Confirmation Date with respect to any insurance policy or insurance agreement assumed, or assumed and assigned, pursuant to this Section 6.3. Each insurance company is prohibited from, and the Confirmation Order shall include an injunction against, denying, refusing, altering or delaying coverage on any basis regarding or related to this Case, this Plan, or any provision within this Plan, including the treatment or means of liquidation set out within this Plan for any insured Claims or Causes of Action. Without limiting the generality of the foregoing, all directors’ and officers’ liability insurance policies in effect as of the Confirmation Date shall be deemed assumed and shall not be rejected.

## ARTICLE VII

### **Objections to Claims; Provisions Governing Distributions**

7.1 **Objections to Claims.** The Creditor Trustee shall have standing to file objections to Claims, even if such Claims were scheduled by the Debtor as undisputed, liquidated and non-contingent. If the Creditor Trustee has objected to a Claim, distributions to the affected Creditor will be withheld only with respect to the amount actually in dispute, and such objection shall not affect payments or distributions under the Plan on the undisputed portion of the Claim.

7.2 **Beneficiaries Subject to Avoidance Actions.** The Creditor Trustee may, [as otherwise allowed pursuant to section 502\(d\) and \(h\) of the Bankruptcy Code](#) in his or her discretion, withhold Distributions to Beneficiaries who are the subject of a potential or filed Avoidance Action until such time as the Avoidance Action has been fully and finally resolved.

7.3 **Estimation.** The Creditor Trustee may at any time request that the Bankruptcy Court estimate any contingent or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor, Committee, or the Creditor Trustee previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. Subject to the provisions of section 502(j) of the Bankruptcy Code, in the event that the Bankruptcy Court estimates any contingent or Disputed Claim, the amount so estimated shall constitute the maximum allowable amount of such Claim. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Creditor Trustee may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation, and resolution procedures are intended to be cumulative

and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

**7.4 Means of Cash Payment.** Cash payments, made pursuant to the Plan and the Creditor Trust Agreement, shall be in U.S. dollars and, at the option and in the sole discretion of the Creditor Trustee, be made by (a) checks drawn on or (b) wire transfers from a domestic bank selected by the Creditor Trustee.

**7.5 Delivery of Distributions.** Subject to the provisions of Bankruptcy Rule 2002(g), and except as otherwise provided herein, distributions and deliveries to Holders of Allowed Claims shall be made at the address of each such Holder as set forth on the Schedules, unless superseded by the address set forth on a timely filed ~~Proof~~[proof](#) of Claim or some other writing filed with the Bankruptcy Court and served upon the Creditor Trustee and/or the Debtor.

**7.6 Tax Identification Numbers and OFAC Certifications.** Notwithstanding anything in the Plan to the contrary, prior to making Distributions hereunder, the Creditor Trustee shall require all Holders to furnish to him: (a) its Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service on a Form W-9 and (b) a certification that the Holder is not a person or entity with whom it is illegal for a U.S. person to do business under Office of Foreign Assets Control (“OFAC”) sanctions regulations and/or the list of Specially Designated Nationals and Blocked Persons (collectively, the “Pre-Distribution Certifications”). Pre-Distribution Certification forms will be mailed to the Distribution Address for each Holder prior to Distributions being made, and Holders shall have forty-five (45) days from the date of mailing to return the executed Pre-Distribution Certifications. Any Holder that fails to return the executed Pre-Distribution Certifications within such forty-five (45) day period shall be deemed to have forfeited its right to receive Distributions and shall be forever barred and enjoined from asserting any right to Distributions made prior to the Creditor Trustee receiving its executed Pre-Distribution Certifications (such a Holder, if a Holder of an Allowed Class 3 General Unsecured Claim, would only be entitled to a Pro Rata share of remaining future Distributions, if any). Any Distributions that are forfeited pursuant to this provision will be returned to the Creditor Trustee and become property of the Creditor Trust.

## 7.7 Undeliverable Distributions

**7.7.1 Holding of Undeliverable Distributions.** If any Distribution to any Holder of an Allowed Claim is returned to the Creditor Trustee as undeliverable, no further Distributions shall be made to such Holder unless and until the Creditor Trustee is notified by such Holder, in writing, of such Holder's then-current address. Upon such an occurrence, the appropriate Distribution shall be made as soon as reasonably practicable after such Distribution has become deliverable. All Creditors ultimately receiving previously undeliverable Cash shall not be entitled to any interest or other accruals of any kind. Nothing contained in the Plan shall require the Debtor or the Creditor Trustee to attempt to locate any Holder of an Allowed Claim.

