

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

In re

VIOLIN MEMORY, INC.,¹

Debtor.

Chapter 11

Case No. 16-12782 (LSS)

Related D.I. 305, 313, 314

NOTICE OF FILING OF PLAN SUPPLEMENT

PLEASE TAKE NOTICE that on April 5, 2017, the above-captioned debtor and debtor in possession (the “**Debtor**”) filed the documents attached hereto (the “**Plan Supplement**”) in connection with the *Second Amended Plan of Reorganization for Violin Memory, Inc.* [D.I. 313] (as may be amended, modified or supplemented from time to time in accordance with its terms, the “**Plan**”).² The documents comprising the Plan Supplement are integral to and part of the Plan and, if the Plan is approved, shall be approved pursuant to the Confirmation Order.

PLEASE TAKE FURTHER NOTICE that the Plan Supplement documents remain subject to continuing negotiation among the Debtor, Plan Sponsor, and interested parties with respect thereto. The Debtor and Plan Sponsor reserve all rights to amend, modify or supplement the Plan Supplement and any documents contained therein in accordance with the terms of the Plan. To the extent that any material modifications are made to any of these documents, the Debtors will file a blacklined version with the Court prior to the Confirmation Hearing marked to reflect such revisions.

¹ The Debtor’s tax identification number is 20-3940944 and its business address is 4555 Great America Parkway, Suite #510, Santa Clara, CA 95054.

² Capitalized terms used but not defined herein have the meaning ascribed to them in the Plan.

PLEASE TAKE FURTHER NOTICE that the Confirmation Hearing is currently scheduled for **April 18, 2017 at 2:00 p.m. (Eastern Time)** before the Honorable Laurie Selber Silverstein, United States Bankruptcy Judge, in Courtroom #2 of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Wilmington, Delaware, 19801. Please be advised that this hearing may be continued from time to time by the Court or the Debtor without further notice other than by such adjournment being announced in open court or by a notice of adjournment being filed with the Court and served on parties entitled to notice under Bankruptcy Rule 2002 and Local Rules or otherwise.

Dated: April 5, 2017
Wilmington, Delaware

BAYARD, P.A.

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Exhibit B: Assumption Schedule

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EXHIBIT A

DISTRIBUTION TRUST AGREEMENT¹

THIS DISTRIBUTION TRUST AGREEMENT (the “**Agreement**”), dated as of April __, 2017, by and among (i) Violin Memory, Inc. (the “**Debtor**”) and (ii) Sheon Karol and Cory J. Sindelar (each, a “**Distribution Trustee**” and together, the “**Distribution Trustees**”), is executed to establish a trust (the “**Distribution Trust**”) pursuant to the *Second Amended Plan of Reorganization for Violin Memory, Inc.* (as the same may be amended, supplemented, or modified from time to time, the “**Plan**”). Capitalized terms used but not defined in this Agreement have the meaning ascribed to such terms in the Plan.

RECITALS

WHEREAS, on December 14, 2016, the Debtor commenced a voluntary case under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), which case is administered under the caption *In re Violin Memory, Inc.*, Case No. 16-12782 (LSS) (the “**Bankruptcy Case**”);

WHEREAS, on March 8, 2017, the Debtor filed the Plan with the Bankruptcy Court [Docket No. 313];

WHEREAS, on April [18], 2017, the Bankruptcy Court entered an order confirming the Plan [Docket No. ____] (the “**Confirmation Order**”);

WHEREAS, the Plan provides for the establishment of the Distribution Trust to resolve and satisfy claims against the Debtor existing on or prior to the Effective Date and to hold, administer and liquidate certain assets, including without limitation to enforce and pursue the Distribution Trust Claims (as defined in Section 2.2 below), for the benefit of the Distribution Trust Beneficiaries and each of their heirs, successors, executors, representatives, administrators and permitted assigns (collectively, the “**Beneficiaries**”);

WHEREAS, the Confirmation Order provides for the appointment of the Distribution Trustees as co-trustees of the Distribution Trust and as the representatives of the Estate pursuant to section 1123(b)(3)(B) of the Bankruptcy Code for, among other purposes, the enforcement of the Distribution Trust Claims on behalf of and in the right of the Estate;

WHEREAS, the Confirmation Order further provides for the appointment of the Distribution Trustees to serve as the Disbursing Agent for the purposes of all distributions to be made under the Plan after the Effective Date;

WHEREAS, the Distribution Trustees have agreed to serve jointly as trustees of the Distribution Trust and as the disbursing agent for Plan distributions, upon the terms and subject to the conditions set forth in this Agreement and the Plan; and

¹ This Form of Distribution Trust Agreement is subject to further modification prior to the Effective Date.

WHEREAS, the Distribution Trust is intended to qualify as a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d) and as a “grantor trust” pursuant to sections 671-677 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. §§ 1-9833 (the “**Internal Revenue Code**”) for United States federal income tax purposes, with the Beneficiaries treated as the grantors and owners of the Distribution Trust Assets (as defined in Section 1.2 below).

NOW, THEREFORE, in accordance with the Plan and in consideration of the promises and mutual covenants and agreements contained herein, the validity and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

ESTABLISHMENT OF TRUST

Section 1.1 Name of Trust. The trust created by this Agreement shall be known as the “Violin Distribution Trust” and is referred to herein as the Distribution Trust. The Distribution Trust shall have a separate existence from the Reorganized Debtor. The Distribution Trustees shall use best efforts to show conspicuously that the Distribution Trustees represent the Distribution Trust, which should not be confused with the Reorganized Debtor. The Distribution Trust is the trust created pursuant to Article VI of the Plan.

Section 1.2 Declaration of Trust. In furtherance of the consummation of the Plan, the Debtor and the Distribution Trustees have executed this Agreement. Effective on the Effective Date of the Plan, in accordance with Article VI of the Plan, the Debtor and the Estate are deemed to have irrevocably assigned, transferred, conveyed and delivered to the Distribution Trustees, and to have and to hold in trust all right, title and interest of the Debtor and the Estate in and to the Distribution Trust Assets (as defined in the Plan), which include: (i) the Distribution Trust Claims and all litigation recoveries with respect to the Distribution Trust Claims (subject to Section 2.2 of this Agreement) and (ii) the Distribution Trust Funding Amount (as defined in Section 3.1 below). The use and distribution of the Distribution Trust Assets shall be made in accordance with, and subject to the terms and conditions of, this Agreement and the Plan.

Section 1.3 Purpose of Trust. The Distribution Trust is established solely for the purposes of holding, administering and liquidating the Distribution Trust Assets and making distributions to the Beneficiaries in accordance with Treasury Regulation section 301.7701-4(d) with no objective to continue or engage in the conduct of a trade or business. The Distribution Trustees shall be the exclusive trustees of the Distribution Trust Assets for purposes of 31 U.S.C. § 3713(b) and section 6012(b)(3) of the Internal Revenue Code.

Section 1.4 Transfer of Distribution Trust Assets. Pursuant to the Confirmation Order, on the Effective Date, the Distribution Trust Assets are deemed to have transferred to and been vested in the Distribution Trust effective as of the Effective Date free and clear of all Claims, Liens and Interests subject only to the Plan and the Confirmation Order. Pursuant to Section 11.4 of the Plan, the transfer of the Distribution Trust Assets to the Distribution Trust shall not be subject to any document recording tax, stamp tax, conveyance fee or other similar tax or governmental assessment.