**7.7.2 Failure to Claim Undeliverable Distributions.** Any Holder of an Allowed Claim entitled to an undeliverable or unclaimed Distribution that does not provide notice of such Holder's correct address to the Creditor Trustee within ninety (90) days after the date of the initial Distribution made by the Creditor Trustee to such Holder, shall be deemed to have forfeited its claim for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such claim for an undeliverable or unclaimed Distribution against the Debtor, its Estate or the Creditor Trust. If, after ninety days, Distributions remain unclaimed, unclaimed Distributions will become forfeited Distributions and such amounts shall be made available for distribution to other Creditor Trust beneficiaries or for Trustee's Expenses.

**7.8 Withholding and Reporting Requirements.** In connection with the Plan, the Creditor Trust Agreement and all Distributions thereunder, the Debtor and the Creditor Trustee, as applicable, shall comply with all tax withholding and reporting requirements imposed by any U.S. federal, state or local or non-U.S. taxing authority, and all Distributions hereunder shall be subject to any such withholding and reporting requirements. The Debtor and the Creditor Trustee, as applicable, shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution, and (b) the Creditor Trustee reserves the option, in his or her discretion, to not make a Distribution to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Creditor Trustee for the payment and satisfaction of such tax obligations or has, to the Creditor Trustee's satisfaction, established an exemption therefrom.

**7.9 Time Bar to Cash Payments.** Checks issued by the Creditor Trust on account of Allowed Claims shall be null and void if not negotiated within forty-five (45) days from and after the date of issuance thereof. Requests for reissuance of any check that has become null and void shall be made directly to the Creditor Trustee by the Holder of the Allowed Claim within sixty (60) days of the check becoming null and void. After such sixty (60) day period has elapsed, all Claims relating to such voided checks shall be discharged and forever barred. In the case of checks issued on account of Allowed Claims but not negotiated within forty-five (45) days of

issuance and for which no request for reissuance is made before sixty (60) days after issuance, the amounts at issue shall be considered to be a forfeited Distribution.

7.10 **Interest.** Unless otherwise required by applicable bankruptcy law (or under this Plan), or specifically provided for herein, postpetition interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. In accordance with section 502(b)(2) of the Bankruptcy Code, the amount of all prepetition Unsecured Claims against the Debtor shall be calculated as of the Petition Date. Except as otherwise explicitly provided in the Plan, in section 506(b) of the Bankruptcy Code, or by Final Order, no Holder of a prepetition Claim shall be entitled to or receive interest or fees relating to such Claim.

7.11 **De Minimis Distributions.** The Creditor Trustee will not make any De Minimis Distributions, and reserves the right to reserve such De Minimis Distributions until such time as the Holder of such Claim is entitled to a Distribution of at least fifty dollars (\$50.00).

7.12 **Set-Offs.** Consistent with applicable law, the Creditor Trustee may, but shall not be required to, set off against any Allowed Claim and the Distributions to be made pursuant to the Plan on account thereof (before any distribution is made on account of such Claim), the claims, rights and Causes of Action of any nature that the Debtor or its Estate may hold against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a set off nor the allowance of any claim hereunder shall constitute a waiver or release by the Debtor, its Estate, or the Creditor Trust of any such claims, rights, and Causes of Action that the Debtor, its Estate, or the Creditor Trustee may possess against such Holder.

7.13 **Settlement of Claims and Controversies.** Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided under the Plan, the provisions of this Plan shall constitute a good faith compromise of all Claims or controversies relating to the contractual, legal and subordination rights that a Holder of a Claim may have against the Debtor with respect to any Allowed Claim. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims or controversies, and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtor, its Estate, the Creditor Trust, and Holders of Claims and is fair, equitable and reasonable.

## ARTICLE VIII

### Means of Implementation of the Plan

8.1 **Creditor Trust.** The Creditor Trust shall be established as of the Effective Date for the benefit of all creditors of the Estate holding Allowed Claims and shall be governed by the Creditor Trust Agreement. Laurence V. Goddard shall be designated as Creditor Trustee. The Creditor Trustee will owe a fiduciary duty, consistent with the duties of trustees under Ohio law, to beneficiaries of the Creditor Trust.

8.2 **Vesting of Assets.** On the Effective Date, all assets of the Debtor and its Estate (including the Creditor Trust Assets) shall be transferred to and vest in the Creditor Trust and be