Section 1.5 Estate Representative. On the Effective Date, the Distribution Trustees shall be deemed to have been designated as a representative of the Estate pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to (a) enforce and pursue the Distribution Trust Claims, and (b) resolve all Disputed Claims. To the extent that any Distribution Trust Asset cannot be transferred to the Distribution Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, the Distribution Trustees shall be deemed to have been designated as the representatives of the Reorganized Debtor pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to administer, liquidate, enforce and pursue such Distribution Trust Assets and all proceeds of such Distribution Trust Assets shall be transferred to the Distribution Trust to be distributed in accordance with the terms of the Plan and this Agreement. Without limiting the foregoing, the Distribution Trust shall be deemed the successor to the Official Committee with respect to (i) adversary proceedings or contested matters pending as of the Effective Date to which the Official Committee is a party, (ii) any motions by the Official Committee seeking to enforce the Plan and the transactions contemplated thereunder or the Confirmation Order, and (iii) any pending appeals and related proceedings.

Section 1.6 Vesting of Privileges. The Distribution Trust shall be vested with any attorney-client, work product protection or other privilege or immunity (“**Privileges**”) belonging to the Debtor or the Reorganized Debtor as of the Effective Date attaching to any documents or communications (whether written or oral) related to any Disputed Claim or the Distribution Trust Claims, subject to the provisions of Section 2.3 of this Agreement. The Debtor, Reorganized Debtor and the Distribution Trustees shall take all necessary actions to effectuate the transfer of such privileges, protections and immunities. The Distribution Trust’s holding of the Privileges associated with the Disputed Claims or the Distribution Trust Claims shall not operate as a waiver of other privileges possessed or retained by the Reorganized Debtor. The Distribution Trustees shall be entitled to waive any Privilege with respect to the Disputed Claims or the Distribution Trust Claims as may be necessary or appropriate in the discretion of the Distribution Trustees; provided, however, that, the Distribution Trustees may not waive any Privilege if such waiver would impair other privilege held by the Reorganized Debtor.

Section 1.7 Acceptance by the Distribution Trustees. The Distribution Trustees are willing, and hereby accept the appointment, to jointly serve as trustees of the Distribution Trust pursuant to this Agreement and the Plan, and agree to observe and perform all duties and obligations imposed upon the Distribution Trustees by this Agreement and the Plan, including, without limitation, to accept, hold, and liquidate the Distribution Trust Assets, make distributions to Beneficiaries and to otherwise carry out the purpose of the Distribution Trust in accordance with the terms and subject to the conditions set forth herein and in the Plan and the Confirmation Order. Under no circumstance shall the Distribution Trustees be authorized or contend that they are authorized to incur liability on behalf of the Estate or the Reorganized Debtor, and any and all liability incurred by the Distribution Trustees, whether for expenses of prosecution, payment of sanctions, or otherwise, shall be the exclusive liability of the Distribution Trust and not the liability of the Estate or the Reorganized Debtor.

ARTICLE II

DISTRIBUTION TRUST CLAIMS

Section 2.1 Enforcement of Distribution Trust Claims. The Distribution Trustees shall have the exclusive power, right, authority, discretion and standing to investigate, institute, prosecute, abandon, transfer, sell, settle or compromise any and all Distribution Trust Claims, and to decline to do any of the foregoing, without the consent or approval of any third party (including any Creditor) and without further notice, order or authorization of the Bankruptcy Court, except as otherwise provided herein (including, without limitation, in Section 6.2 of the Plan) or in this Agreement. The Distribution Trustees shall be permitted, in the good faith exercise of their business judgment, to settle any Distribution Trust Claims or to otherwise reduce the Distribution Trust Claims to Distribution Trust proceeds in accordance with the terms of this Agreement.

Section 2.2 Distribution Trust Claims. For purposes of this Agreement, the term “Distribution Trust Claims” shall mean all Avoidance Actions of the Debtor or the Estate as of the Effective Date except for the Retained Avoidance Actions and any claims released or subject to exculpation under the Plan (collectively, the “**Excluded Claims**”). For the avoidance of doubt, none of the Excluded Claims, and no Causes of Action other than the Distribution Trust Claims, shall be transferred or assigned to the Distribution Trust.

Section 2.3 Books and Records.

(a) The Debtor’s and the Official Committee’s counsel, financial advisors and other professionals shall provide to the Distribution Trustees the documents and other information gathered, and relevant work product developed, during the Bankruptcy Case in connection with their respective investigation or analysis of the Distribution Trust Claims and any Disputed Claims.

(b) The Reorganized Debtor will preserve and maintain its books and records related to the Distribution Trust Claims or Disputed Claims (“**Trust Books and Records**”) for the duration of the Distribution Trust. The Reorganized Debtor will, on the reasonable request of the Distribution Trustees, deliver copies of Trust Books and Records that are responsive to such reasonable requests, subject to appropriate confidentiality restrictions, and will assist the Distribution Trust with any evidentiary requirements related to such records. The Distribution Trustees will not disclose Trust Books and Records to any third party (except for Professionals (as defined in Section 6.6 below)) without the prior written consent of the Reorganized Debtor, which consent shall not be unreasonably withheld. Any dispute regarding whether consent is unreasonable shall be resolved on motion to the Bankruptcy Court.

(c) The Debtor, the Reorganized Debtor and the Distribution Trustees agree that they share a common interest with regard to information related to the Distribution Trust Claims and Disputed Claims (which shall include the Trust Books and Records) (the “**Common Interest Information**”), and they desire, intend and mutually agree that the exchange of Common Interest Information is not intended to, and shall not, waive any

evidentiary privileges, protections or immunities, including without limitation the Privileges attaching to any such documents or information (whether written or oral).

(d) Notwithstanding anything to the contrary herein the Distribution Trustees do not have possession, custody or control over any of the books and records of the Reorganized Debtor within the meaning of the Federal Rules of Civil Procedure and shall have no power over the books and records of the Debtor or Reorganized Debtor beyond the rights granted herein.

(e) The Reorganized Debtor (and any other party that provides cooperation and/or delivers documents and/or information hereunder) and the Distribution Trustees shall use commercially reasonable efforts to cooperate with the other with respect to the implementation of the Plan (including, without limitation, the resolution of Disputed Claims, the determination of taxes and the preparation and filing of tax returns), with all out-of-pocket expenses incurred by the Reorganized Debtor in connection therewith being borne by the Distribution Trust; provided, however, that neither party shall be required to (i) provide information, records or employees or other personnel under circumstances which the providing party believes in its sole reasonable determination may waive privilege, confidentiality or a similar protection or expose it to material liability to any person or may prejudice any legal interest of the providing party, or (ii) take any action that in the providing party's reasonable determination unreasonably interferes with its business.

ARTICLE III

FUNDING OF DISTRIBUTION TRUST

Section 3.1 Distribution Trust Funding. Pursuant to the Plan and the Plan Sponsor Agreement, on the Effective Date, the Debtor shall transfer to the Distribution Trust the Administrative Claim Reserve, Incremental Reserve and Consideration (whether held by or on behalf the Debtor), less any amounts actually used to satisfy Allowed Administrative and Priority Claims on or prior to the Effective Date in accordance with the Plan, and the Plan Sponsor shall transfer to the Distribution Trust the Consideration Balance (all such amounts regardless of source, the "**Distribution Trust Funding Amount**"). For the avoidance of doubt, nothing herein shall impose any obligation on any of the Debtor, the Reorganized Debtor, the Plan Sponsor, or any of their respective Affiliates, to fund the Distribution Trust.

Section 3.2 Distribution Trust Expenses. All Distribution Trust expenses, including all fees and costs of the Distribution Trustees and the Professionals (as defined in Section 6.6 of this Agreement) and any applicable insurance premiums for coverage of the Distribution Trust and the Distribution Trustees, shall be funded solely from the Distribution Trust Funding Amount and proceeds of any Distribution Trust Claims. In the first instance, all Distribution Trust expenses will be paid out of the Initial Cash. In the event the Initial Cash is insufficient to cover the Distribution Trusts expenses, the Consideration may be used to fund Distribution Trust expenses only if consent is given to do so by both Distribution Trustees. From and after the Effective Date, the Distribution Trustees, on behalf of the Distribution Trust, shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court,

pay the reasonable expenses incurred by the Distribution Trust, and any Professionals retained by the Distribution Trust. The Distribution Trust shall not require any Beneficiary to fund expenses of the Distribution Trust and the Distribution Trust shall not make any cash calls from the Beneficiaries. The Distribution Trustees (except as otherwise set forth in section 6.10(e) of this Agreement) and all Professionals shall have no personal liability in the event there are insufficient funds to pay the Distribution Trust expenses.

Section 3.3 Distribution Trust Budget. The Distribution Trustees shall fulfill their duties under this Agreement pursuant to the certain budget prepared by the Debtor for the purpose of winding down the Debtor's Estate. From time to time, the Distribution Trustees may amend or revise the budget to reflect the progress of the Distribution Trust.

ARTICLE IV

DISBURSING AGENT ROLE

Section 4.1 Disbursing Agent.

(a) The Distribution Trustees, in their role as disbursing agent, shall be responsible for making all distributions to Holders of Allowed Claims on or after the Effective Date pursuant to the Plan.

(b) After payment in full (or reserving for payment in full) of all Administrative Claims, Priority Claims and Secured Claims as and when Allowed, the Distribution Trustee shall distribute to the holders of Allowed General Unsecured Claims in Class 4 on account of their Distribution Trust Interests, on at least a semi-annual basis commencing on or before thirty (30) days after the Effective Date, all available cash (including any Cash received from the Debtor and treating any permissible investment as Cash for this purpose), less such amounts that may be reasonably necessary to (a) meet contingent liabilities and to maintain the value of the Distribution Trust Assets during liquidation, (b) pay reasonably incurred or anticipated expenses (including, without limitation, any taxes imposed on or payable by the Distribution Trust or in respect of the Distribution Trust Assets, including with respect to such assets as are allocable to Disputed Claims), or (c) satisfy other liabilities incurred or anticipated by such Distribution Trust in accordance with the Plan or Agreement; provided, however, that such Distribution Trustee shall not be required to make a Distribution pursuant to this Section 4.1 of this Agreement or Section 6.2(g) of the Plan if such Distribution Trustee determines that the expense associated with making the Distribution would likely utilize a substantial portion of the amount to be distributed, thus making the Distribution impracticable.

Section 4.2 Assistance. The Disbursing Agent may employ or contract with other persons or entities to perform the payment, tax withholding and remittance obligations created under the Plan. The Distribution Trustees may delegate any of their rights and responsibilities under the Plan to other persons or entities as necessary or appropriate to carry out speedy and inexpensive Distributions to Creditors under the Plan. Such persons or entities may receive

reasonable compensation for services rendered and reimbursement for expenses incurred in connection with this Plan or any functions or responsibilities adopted under the Plan.

ARTICLE V

RESOLUTION OF CLAIMS

Section 5.1 Disputed Claims. Pursuant to Section 8.1 of the Plan, after the Effective Date, the Distribution Trustees shall have standing and the authority to File objections to all Claims against the Debtor that have not been Allowed as of the Effective Date. The Distribution Trustees may litigate to judgment their Filed objections to such Claims. The Distribution Trustees may settle, compromise, or withdraw any objection to any Claim without approval of the Bankruptcy Court. For the avoidance of doubt, the Distribution Trustees shall have standing and authority to assert any Causes of Action of the Debtor or the Estate solely to the extent necessary to defend or offset against any Claim to be satisfied, in whole or in part, by the Distribution Trust from the Distribution Trust Assets. Except as otherwise explicitly provided in the Plan, nothing herein shall affect the Distribution Trust's or the Distribution Trustees' rights and defenses, both legal and equitable, with respect to any Claims, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

Section 5.2 Objection Deadline. The Distribution Trustees may file objections to any Claim by the Claims Objection Deadline. The Distribution Trustees may seek an extension of the Claims Objection Deadline pursuant to Bankruptcy Rule 9006(b)(1) and Article 8 of the Plan.

Section 5.3 Maximum Distributions. Notwithstanding anything to the contrary in this Agreement, no Creditor shall receive any Distribution from the Distribution Trust Assets that exceeds payment in full, plus interest (including default interest, fees, costs, expenses, charges, and any other amounts otherwise due and payable), on account of the Allowed Claim held by such Creditor. If and to the extent there remains a surplus of any Distribution Trust Assets after the payment in full to the Beneficiaries and the satisfaction in full of any expenses incurred by the Distribution Trust, and such surplus is not a *de minimis* amount, the Distribution Trustees shall petition the Bankruptcy Court for instructions with respect to the disposition of such surplus.

Section 5.4 Timing of Distributions. The Distribution Trustees shall make distributions of Available Cash in accordance with this Agreement and the Plan, and shall use commercially reasonable efforts to complete all distributions no later than three months after the Effective Date or as soon as possible thereafter.

Section 5.5 No Interest. Except to the extent required by a Final Order of the Bankruptcy Court, for purposes of computing distributions under the Plan, no Allowed Claim in Class 4 (General Unsecured Claims) shall receive any interest, penalty, premium or late charge accruing on such claim from and after the Petition Date.

Section 5.6 Reserve for Disputed Claims.

(a) In accordance with Section 4.3(b) of the Plan, the Distribution Trustees shall maintain and administer a separate reserve (each, a “**Reserve**”) for each Class of Claims and/or type of Distribution remaining to be made after the Effective Date (if and to the extent necessary).

(b) To the extent that Reserves are established and maintained in accordance with Section 5.6(a), such Reserves shall be established based on the Distributions that would have been made to the Holder of a Disputed Claim if it were an Allowed Claim in an amount equal to the lesser of (i) the amount of the Disputed Claim, (ii) the amount in which the Disputed Claim shall be estimated by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code for purposes of allowance, which amount, unless otherwise ordered by the Bankruptcy Court, shall constitute and represent the maximum Allowed amount of such Claim, or (iii) such other amount as may be agreed upon by the Holder of such Disputed Claim and the Debtor or the Distribution Trustee. The Reserve shall be treated as a “disputed ownership fund” within the meaning of Treasury Regulations section 1.468B-9. In addition, unless the Distribution Trustees determine otherwise, the Distribution Trustees will pay from the applicable Distribution Trust Funding Amount or Distribution Trust Assets proceeds on a current basis any taxes owed on any net income or gain of such Reserve. Cash held in a Reserve shall only be invested consistent with section 345 of the Bankruptcy Code.

(c) At reasonable period intervals as such Disputed Claims are resolved, the amount set aside as a Reserve for such Disputed Claim(s) (including any earnings thereon, net of any allocable expenses of the reserve) shall be distributed (i) in the case of amounts allocable to the Allowed portion of any such claim, to the holder of such resolved Disputed Claim and (ii) in the case of amounts allocable to the Disallowed portion of any such Disputed Claim, to the Distribution Trust for redistribution to Allowed claims. (The amount of cash set aside with respect to Disputed Claims will be treated as held by a “disputed ownership fund” for federal and applicable state and local income tax purposes).