deemed contributed thereto, subject to the terms of the Plan. The assets include, without limitation, all Cash in the possession of the Debtor, all Causes of Action, all existing and uncollected accounts receivable, all pending litigation claims, regardless of venue, in which the Debtor is a plaintiff, all other remaining personal property of the Debtor, all rights of the Debtor under the Plan, the Confirmation Order and all other orders entered by the Bankruptcy Court in the Case on or prior to the Confirmation Date, and all books and records related to the Estate that are in the Debtor's possession, custody and control as of the Confirmation Date. For the avoidance of doubt, all property held for distribution pursuant to the Plan shall be held by the Creditor Trust solely in trust for the Holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Class 1 Secured Claims, Allowed Class 2 Priority Claims, and Allowed Class 3 General Unsecured Claims and shall not be deemed property of the Debtor. Nothing in the Plan, however, shall preclude payment of: (i) statutory fees under 28 U.S.C. § 1930 to the extent unpaid on the Confirmation Date; and (ii) the Trustee's Expenses in accordance with this Plan and the Creditor Trust Agreement from any other assets held by the Creditor Trust. The Debtor is hereby authorized and directed to take such steps as may be necessary or appropriate to confirm such transfer and contribution of its property to the Creditor Trust, subject to oversight from the Creditor Trustee, as applicable.

**8.3 Creditor Trust Asset Administration.** The Creditor Trustee, with advice and consultation from the Advisory Committee, shall administer the Creditor Trust Assets pursuant to the Plan and the Creditor Trust Agreement from and after the Effective Date. As more fully set forth in the Creditor Trust Agreement, the Creditor Trustee shall be responsible for, *inter alia*, liquidating the Creditor Trust Assets, analyzing and reconciling Claims (including filing and pursuing objections to the extent required), pursuing the Causes of Action, making distributions of the Net Proceeds to the Beneficiaries of the Creditor Trust, maintaining and administering reserves for Disputed Claims and Claims of Creditors that may be the subject of Avoidance Actions, paying Trustee's Expenses, preparing and filing post-Effective Date operating reports, filing post-Effective Date tax returns and all other activities typically related to trust administration. For the avoidance of doubt, the Debtor shall be responsible for preparing and filing all of its pre-Effective Date tax returns, with the costs of any such returns to be paid by the Creditor Trust, to the extent not paid or pre-paid prior to the Effective Date.

**8.4 Case Administration.** From and after the Effective Date and continuing through the date that a final decree closing the Case is entered pursuant to section 350 of the Bankruptcy Code and Bankruptcy Rule 3022, the Creditor Trustee shall possess the rights of a party in interest pursuant to section 1109(b) of the Bankruptcy Code for all matters arising in, arising under or related to the Case. In addition to the foregoing, for all matters arising in, arising under or related to the Case, the Creditor Trustee shall: (i) have the right to appear and be heard on matters brought before the Bankruptcy Court or other courts of competent jurisdiction; (ii) have the right to obtain records of, or related to, the Debtor (including, without limitation, bank statements and cancelled checks); (iii) be entitled to notice and opportunity for hearing; (iv) be entitled to participate in all matters brought before the Bankruptcy Court, including, but not limited to, adversary proceedings; (v) have exclusive standing (including derivative standing to pursue Causes of Action on behalf of the Debtor) to commence Causes of Action, and to continue litigating, as successor-in-interest to the Debtor, any other litigation Causes of Action that were pending as of the Effective Date, regardless of venue; (vi) be entitled to request the Bankruptcy Court to enter a final decree closing the Case; and (vii) be entitled to receive notice

of all applications, motions and other papers and pleadings set before the Bankruptcy Court in this Case.

**8.5 Advisory Committee.** For purposes of implementation of the Plan, the Advisory Committee shall be created on the Confirmation Date and comprised of three (3) members, which shall be former members of the Committee, and the membership of which shall be subject to the approval of the Committee. The Advisory Committee shall exercise such rights and duties as are set forth in the Creditor Trust Agreement. Each member of the Advisory Committee shall serve until the earlier of: (i) his or her death or resignation; (ii) his or her removal pursuant to the Creditor Trust Agreement; and (iii) the termination of the Creditor Trust.

**8.6 Creditor Trustee's Professionals.** Upon the acceptance by the Creditor Trustee of his or her appointment in accordance with this Plan and the Creditor Trust Agreement, the Creditor Trustee may, without the need for Bankruptcy Court approval, retain such law firms, accounting firms, experts, advisors, consultants, investigators or other Professionals as it may deem necessary, with advice and consultation with the Advisory Committee, in accordance with the Creditor Trust Agreement, to aid in the performance of his or her responsibilities pursuant to the terms of the Plan, including, without limitation, the liquidation and distribution of assets of the Creditor Trust. The Professionals retained by the Creditor Trustee are not required to be "disinterested" as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of any party in this Case, and the Creditor Trustee shall be permitted to retain any such Professional in light of the efficiencies implicit in continuity. ~~The Creditor Trustee's retention of any such Professionals is deemed not to pose any conflict of interest, and no conflict shall exist by virtue of the filing of applications by Professional Persons for allowance of Administrative Claims in accordance with Section 5.1 of this Plan.~~

**8.7 Quarterly Reports.** The Creditor Trustee shall prepare and provide to the Advisory Committee and file with the Bankruptcy Court a report within thirty (30) days after the conclusion of every calendar quarter setting forth: (i) all distributions to Creditors during the calendar quarter; (ii) a summary of the Creditor Trust deposits and disbursements during the calendar quarter; and (iii) a summary of the Creditor Trust Assets. As used in this section, "calendar quarter" shall mean a three-month period of time, and the first calendar quarter shall commence on the first day of the first quarter immediately following the occurrence of the Effective Date.