Section 5.7 Professional Fee Reserve. Notwithstanding anything to the contrary herein, the Professional Fee Reserve established pursuant to the Plan and held by counsel to the Debtor (i) shall be the first source of recovery for any Professional Fee Claims as and when allowed to the extent provided for by the Plan, and (ii) shall be deemed to be a reserve established and controlled by the Distribution Trust for all purposes with respect to calculating reserves held by or distributions to be made by the Distribution Trust.

Section 5.8 Delivery of Distributions. Distributions from Available Cash shall be made by mailing such Distribution to the Creditor at the address listed in any proof of claim filed by the Creditor or at such other address as such Creditor shall have specified for payment purposes in a written notice received by the Distribution Trustee at least twenty (20) days before a Distribution Date. If a Creditor has not filed a proof of claim or interest or sent the Distribution Trustee a written notice of payment address, then the Distribution(s) for such Creditor will be mailed to the address identified in the Schedules of Assets and Liabilities.

Section 5.9 No Partial Distributions. The Distribution Trustees shall not be required to make any partial distributions to any holder of any Disputed Claims pending resolution of such Disputed Claims, provided that, the foregoing shall not limit, impair or otherwise affect the right of such holder to receive, in accordance with the Plan and this Agreement, a distribution in respect of any other claims of such holder that are Allowed Claims and that are not subject to Section 5.6 of this Agreement.

Section 5.10 Undeliverable Distributions. If any distribution from the Distribution Trust is returned as undeliverable, the Distribution Trustees may, but is not obligated to, make such efforts to determine the current address of the Beneficiary to whom such distribution should be made as the Distribution Trustees deems appropriate, but no further distribution shall be made unless and until the Distribution Trustees have determined current, valid address for such Beneficiary, at which time the distribution to such Beneficiary shall be made to such Beneficiary without interest. If the Distribution Trustees are unable to determine a current, valid address for a Beneficiary, any Distribution Trust distribution that is returned as undeliverable shall become the property of the Distribution Trust and the entitlement by the Beneficiary to such distribution or any subsequent distribution on account of such Beneficiary's claim shall be extinguished and forever barred. All funds or other property that revert to the Distribution Trust pursuant to this section shall be treated as unclaimed property in accordance with Section 5.14 of this Agreement.

Section 5.11 Fractional Cents. The Distribution Trustees shall not be required to make distributions or payments of fractions of cents. Whenever any payment of a fraction of a cent under this Agreement would otherwise be called for, the actual payment shall be rounded down to the nearest whole cent.

Section 5.12 Minimum Distributions. The Distribution Trustees shall not be required to, but may in its sole and absolute discretion, make an initial or interim distribution to any Beneficiary in an amount less than \$100 (but shall withhold such amount(s) pending a final distribution). In addition, the Distribution Trustees shall not be required to, but may in its sole and absolute discretion, make any payment to a Beneficiary in the event that the cost of making such payment exceeds the amount of such payment.

Section 5.14 Unclaimed Property. Any distribution of Cash under this Agreement that is unclaimed after six (6) months after it has been delivered (or attempted to be delivered) shall become the property of the Distribution Trust, notwithstanding any state or other escheat or similar laws to the contrary, and the entitlement by the Beneficiary to such distribution or any subsequent distribution on account of such Beneficiary's claim shall be extinguished and forever barred. Nothing contained in the Plan, the Confirmation Order or this Agreement shall require the Distribution Trustees to attempt to locate any Beneficiary. All funds or other property that revert to the Distribution Trust pursuant to this Article shall be distributed by the Distribution Trustees to the other Beneficiaries in accordance with the provisions of the Plan and this Agreement.

ARTICLE VI

RIGHTS, POWERS AND DUTIES OF DISTRIBUTION TRUSTEES

Section 6.1 Appointment. Pursuant to Article VI of the Plan, the Distribution Trustees shall become the trustees of the Distribution Trust upon the Closing.

Section 6.2 Legal Title. The Distribution Trust shall hold legal title to the Distribution Trust Assets except that the Distribution Trustees may cause legal title or evidence of title to any of the Distribution Trust Assets to be held by any nominee or person, on such terms, in such manner and with such power as the Distribution Trustees may determine advisable.

Section 6.3 Bonding of Distribution Trustee. The Distribution Trustees shall not be obligated to obtain a bond but may do so, in their sole discretion, in which case the expense incurred for such bond shall be paid by the Distribution Trust.

Section 6.4 Fiduciary Duties of Distribution Trustees. Pursuant to the Plan and this Agreement, the Distribution Trustees shall act in a fiduciary capacity on behalf of the Beneficiaries. The Distribution Trustee's actions with respect to disposition of the Distribution Trust Assets shall in all events be taken in a manner so as reasonably to maximize the value of the Distribution Trust Assets and distributions to the Beneficiaries, giving due regard to the cost, risk and delay of any course of action.

Section 6.5 General Powers.

(a) Except as otherwise provided in the Plan, the Confirmation Order or in this Agreement, and subject to the retained jurisdiction of the Bankruptcy Court as provided for herein, in the Plan or the Confirmation Order, the Distribution Trustees may control and exercise authority over the Distribution Trust Assets, the acquisition, management and disposition thereof and the management and conduct of the affairs of the Distribution Trust, provided, however, that such control and authority over the Distribution Trust Assets shall be subject to the provisions of this Agreement. The Distribution Trustees shall execute all agreements and other documents with the signature “_____ in [his/her] capacity as the Distribution Trustee of the Violin Distribution Trust” and shall commence or appear in any civil action or proceeding in his/her capacity as the Distribution Trustees of the Violin Distribution Trust.

(b) Any and all decisions or actions on behalf of, or in the name of, the Distribution Trust must be authorized by or with the consent of each Distribution Trustee, with any differences after good faith consultation between the Distribution Trustees to be resolved by the Bankruptcy Court. For the avoidance of doubt, any reference herein to the actions, rights, duties or obligations of the Distribution Trustee refers to both Distribution Trustees jointly. Except as provided in the Plan, the Confirmation Order or otherwise specified in this Agreement, the Distribution Trustees need not obtain an order or approval of the Bankruptcy Court in the exercise of any power, rights, or discretion conferred hereunder, or account to the Bankruptcy Court. Notwithstanding the foregoing, the Distribution Trustees shall have the right to submit to the Bankruptcy Court any questions the Distribution Trustees may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the Distribution Trustees with respect to the Distribution Trust Assets, the Distribution Trust, this Agreement, the Plan, or the administration and distribution of the Distribution Trust

Assets, provided, however, that any specific action proposed to be taken by the Distribution Trustees shall otherwise be in accordance with the terms of this Agreement and the Plan;

(c) In connection with the management of the Distribution Trust Assets, except as otherwise expressly limited in this Agreement, the Distribution Trustees shall have the power and authority, subject to the terms of this Agreement, to:

- (i) administer, liquidate, and monetize the Distribution Trust Assets;
- (ii) formulate a Distribution Trust Budget from time to time;
- (iii) investigate, pursue, litigate, settle, or abandon any Distribution Trust Claims;
- (iv) object to and otherwise resolve Disputed Claims;
- (v) establish and maintain one or more depository, escrow, or other accounts to hold Cash or cash equivalents constituting Distribution Trust Assets;
- (vi) serve as Disbursing Agent and make distributions in accordance with the terms of the Plan and this Agreement;
- (vii) adopt, execute, deliver or file all plans, agreements, certificates and other document and instruments necessary or appropriate to implement the Distribution Trust;
- (viii) maintain appropriate books and records;
- (ix) make investments as permitted in Section 6.9 hereof, and as deemed appropriate by the Distribution Trustees;
- (x) file appropriate tax returns and other reports on behalf of the Distribution Trust or with respect to its assets or income and pay taxes or other obligations owed by the Distribution Trust or with respect to its assets or income; and
- (xi) exercise such other powers and duties as necessary or appropriate, in accordance with this Agreement, the Plan and the Confirmation Order, to accomplish the purposes of the Distribution Trust as set out herein and therein.