**8.8 Transfer, Prosecution, Preservation, and Resolution of Causes of Action.**

**8.8.1 Transfer of Causes of Action.** On the Effective Date, the Debtor shall transfer to the Creditor Trust, and the Creditor Trustee shall hold and retain, all rights of the Debtor to commence and pursue any and all Causes of Action (under any theory of law, including, without limitation, the Bankruptcy Code, and in any court or other tribunal including, without limitation, in an adversary proceeding filed in the Debtor's Case) discovered in such investigation to the extent the Creditor Trustee deems appropriate. Potential Causes of Action may, but need not be, pursued by the Debtor prior to the Effective Date and by the Creditor Trustee after the Effective Date. ~~8.8.1~~ All Causes of Action, defenses, and counterclaims not expressly and specifically released in connection with the Plan, the Confirmation Order, or in any settlement agreement approved during the Case, or as otherwise provided in the Confirmation Order or in any contract, instrument, release, indenture or other agreement entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, shall be



transferred to and vest with the Creditor Trust, whether or not litigation relating thereto is pending on the Effective Date, and whether or not any such Causes of Action, defenses and counterclaims have been listed or referred to in the Plan, the Schedules, or any other document filed with the Bankruptcy Court, and prior to the Effective Date, the Debtor shall not waive, relinquish, or abandon (nor shall it be estopped or otherwise precluded from asserting) any right, Claim, Cause of Action, defense, or counterclaim that constitutes property of the Estate: (a) whether or not such right, Claim, Cause of Action, defense, or counterclaim has been listed or referred to in the Plan or the Schedules, or any other document filed with the Bankruptcy Court, (b) whether or not such right, Claim, Cause of Action, defense, or counterclaim is currently known to the Debtor, and (c) whether or not a defendant in any litigation relating to such right, Claim, cause of action, defense or counterclaim filed a [Proofproof](#) of Claim in the Case, filed a notice of appearance or any other pleading or notice in the Case, voted for or against the Plan, or received or retained any consideration under the Plan. Without in any manner limiting the generality of the foregoing preservation of rights, notwithstanding any otherwise applicable principal of law or equity, without limitation, any principals of judicial estoppel, res judicata, collateral estoppel, issue preclusion, or any similar doctrine, the failure to list, disclose, describe, identify, or refer to a Cause of Action, defense, or counterclaim, or potential Cause of Action, defense, or counterclaim, in the Plan, the Schedules, or any other document filed with the Bankruptcy Court shall in no manner waive, eliminate, modify, release, or alter the Creditor Trustee's right to commence, prosecute, defend against, settle, and realize upon any Causes of Action, defenses, or counterclaims that the Debtor had immediately prior to the Effective Date, or that the Creditor Trust has as of the Effective Date. The Creditor Trustee may commence, prosecute, defend against, settle, and realize upon any rights, Claims, Causes of Action, defenses, and counterclaims in his sole discretion, upon consultation with the Advisory Committee, in accordance with what is in the best interests, and for the benefit, of the beneficiaries of the Creditor Trust.

**8.8.2 Preservation of Right to Conduct Investigations; Cooperation of Insiders.** The preservation for the Creditor Trust of any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 is necessary and relevant to the liquidation and administration of the Creditor Trust Assets. Accordingly, any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 held by the Debtor prior to the Effective Date shall vest with the Creditor Trust and shall continue until dissolution of the Creditor Trust.

~~8.8.3 **Preserved Causes of Action.** The following is a non-exclusive list of Causes of Action that shall be transferred to, and vest in, the Creditor Trust: (a) all Avoidance Actions (including for any transfers to non-Insider creditors, Insiders and other Persons disclosed by the Debtor in its Statement of Financial Affairs); (b) all other Causes of Action of the Debtor, including, but not limited to, all actions disclosed on Part 3 of the Statement of Financial Affairs and for recovery or liquidation of those assets scheduled by the Debtor in Parts 2 and 3 of its Schedule A/B; and (c) all Insider Causes of Action, including, but not limited to, [Preservation of Causes of Action.](#) Unless any Causes of Action against Andrew M. Harris, Christopher A. Cole, David Ray, James A. Broering, John K. Flanagan, Kaitlen A. Fraim, Mary E. Grim, Michael Perry, Noel Shannan Stover, Paul V. Higham, Steven P. Reed, Thomas E. Britt, and William L. Fraim a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan, or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the~~