Section 6.6 Retention of Attorneys, Accountants and Other Professionals. The Distribution Trustees may retain the following professionals (the “**Professionals**”) to aid in the performance of his/her responsibilities pursuant to the terms of the Plan and this Agreement:

(a) Law firm(s) that the Distribution Trustees determines are necessary to perform such functions as may be appropriate to carry out the primary purposes of the Distribution Trust. The Distribution Trustees may engage such law firm(s) on a

contingent fee basis as permitted by applicable law; provided, however, that the Distribution Trustees shall use good-faith efforts to engage law firm(s) on a flat fee basis and to resolve the Disputed Claims and the Distribution Trust Claims no later than three months after the Effective Date or as soon as reasonably practicable thereafter.

(b) An independent public accounting firm to, if necessary, audit the financial books and records of the Distribution Trust, to prepare and file all federal, state and local tax returns and related tax forms on behalf of the Distribution Trust that the Distribution Trustees are obligated to prepare, provide and file, and to perform such other reviews and/or audits as the Distribution Trustees may deem advisable to carry out the primary purposes of the Distribution Trust.

(c) Such other attorneys, forensic accountants, experts, advisors, consultants, investigators, appraisers, auctioneers or other professionals as are advisable to carry out the purposes of the Distribution Trust.

Section 6.7 Compensation of Professionals. Subject to Sections 3.2 and 6.6(a), the Distribution Trustees may commit the Distribution Trust to and shall pay all such Professionals reasonable compensation from the Distribution Trust Assets or other available funds for services rendered and expenses incurred in accordance with this Agreement. In no event shall the amount paid with respect to legal fees exceed \$400,000. The Distribution Trustees may also enter into a litigation funding or financing arrangement if the Distribution Trustees deems it necessary to sufficiently prosecute the Distribution Trust Claims.

Section 6.8 Compensation of Distribution Trustee. Each Distribution Trustee shall be entitled to compensation of (i) \$25,000 per month for the initial three months after the Effective Date; (ii) to the extent the Distribution Trust has not been dissolved within the initial three months after the Effective Date, \$25,000 for the subsequent twelve-month period (payable in full at the commencement of such period); (iii) to the extent the Distribution Trust is not resolved within fifteen months after the Effective Date, \$25,000 for the subsequent twelve-month period (payable in full at the commencement of such period); and (iv) \$0.00 thereafter. Each Distribution Trustee shall be entitled to the payment of reasonable and expenses incurred in fulfilling its duties pursuant to this Agreement, it being understood that the Distribution Trustees will use reasonable efforts to minimize such expenses. Such compensation and expenses shall be paid from the Distribution Trust Assets.

Section 6.9 Limitation on Investment Powers of Distribution Trustee. Other than funds maintained in operating accounts in an amount deemed appropriate by the Distribution Trust to pay the current costs, expenses and obligations of the Distribution Trust, the Distribution Trustees may invest any monies held at any time as a part of the Distribution Trust, provided, however, that any such investments shall be only in interest-bearing deposits, certificates of deposit, or repurchase obligations of any federally insured banking institution or short term investments and obligations of, and unconditionally guaranteed as to payment by, the United States of America and its agencies or instrumentalities, pending the need to make disbursements thereof in payment of costs, expenses, and liabilities of the Distribution Trust or to make a distribution to the Beneficiaries and shall in any event be limited to such permissible investments

described in IRS Revenue Procedure 94-45 (or successor guidance) of a “liquidating trust” within the meaning of Treasury Regulations section 301.7701-4(d).

Section 6.10 Limitations of Liability.

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

(b) No Implied Obligations. The Distribution Trustees shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be read into this Agreement against the Distribution Trustees.

(c) No Liability for Good Faith Error of Judgment. The Distribution Trustees shall not be liable for any error of judgment made in good faith, unless it shall be proved that the Distribution Trustees was grossly negligent or acting with willful misconduct in ascertaining the pertinent facts; provided, however, that in no event shall one of the Distribution Trustees be liable for the gross negligence or willful misconduct of the other Distribution Trustee.

(d) Reliance by Distribution Trustees on Documents and Professional Advice. Except as otherwise provided herein, the Distribution Trustees may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by the Distribution Trustees to be genuine and to have been signed or presented by the proper party or parties. The Distribution Trustees also may engage and consult with Professionals for the Distribution Trust and other agents and advisors and shall not be liable for any action taken or suffered by the Distribution Trustees in reliance upon the advice of such Professionals, agents or advisors. In no event shall one Distribution Trustee be liable for the gross negligence or willful misconduct of the other Distribution Trustee.

(e) Limitation on Liability. Except for acts of reckless or willful misconduct, fraud or gross negligence, willful disregard of the Distribution Trustees’ duties under this Agreement, Persons dealing with the Distribution Trustees, or seeking to assert claims against the Distribution Trust, shall look only to the assets of the Distribution Trust to satisfy any liability incurred by the Distribution Trustees to any such person in carrying out the terms of this Agreement, and the Distribution Trustees and any of his/her designees, partners, affiliates, agents, employees, representatives and Professionals shall have no personal, individual obligation or recourse of any nature or kind whatsoever to satisfy any such liability. In no event shall one Distribution Trustee be liable for the fraud, gross negligence or reckless or willful misconduct of the other Distribution Trustee.

Section 6.11 Indemnification, Exculpation and Reimbursement. The Distribution Trustees shall perform the duties and obligations imposed on the Distribution Trustees by this

Agreement with reasonable diligence and care under the circumstances. Neither Distribution Trustee shall be personally liable to the Distribution Trust, to any Beneficiary, holder of a Claim or any other Person (or any predecessor or successor thereto) for any reason whatsoever, except for such of their own acts or omissions constituting reckless or willful misconduct, reckless or willful violation of criminal law, fraud, gross negligence or willful disregard of their duties, and resulting in a material breach of any provision of this Agreement. Except as aforesaid, the Distribution Trustees shall be defended, held harmless and indemnified from time to time from the Distribution Trust Assets (but not from or by the Beneficiaries or any of the parties released under the Plan), against any and all losses, claims, costs, expenses and liabilities to which the Distribution Trustees may be subject by reason of the Distribution Trustees' execution in good faith of their duties under this Agreement. Without limiting the generality of the foregoing, the Distribution Trustees shall have no liability to any Beneficiary or holder of a Claim against the Debtor or Reorganized Debtor on account of the Distribution Trustees' investment or non-investment of any Distribution Trust Assets or any losses with respect to any such investments of Distribution Trust Assets, provided such investments are made, or the Distribution Trustees' decision not to invest any Distribution Trust Assets in any case is made, in accordance with the terms of this Agreement. The Distribution Trustees shall not be obligated to give any bond or surety or other security for the performance of any of its duties, unless ordered by the Bankruptcy Court. The Distribution Trust shall obtain insurance for its obligations under this Section 6.11, and all amounts payable to the Distribution Trustees pursuant to this Section 6.11 shall be paid solely from the proceeds of such insurance or Distribution Trust Assets.

Section 6.12 Fidelity and Liability Insurance. In their reasonable business judgment, the Distribution Trustees may use the Distribution Trust Funding Amount and proceeds of any Distribution Trust Claims to procure and maintain customary fidelity and liability insurance coverage, if available, for the protection of the Beneficiaries and the Distribution Trustees.

Section 6.13 Action Upon Instructions from the Bankruptcy Court. If in performing the Distribution Trustees' duties under this Agreement, the Distribution Trustees are required to decide between alternate courses of action, or the Distribution Trustees are unsure of the application of any provision of this Agreement or the Plan, then counsel for the Distribution Trustees may promptly deliver a notice to the Bankruptcy Court requesting written instructions as to the course of action to be taken by the Distribution Trustees. Such notice shall include each Distribution Trustee's respective positions with regard to the alternate courses of action to be taken. If the Distribution Trustees does not receive such written directions within fourteen (14) days after the Distribution Trustees have delivered such notice, the Distribution Trustees may, but shall be under no duty to, take or refrain from taking such action not inconsistent with this Agreement as the Distribution Trustees shall deem advisable.

Section 6.14 Tax Matters.

(a) Tax Filings and Notices. The Distribution Trustees shall prepare and provide to, and file with, the appropriate taxing authorities and other required parties such notices, tax returns and other filings, including all federal, state and local tax returns for the Distribution Trust, as may be required under the Bankruptcy Code, the Plan, the Internal Revenue Code or by other applicable law, including, if required under applicable law, notices required to report interest or dividend income ("**Tax Reports**"). The

Distribution Trustees shall be responsible for payment, solely out of the Distribution Trust Assets, of any taxes imposed on the Distribution Trust or the Distribution Trust Assets. The Distribution Trustees may request an expedited determination of the taxes owed by the Distribution Trust under section 505(b) of the Bankruptcy Code for any tax return for which such determination may be requested. To the extent required by applicable law and, if not so required, then when specifically requested by a Beneficiary in writing, the Distribution Trustees shall provide such Beneficiary with such tax information as is necessary for the preparation by such Beneficiary of such Beneficiary's income tax return. If such tax information is provided at the specific request of a Beneficiary (and not as required by applicable law), then such Beneficiary shall pay a reasonable fee to the Distribution Trustees, in an amount to be determined by the Distribution Trustees, together with all costs and expenses incurred by the Distribution Trustees in providing such tax information to such Beneficiary. In connection with the Distribution Trustees' performance of its duties pursuant to this Agreement, the Distribution Trustees may require any Beneficiary to furnish to the Distribution Trustees its employer or taxpayer identification number as assigned by the Internal Revenue Service, together with such other information, returns or forms as the Distribution Trustees may determine are required, and the Distribution Trustees may condition any distribution to any Beneficiary upon such receipt of such identification number, any other information and returns and forms as are required for the Distribution Trustees to comply with federal, state or other governmental authority laws, regulations or rulings.

(b) Liquidating Trust. The Distribution Trustees will file tax returns pursuant to Treasury Regulations section 1.671-4(a) on the basis that Distribution Trust is a grantor trust that is a "liquidating trust" within the meaning of Treasury Regulations section 301.7701-4(d) and related regulations. Pursuant to such provisions, for federal income tax purposes the Distribution Trustees will allocate to the Beneficiaries their applicable shares of any income, gain, deduction, loss and credit of such grantor trust, and such Beneficiaries will be subject to tax thereon on a current basis. As soon as reasonably practicable after the close of each calendar year, the Distribution Trustees will send each affected Beneficiary a statement setting forth such Beneficiary's share of the Distribution Trust's income, gain, deduction, loss and credit for the year and will instruct the holder to report all such items on its tax return for such year and pay any tax due with respect thereto.

(c) Withholdings. The Distribution Trustees shall (i) withhold, deduct, and pay over to the appropriate governmental authority any amount required to be withheld under applicable tax laws with respect to any distribution pursuant to this Agreement and (ii) comply with any reporting requirements imposed by any federal, state, local, or foreign taxing authority. The Distribution Trustees may withhold all or the appropriate portion of any distribution due to any Beneficiary until such time as such Beneficiary provides the necessary information to comply with any withholding requirements of any governmental authority. Any tax withheld shall be treated as distributed to and received by the applicable Beneficiary for all purposes of this Agreement and the Plan. If a Beneficiary fails to provide the information necessary to comply with any withholding requirements of any governmental authority, then such Beneficiary's distribution may be treated as unclaimed property in accordance with Section 5.12 of this Agreement.

(d) Tax Year. The taxable year of the Distribution Trust shall, unless otherwise required by the Internal Revenue Code, or Treasury Regulations or rulings, be the calendar year.

(e) Valuation of Distribution Trust Assets. As such time as may be necessary or appropriate following the Effective Date (i) the Distribution Trustees will determine the fair market value of the Distribution Trust Assets (other than Cash) as of the Effective Date, based on a good faith determination and the advice of any Professional retained by the Distribution Trustees for such purpose and (ii) the Distribution Trustees shall notify the Beneficiaries of the valuation of each Beneficiary's portion of the Distribution Trust Assets. The Debtor, the Distribution Trust, the Distribution Trustees and the Beneficiaries will use such values consistently for all federal income tax purposes

(f) Purpose and Tax Treatment. The Distribution Trust shall be established solely for the purpose of holding and administering the Distribution Trust Assets in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. For all United States federal income tax purposes, among other purposes, all parties (including, without limitation, the Debtor, the Distribution Trustees, and the Beneficiaries) shall treat the transfer of the Distribution Trust Assets to the Distribution Trust as (i) a transfer by each Debtor of the Distribution Trust Assets (subject to any obligations relating to those assets) directly to the Beneficiaries in full satisfaction (together with such other consideration to be Distributed pursuant to the Plan) of the Holders' Claims against the Debtor followed by (ii) the transfer by such Beneficiaries to the Distribution Trust of the Distribution Trust Assets in exchange for such Beneficiaries' respective interest in the Distribution Trust Assets. Accordingly, the Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Distribution Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for all state, provincial, territorial and local income tax purposes.

Section 6.15 Records of Distribution Trustee. The Distribution Trustees shall maintain accurate records of receipts and disbursements and other activity of the Distribution Trust. The books and records maintained by the Distribution Trustees, as well as any and all other books and records obtained from the Debtor or the Reorganized Debtor may be disposed of by the Distribution Trustees at such time as the Distribution Trustees determines that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Distribution Trust or the Beneficiaries, or upon the dissolution of the Distribution Trust, all after consultation with the parties who provided the books and records.

Section 6.16 Runoff Policy. The Distribution Trustees shall not liquidate, terminate, amend or otherwise modify the Runoff Policy, and shall use any proceeds of or payments from the Runoff Policy solely as provided for by Section 9.5 of the Plan. Notwithstanding anything to the contrary herein, this Agreement may not be amended to modify the foregoing obligation except with the prior written consent of each beneficiary of Section 9.5 of the Plan. For the avoidance of doubt, this Section 6.16 does not limit the ability of the Distribution Trustees to

dissolve or otherwise act in respect of or on behalf of the Distribution Trust as may be permitted under this Agreement.

Section 6.17 Timely Performance. The Distribution Trustees will make continuing efforts to prosecute, collect, compromise and settle the Distribution Trust Claims and administer, maintain and make timely distributions to the Beneficiaries, and not unduly prolong the duration of the Distribution Trust.