Creditor Trust: (i) shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtor or the Debtor's Estate, whether arising before or after the Petition Date, including, but not limited to, any Causes of Action specifically enumerated in Appendix C to the Disclosure Statement, and the Creditor Trust's right to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date; and (ii) expressly reserves all Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation of the Plan or the occurrence of the Effective Date. The Creditor Trust may pursue Causes of Action, as appropriate, in accordance with the best interests of the Creditor Trust. No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against such Entity as any indication that the Creditor Trust will not pursue any and all available Causes of Action against such Person. The Creditor Trust expressly reserves all rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in the Plan or in a Bankruptcy Court order. For the avoidance of doubt, the Plan does not release any Causes of Action that the Plan Proponents or the Creditor Trust have or may have now or in the future against any Person.

Except as otherwise provided in the Plan or in a Final Order, the Creditor Trust reserves and shall retain Causes of Action notwithstanding the assumption or rejection of any Executory Contract during the Case or pursuant to the Plan to the fullest extent permitted by law. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that the Debtor may hold against any Person that is not released under the Plan or a separate settlement approved by Final Order shall vest in the Creditor Trust, which shall retain and may exclusively enforce any and all such Causes of Action. The Creditor Trust has the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court.

**8.8.4 Limitations on Insider Causes of Action.** The Committee or the Creditor Trustee shall commence any Insider Causes of Action, whether through an adversary proceeding filed with the Bankruptcy Court or a complaint filed in another court having competent jurisdiction, by no later than the Insider Cause of Action Termination Date; provided, however, that the Creditor Trust may seek an extension of the Insider Cause of Action Termination Date for cause by filing a motion with the Bankruptcy Court prior to the Insider Cause of Action Termination Date then in effect. For purposes of this section 8.8.4, "cause" shall include, but not be limited to, a failure by any former or current Insider of the Debtor to cooperate in good faith with the Committee's or the Creditor Trustee's investigation of Insider Causes of Action. In the event that the Committee or the Creditor Trustee does not commence an Insider Cause of Action on or before the applicable Insider Cause of Action Termination Date against a particular Insider, such Insider shall be deemed to have been released and discharged from any Insider Causes of Action in their entirety.

8.9 **Officers and Directors of the Debtor.** Upon the Effective Date, all officers and directors of the Debtor shall be automatically deemed to have resigned from such positions, without further act, notice, deed or court order.

8.10 **Dissolution of the Debtor.** Upon the Effective Date, the Creditor Trustee shall be authorized and empowered, in his or her reasonable discretion, to file a certificate of dissolution or other documents, if any, memorializing the Debtor's dissolution with the office of the secretary of state of Ohio, or may allow the secretary of state to involuntarily dissolve the Debtor. In the event of a dissolution (whether voluntary or involuntary), the Creditor Trustee shall thereafter have and retain standing to assert claims or pursue matters on behalf of the Debtor to the extent necessary to preserve, protect and liquidate the Creditor Trust Assets or otherwise necessary to administer the Creditor Trust.

8.11 **Termination of Committee.** The Committee shall terminate automatically upon the acceptance by the Creditor Trustee of his or her appointment in accordance with this Plan and the Creditor Trust Agreement following the Confirmation Date. Upon termination of the Committee, the Committee shall be dissolved and its members shall be deemed released of their duties and responsibilities in connection with the Case or the Plan and its implementation, and the retention or employment of the Committee's counsel shall terminate, except for ministerial duties or any duties imposed pursuant to the Plan (including, without limitation, filing applications for allowance and payment of Professional Fee Claims).

8.12 **Filing of Additional Documents.** On or before the Confirmation Date of the Plan, the Plan Proponents shall file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, including, without limitation, the final Creditor Trust Agreement.

8.13 **Notices.** Any notice required or permitted to be provided under the Plan shall be in writing and served by either: (i) certified mail, return receipt requested, postage prepaid; (ii) hand delivery; or (iii) reputable overnight delivery service, freight prepaid, addressed to the following:

The Debtor:

ASPC Corp. f/k/a AcuSport Corporation  
c/o Lee Sweigart  
Huron Consulting Group  
550 W. Van Buren St., Suite 1700  
Chicago, Illinois 60607  
Phone: (312) 880-3085  
E-mail: [lsweigart@huronconsultinggroup.com](mailto:lsweigart@huronconsultinggroup.com)

With a copy to:

Jason J. DeJonker  
Bryan Cave Leighton Paisner LLP  
161 N. Clark St., Suite 4300  
Chicago, Illinois 60601  
Phone: (312) 602-5005  
E-mail: [Jason.dejonker@bcplaw.com](mailto:Jason.dejonker@bcplaw.com)

and

Cullen Kuhn  
Bryan Cave Leighton Paisner LLP  
211 N. Broadway, Suite 3600  
St. Louis, Missouri 63102  
Phone: (314) 259-2869  
E-mail: [ckkuhn@bcplaw.com](mailto:ckkuhn@bcplaw.com)

and

Thomas R. Allen  
Erin L. Gapinski  
Allen Stovall Neuman Fisher & Ashton LLP  
17 South High Street, Suite 1220  
Columbus, Ohio 43215  
Phone: (614) 221-8500  
E-mail: [allen@aksnlaw.com](mailto:allen@aksnlaw.com)  
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*Counsel for the Committee*

The Creditor Trustee:

Laurence V. Goddard  
BDO USA, LLP  
32125 Solon Road  
Cleveland, Ohio 44139  
Phone: (440) 394-6151  
E-mail: [lgoddard@bdo.com](mailto:lgoddard@bdo.com)

**8.14 Cancellation of Notes, Instruments, and Debentures.** On the Effective Date, except to the extent provided otherwise in the Plan, all notes, instruments, debentures, certificates, and other documents evidencing Claims against the Debtor shall be deemed canceled, terminated, and surrendered (regardless of whether such notes, instruments, debentures, certificates or other documents are in fact surrendered for cancellation to the appropriate indenture trustee or other such Person). On the Effective Date, any indentures to which the Debtor is a party shall be deemed canceled as permitted by section 1123(a)(5) of the Bankruptcy Code.

**8.15 Insurance Preservation.** Nothing in the Plan, including any Releases, shall diminish or impair the enforceability of any policies of insurance that may cover any claims against the Debtor or any other Person.

**~~8.16~~ Restructuring Transactions.** Debtor and the Creditor Trustee, as appropriate, will be authorized to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan.

## ARTICLE IX

### Conditions Precedent to Confirmation and Effective Date

#### 9.1 Acceptance or Rejection of the Plan

9.1.1 **Acceptance by Impaired Classes.** Class 3 will have accepted the Plan if the Holders of at least two-thirds in amount and more than one-half in number of the Allowed Claims in the Class actually voting have voted to accept the Plan, in each case not counting the vote of any Holder designated under section 1126(e) of the Bankruptcy Code. ~~9.1.2~~

9.1.2 **Elimination of Classes.** Any Class that does not contain any Allowed Claims or any Claims temporarily allowed for voting purposes under Bankruptcy Rule 3018, as of the date of the commencement of the Confirmation Hearing, will be deemed not included in the Plan for purposes of (i) voting to accept or reject the Plan and (ii) determining whether such Class has accepted or rejected the Plan under section 1129(a)(8) of the Bankruptcy Code.

~~9.1.3 **Termination of Subordination Rights and Settlement of Related Claims.** The classification and manner of satisfying all Claims and Equity Interests and the respective distributions and treatments hereunder take into account and/or conform to the relative priority and rights of the Claims and Equity Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code or otherwise, and any and all such rights are settled, compromised and released pursuant to the Plan. The Confirmation Order shall permanently enjoin, effective as of the Effective Date, all Persons from enforcing or attempting to enforce any such contractual, legal, and equitable subordination rights satisfied, compromised, and settled in this manner.~~

~~9.1.3~~ **9.1.4 Nonconsensual Confirmation.** The Bankruptcy Court may confirm the Plan over the dissent of any Impaired Class if all of the requirements for consensual confirmation under subsection 1129(a), other than subsection 1129(a)(8), of the Bankruptcy Code and for nonconsensual confirmation under subsection 1129(b) of the Bankruptcy Code have been satisfied. Since Class 4, the impaired Class of Equity Interests, is deemed to reject the Plan, the Debtor requests that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code.

9.2 **Conditions Precedent to Confirmation Date of the Plan.** The occurrence of the Confirmation Date shall be subject to satisfaction of the following conditions precedent:

9.2.1 The entry of the Confirmation Order in form and substance satisfactory to the Plan Proponents; and

9.2.2 The Debtor being authorized to take all actions necessary or appropriate to enter into, implement, and consummate the Plan and other agreements or documents created in connection with the Plan.

9.3 **Conditions Precedent to the Effective Date of the Plan.** The occurrence of the Effective Date and the consummation of the Plan are subject to satisfaction of the following conditions precedent:

9.3.1 **Confirmation Order.** The Confirmation Order as entered by the Bankruptcy Court shall be a Final Order in full force and effect, in form and substance reasonably satisfactory to the Plan Proponents.

9.3.2 **Creditor Trust Agreement.** The Creditor Trust Agreement shall be acceptable to the Plan Proponents in form and substance, and shall have been executed by the Debtor, the Committee and the Creditor Trustee.