Section 6.18 Resignation of Distribution Trustee. Any Distribution Trustee may resign as Distribution Trustee by giving written notice of its resignation to the other Distribution Trustee. The Distribution Trustee who tenders his written notice of resignation shall continue to serve as trustee for the shorter of (i) sixty (60) days following the date of the notice of resignation, and (ii) the date the appointment of a successor Distribution Trustee shall become effective in accordance with Section 6.20 of this Agreement.

Section 6.19 Removal of Any Distribution Trustee. Any Distribution Trustee may be removed by the Bankruptcy Court for cause shown on a motion for any other Distribution Trustee for, among other reasons: (1) fraud, gross negligence, or willful misconduct in connection with the affairs of the Distribution Trust, (2) for such physical or mental disability as substantially prevents the Distribution Trustees from performing the duties of Distribution Trustee in accordance with the Plan or this Agreement, or (3) for cause, which shall include a breach of fiduciary duty, an unresolved conflict of interest, acts or omissions from which an improper personal benefit was received, or other failure to competently fulfill the duties of Distribution Trustee pursuant to this Agreement, the Plan or the Confirmation Order.

Section 6.20 Appointment of Successor Distribution Trustee. In the event of the death, resignation or removal of any Distribution Trustee, the remaining Distribution Trustee shall appoint a successor Distribution Trustee and specify the date when such appointment shall be effective; provided, that Richard N. Nottenburg shall be the successor Distribution Trustee for Cory J. Sindelar and Michael Richmond of The DAK Group, Ltd. shall be the successor Distribution Trustee for Sheon Karol. Every successor Distribution Trustee appointed hereunder shall execute, acknowledge and deliver to the Bankruptcy Court and to the predecessor Distribution Trustee and the Professionals for the Distribution Trust an instrument accepting the appointment and shall additionally file an affidavit demonstrating that such Person is disinterested, as defined by section 101(14) of the Bankruptcy Code, and thereupon the successor Distribution Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the predecessor Distribution Trustee.

Section 6.21 Bankruptcy Case Duties. After the Effective Date, the Distribution Trustee will file with Bankruptcy Court and serve on the U.S. Trustee quarterly financial reports in a format prescribed by the U.S. Trustee, and the Distribution Trustee will pay post-confirmation quarterly fees to the U.S. Trustee until a final decree is entered or the case is converted or dismissed as provided in 28 U.S.C. § 1930(a)(6).

Section 6.22 Conflicts of Interest. In the event that the performance of a Distribution Trustee's duties under this Agreement involves an actual, perceived or potential conflict of interest, such Distribution Trustee shall (1) disclose to the other Distribution Trustee the

existence of any potential conflict of which he or she has knowledge, and (2) withdraw from participation in such duties that give rise to the actual, perceived or potential conflict of interest. If there is a dispute as to whether a conflict of interest exists, the matter shall be resolved by the Bankruptcy Court pursuant to Section 6.13 of this Agreement.

ARTICLE VII

TERMINATION

Section 7.1 Dissolution. The Distribution Trustee and Distribution Trust shall be discharged or dissolved, as the case may be, at such time as (i) all of the Distribution Trust Assets have been distributed pursuant to the Plan and this Agreement, (ii) the Distribution Trustee determines, in its sole discretion, that the administration of any remaining Distribution Trust Assets is not likely to yield sufficient additional Distribution Trust proceeds to justify further pursuit, or (iii) all Distributions required to be made by the Distribution Trustee under the Plan and this Agreement have been made; provided, however, that in no event shall the Distribution Trust be dissolved later than three (3) years from the creation of such Distribution Trust pursuant to Section 6.2 of the Plan unless the Bankruptcy Court, upon motion within the six-month period prior to the third (3rd) anniversary (or within the six-month period prior to the end of an extension period), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable private letter ruling from the Internal Revenue Service or an opinion of counsel satisfactory to the Distribution Trustee that any further extension would not adversely affect the status of the trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Distribution Trust Assets.

Section 7.2 Charitable Donation. If at any time the Distribution Trustee determines, in reliance upon such professionals as the Distribution Trustee may retain, that the expense of administering the Distribution Trust so as to make a final Distribution to Distribution Trust Beneficiaries is likely to exceed the value of the assets remaining in such Distribution Trust, such Distribution Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amount necessary to dissolve such Distribution Trust, (ii) donate any balance to a charitable organization (A) described in section 501(c)(3) of the Internal Revenue Code, (B) exempt from United States federal income tax under section 501(a) of the Internal Revenue Code, (C) not a “private foundation,” as defined in section 509(a) of the Internal Revenue Code, and (D) that is unrelated to the Debtor, such Distribution Trust, and any insider of such Distribution Trustee, and (iii) dissolve such Distribution Trust.

Section 7.3 Residual Powers. Notwithstanding the termination of the Distribution Trust, the Distribution Trustees shall have the power to exercise all the powers, authorities and discretions herein conferred solely for the purpose of winding up the affairs of the Distribution Trust. The Distribution Trustees shall retain the books, records and files that shall have been delivered to or created by the Distribution Trustees. At the Distribution Trustees’ discretion, all of such records and documents may be destroyed at any time after one (1) year from the date of termination of the Distribution Trust after providing thirty (30) days’ notice of such intent to destroy to the Reorganized Debtor to the extent the Debtor or Reorganized Debtor delivered such records or documents to the Distribution Trust or Distribution Trustee.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Notices. All notices hereunder shall be deemed given if in writing and delivered, if contemporaneously sent by electronic mail, facsimile, courier, or by registered or certified mail (return receipt requested) to the following addresses and facsimile numbers or such other addresses of which notice is given pursuant hereto:

- (a) if to the Distribution Trustees, to:

Sheon Karol
The DAK Group, Ltd.
195 Route 17 South
Rochelle Park, NJ 07662

- and -

Cory J. Sindelar
222 Delaware Avenue, Suite 900
Wilmington, DE 19801

with a copy (which shall not constitute notice) to:

Bayard, P.A.
222 Delaware Avenue, Suite 900
Wilmington, DE 19801
Attn: Scott D. Cousins, Esq.

- (b) if to the Reorganized Debtor, to:

Violin Memory, Inc.
4555 Great America Parkway
Suite 510
Santa Clara, CA
Attention: General Counsel
E-mail: [_____]

with a copy (which shall not constitute notice) to:

Soros Fund Management LLC
250 W. 55th St.
New York, NY 10019
Attention: Regan O'Neill and Nicholas Esayan
Facsimile: (646) 731-5581
E-mail: Regan.ONeill@soros.com, and Nick.Esayan@soros.com

with a copy (which shall not constitute notice) to:

Weil, Gotshal & Manges LLP (as counsel to Soros)
767 Fifth Avenue
New York, NY 10153
Attention: Gary Holtzer, Esq. and David Griffiths, Esq.
Facsimile: (212) 310-8007
E-mail: Gary.Holtzer@weil.com and David.Griffiths@weil.com

Any notice given by delivery, mail, or courier shall be effective when received. Any notice given by facsimile or electronic mail shall be effective upon oral, machine, or electronic mail (as applicable) confirmation of transmission.

Section 8.2 Effectiveness. This Agreement shall become effective on the Effective Date.

Section 8.3 Investment Company Act. The Distribution Trust is organized as a liquidating entity in the process of liquidation, and therefore should not be considered, and the Distribution Trust does not and will not hold itself out as, an “investment company” or an entity “controlled” by an “investment company,” as such terms are defined in the Investment Company Act.

Section 8.4 Counterparts. This Agreement may be executed in one or more counterparts (via facsimile or otherwise), each of which shall be deemed an original but which together shall constitute but one and the same instrument.