9.3.3 **UST Fees.** All UST Fees owed to the U.S. Trustee shall have been paid in their entirety.

9.4 **The Confirmation Order.** If the Confirmation Order is vacated for whatever reason, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in the Debtor; (ii) prejudice in any manner the rights of the Debtor; or (iii) constitute an admission, acknowledgment, offer or undertaking by the Debtor.

## ARTICLE X

### Effect of Plan Confirmation

10.1 **Binding Effect.** From and after the Confirmation Date, but subject to the occurrence of the Effective Date, this Plan shall be binding and inure to the benefit of the Debtor, all present and former holders of Claims and Equity Interests, and their respective assigns. The provisions of the Plan, the Confirmation Order, and any associated findings of fact or conclusions of law shall bind the Debtor, any entity acquiring property under the Plan, and any Creditor of the Debtor, whether or not the Claim of such creditor is Impaired under the Plan and whether or not such creditor has accepted the Plan.

10.2 **Discharge of Claims.** The Debtor will not receive a discharge under the Plan in accordance with section 1141 of the Bankruptcy Code.

### 10.3 Injunction

10.3.1 **Except as otherwise expressly provided in the Plan, all Persons that receive Distributions under the Plan or the Sale Order and that have held, hold, or may hold Claims against or Equity Interests in the Debtor are permanently enjoined, from and after the Effective Date, from taking any of the following actions against any of the Debtor, its Estate, the Creditor Trust, the Creditor Trustee, or any of their respective property on account of any Claims or causes of action arising from events prior to the Effective Date: (i) commencing or continuing in any manner any action or other proceeding of any kind; (ii) enforcing, attaching, collecting or recovering by any manner or in any place or means any judgment, award, decree or order; (iii) creating, perfecting, or enforcing any Lien or**



encumbrance of any kind; (iv) asserting any defense or right of setoff, subrogation, or recoupment of any kind against any obligation, debt or liability due to the Debtor; and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

10.3.2 By accepting Distributions pursuant to the Plan or the Sale Order, each Holder of an Allowed Claim receiving Distributions pursuant to the Plan will be deemed to have specifically consented to the injunctions set forth herein.

10.3.3 Unless otherwise provided in the Plan or the Confirmation Order, all injunctions or stays provided for under this Plan and ordered in the Confirmation Order or pursuant to sections 105 or 362 of the Bankruptcy Code arising under or entered during the Case, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Case is closed.

10.4 **Terms of Existing Injunctions or Stays.** Unless otherwise provided, all injunctions or stays provided for in the Case pursuant to sections 105, 362, or 525 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Case has been closed. The Confirmation Order will permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any Claims, Equity Interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to the Plan.

10.5 **Exculpation.** No Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, loss, or liability for any claim in connection with or arising out of the administration of the Case; the negotiation and pursuit of the transactions approved by the Sale Order, the Disclosure Statement, or this Plan, or the solicitation of votes for, or confirmation of, this Plan; the occurrence of the Effective Date; the administration of this Plan ~~or the Creditor Trust~~; the distribution of property under the Plan ~~and the Creditor Trust Agreement~~; any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan or the Case; or the transactions in furtherance of any of the foregoing; provided, however, that no Exculpated Party shall be released and exculpated for willful misconduct or gross negligence (but in all respects such entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to this Plan). Notwithstanding the foregoing, no Exculpated Party shall have liability for willful misconduct or gross negligence except as determined by a final order of a court of competent jurisdiction. The Exculpated Parties have acted in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of this Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan or such distributions made pursuant to this Plan. Nothing in this Section 10.5 shall be construed as a release of any Causes of Action against the Debtor's former or current Insiders for events occurring prior to the Petition Date, except as set forth in Section 8.8.4 of this Plan.

10.6 **Injunction Related to Exculpation.** The Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities enjoined, exculpated, or otherwise limited or prohibited pursuant to this Plan, including the claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action against the Debtor, ~~or the Committee, the Creditor Trust or the Creditor Trustee~~ that are described in Section 10.5 of this Plan.

## ARTICLE XI

### Modification, Revocation or Withdrawal of the Plan

11.1 **Modification of Plan.** The Plan Proponents reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, in their discretion, to amend or modify the Plan at any time prior to the entry of the Confirmation Order. Upon entry of the Confirmation Order, the Plan Proponents may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan as modified if the proposed modification does not materially and adversely change the treatment of the Claim of such Holder and the votes of each Class for or against the Plan shall be counted and used in connection with the modified plan of reorganization.

11.2 **Revocation, Withdrawal, or Non-Consummation.** The Plan Proponents reserve the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent plans of liquidation. If the Plan Proponents revoke or withdraw the Plan, or if the Confirmation Order confirming the Plan shall not be entered or become a Final Order, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts affected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (1) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor, (2) prejudice in any manner the rights of the Debtor or the Committee, (3) constitute an admission of any sort by the Debtor or the Committee, or (4) constitute a release of any Causes of Action possessed or maintained by the Debtor.

## ARTICLE XII

### Miscellaneous Provisions

12.1 **Payment of Statutory Fees.** All fees payable pursuant to 28 U.S.C. § 1930, shall be paid by the Debtor to the extent required by applicable law.

12.2 **Section 1146 Exemption.** Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under this Plan, may not be taxed under any law imposing a stamp tax or similar tax.

12.3 **Business Day.** If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

12.4 **Severability.** The provisions of this Plan shall not be severable unless such severance is agreed to by the Plan Proponents and such severance would constitute a permissible modification of the Plan pursuant to section 1127 of the Bankruptcy Code.

12.5 **Conflicts.** To the extent that any provision of the Disclosure Statement, the Creditor Trust Agreement, or any exhibits or schedules thereto, conflict with or are in any way inconsistent with the terms of the Plan, the Plan shall govern and control.

12.6 **Further Assurances.** The Debtor, the Committee, the Creditor Trustee, all Holders of Claims receiving Distributions under the Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver agreements or documents and take other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

12.7 **Filing of Additional Documents.** On or before the Effective Date, the Plan Proponents may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

12.8 **Successors and Assigns.** The rights, benefits, and obligations of any entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such entity.

12.9 **Section Headings.** The section headings contained in this Plan are for reference purposes only and shall not affect in any way the meaning or interpretation of the Plan.

12.10 **Further Information.** Requests for further information regarding the Debtor's Case or the Plan may be directed to counsel to the Debtor or the Committee, at the contact information set forth in Section 8.13 above.

~~12.11~~ **Governing Law.** Except to the extent that the Bankruptcy Code or Bankruptcy Rules are applicable, the rights and obligations arising under this Disclosure Statement and the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Ohio, without giving effect to any conflicts of law principles.

## ARTICLE XIII

### Jurisdiction

13.1 **Retention of Jurisdiction.** Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, unless explicitly set forth herein to the contrary, the Bankruptcy Court shall retain and have exclusive jurisdiction after the Effective Date over any matter arising under the Bankruptcy Code, arising in or related to the Case, the Plan or the Creditor Trust, or that relates to the following, in each case to the greatest extent permitted by applicable law:

13.1.1 to enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan;

13.1.2 to determine any and all motions, adversary proceedings, applications and contested or litigated matters that may be pending on the Effective Date or that, pursuant to the Plan, may be instituted by the Creditor Trustee after the Effective Date; provided, however, that the Creditor Trustee shall reserve the right to commence collection actions, actions to recover receivables, adversary proceedings against any Holder of a Claim, and other similar actions in all appropriate jurisdictions, and the jurisdiction of the Bankruptcy Court over such matters shall be nonexclusive;

13.1.3 to hear and determine any timely objections to Administrative Expense Claims, Priority Tax Claims, Priority Claims, General Unsecured Claims, or to Proofs of Claim and Equity Interests filed, both before and after the Confirmation Date, including any objections to the classification of any Claim or Equity Interest, and to allow, disallow, determine, liquidate, classify, estimate or establish the priority of or secured or unsecured status of any Claim, in whole or in part;

13.1.4 to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, reversed or vacated;

13.1.5 to issue such orders in aid of execution of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;

13.1.6 to consider any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;

13.1.7 to hear and determine all applications for awards of compensation for services rendered and reimbursement of expenses filed by Professionals;

13.1.8 to hear and determine disputes arising in connection with or relating to the Plan or the interpretation, implementation, or enforcement of the Plan, or the extent of any Person's obligations incurred in connection with or released or exculpated under the Plan;

13.1.9 to issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person with consummation or enforcement of the Plan;

13.1.10 to determine any other matters that may arise in connection with or are related to the Plan, the Disclosure Statement, the Confirmation Order, the Creditor Trust Agreement, or any other contract, instrument, release or other agreement or document created in connection with the Plan or the Disclosure Statement to be executed in connection with the Plan;

13.1.11 to hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

13.1.12 to hear any other matter or for any purpose specified in the Confirmation Order that is not inconsistent with the Bankruptcy Code; and

13.1.13 to enter a Final Decree closing the Case.

Dated this ~~2nd~~<sup>4th</sup> day of ~~October~~, December 2018.

**ASPC CORP., F/K/A ACUSPORT  
CORPORATION**

By: /s/ Lee Sweigart  
Its Chief Restructuring Officer

**OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS OF ASPC  
CORP., F/K/A ACUSPORT  
CORPORATION**

By: /s/ James Hanus  
Its Chair