Section 8.5 Governing Law. The situs of the Distribution Trust is the State of Delaware. This Agreement shall be governed by, construed under and interpreted in accordance with the laws of the State of Delaware, including all matters of construction, validity, administration and performance, and without taking into consideration the conflict of laws provisions of such State.

Section 8.6 Construction with the Plan. The Plan and the Confirmation Order are each hereby incorporated fully by reference and made a part hereof for all purposes. Other than with respect to the definition of “Distribution Trust Claims,” which shall be governed by Section 2.2 of this Agreement, in the event of any inconsistency or conflict between the terms, conditions and provisions of this Agreement and the terms, conditions and provisions of the Plan and/or the Confirmation Order, each such document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Plan; and (3) this Agreement.

Section 8.7 Jurisdiction. The Bankruptcy Court shall have jurisdiction over the Distribution Trust, Distribution Trustees, and Distribution Trust Assets, including, without limitation, the determination of all disputes arising out of or related to administration of the Distribution Trust. The parties agree to jurisdiction and venue in the Bankruptcy Court to hear and finally determine all matters among the parties arising out of or related to this Agreement or the administration of the Distribution Trust. The Distribution Trustees shall, as needed to effect the terms hereof, request the aid and recognition of any court or judicial, regulatory or administrative body in any nation or state.

Section 8.8 Headings. Sections, subheadings and other headings used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

Section 8.9 Interpretative Provisions.

(a) All references to the plural herein shall also mean the singular and to the singular shall also mean the plural unless the context otherwise requires.

(b) All references to the Debtor, the Reorganized Debtor and the Distribution Trustees pursuant to the definitions set forth in the recitals hereto, or to any other Person herein, shall include their respective successors and assigns.

(c) The words “hereof,” “herein,” “hereunder,” “this Agreement” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not any particular provision of this Agreement and as this Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(d) The word “including” when used in this Agreement shall mean “including, without limitation.”

Section 8.10 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable any such provision in any other jurisdiction.

Section 8.11 Amendments. This Agreement may be amended from time to time by written instrument executed by the Distribution Trustees and upon twenty-one (21) days prior notice to Beneficiaries given by filing a notice of such amendment with the Bankruptcy Court and, to the extent reasonably practicable, by electronic mail or first class mail to the Beneficiaries, provided that (i) the Distribution Trustees shall have reasonably determined in good faith that such amendment is in the best interests of the Beneficiaries, and (ii) any amendment of this Agreement that adversely affects the rights or obligations, or increases the burdens hereunder, of the Reorganized Debtor shall require the written consent of the Reorganized Debtor, and must be approved by the Bankruptcy Court; provided, however, that such amendment cannot conflict with the provisions of the Plan. Notwithstanding this Section 8.11, any amendments to this Agreement shall not be inconsistent with the purpose and intention of the Distribution Trust to liquidate in an orderly manner the Distribution Trust Assets in accordance with Treasury Regulation section 301.7701- 4(d). In the event that the Distribution Trust shall fail or cease to qualify as a liquidating trust in accordance with Treasury Regulation section 301.7701-4(d), this Agreement may be amended by the Distribution Trustees to the extent necessary for the Distribution Trustees to take such action as it shall deem appropriate to have the Distribution Trust classified as a partnership for federal tax purposes under Treasury Regulation section 301.7701-3 (but not a publicly traded partnership under section 7704 of the Internal Revenue Code).

Section 8.12 Beneficial Interests.

(a) All interests of the Beneficiaries of this Distribution Trust shall be uncertificated and no security of any sort will be distributed to the Beneficiaries with respect to their interest in the Distribution Trust. Interests in the Distribution Trust may be transferred solely pursuant to a transfer of the underlying Claim in full compliance with Section 11.12 of the Plan, and any attempted transfer that is not fully compliant with Section 11.12 of the Plan shall be null and void ab initio. Without limiting the foregoing, the Distribution Trust and the Distribution Trustees shall have no obligations or liability to any transferee in a transaction that is not fully compliant with Section 11.12 of the Plan, and any such transferee shall have no rights hereunder.

(b) The rights to a beneficial interest hereunder shall not entitle any Beneficiary to (i) any title in or to the Distribution Trust Assets as such (which title is vested in the Distribution Trustees) or to any right to call for a partition or division of the Distribution Trust Assets or to require an accounting, except for tax purposes pursuant to treatment as a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), or (ii) any voting rights with respect to the administration of the Distribution Trust and the actions of the Distribution Trustees in connection therewith.

(c) This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns hereunder.

Section 8.13 Binding Effect; No Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and, additionally, shall inure to the benefit of the Distribution Trustees, and their respective heirs or successors, and the Beneficiaries and each of their respective heirs or successors and permitted assigns and, except as provided hereunder, nothing herein is intended or shall be construed to give any other Person any right, remedy or claim under, to or in respect of this Agreement, the Distribution Trust Assets or the Distribution Trust or any part thereof.

Section 8.14 Permitted Assigns. Any holder of a Disputed Claim may transfer such claim and any related beneficial interests in the Distribution Trust as permitted by the Plan.

Section 8.14 No Suits by Beneficiaries and Claimholders. No Beneficiary or holder of a Claim shall have any right by virtue of any provision of this Agreement to institute any action or proceeding in law or in equity against any party other than the Distribution Trustees on or under or with respect to the Distribution Trust Assets.

Section 8.15 Irrevocability. The Distribution Trust is irrevocable, but is subject to amendment as provided for herein.

Section 8.16 Trust Continuance. The death, dissolution, resignation, incompetency or removal of the Distribution Trustees shall not operate to terminate the Distribution Trust created by this Agreement or to revoke any existing agency created under the terms of this Agreement or invalidate any action theretofore taken by the Distribution Trustees. In the event of the resignation or removal of the Distribution Trustees, the Distribution Trustees shall promptly (i) execute and deliver such documents, instruments and other writings as may be requested by the Bankruptcy Court or reasonably requested by a successor Distribution Trustee to effect the

termination of the Distribution Trustees' capacity under this Agreement and the conveyance of the Distribution Trust Assets then held by the Distribution Trustees to the successor, (ii) deliver to the Bankruptcy Court or the successor Distribution Trustee all documents, instruments, records and other writings related to the Distribution Trust as may be in the possession of the Distribution Trustees and (iii) otherwise assist and cooperate in effecting the assumption of its obligations and functions by such successor Distribution Trustee.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed, or have caused this Agreement to be executed and delivered by their respective duly authorized officers, solely in their respective capacity as officers of the undersigned and not in any other capacity, as of the date first set forth above.

VIOLIN MEMORY, INC.

By: _____
Name: Richard N. Nottenburg, Ph.D.
Title: Chairman of the Board of Directors

CORY SINDELAR

By: _____
Name:
Title:

SHEON KAROL

By: _____
Name:
Title:

EXHIBIT B

Assumption Schedule

Assumption Schedule

Counterparty Name	Contract	Cure Amount
Aeronet, Inc.	Service Provider Agreement (2/5/15) Schedule of Rates (2/1/14)	\$63,693.58
Aetna Life Insurance Company	Master Business Agreement (10/27/15) Equipment Attachment Agreement (10/27/15) Schedule No. 001 to Master Business Agreement (10/27/15) Evaluation Agreement (3/5/15)	\$0.00
American Portwell Technology, Inc.	Master Purchase Agreement (8/7/15)	\$369,048.53
Arrow Electronics, Inc.	Trade Payables	\$866.92
Choice Logistics, Inc.	Master Services Agreement (6/27/13) Appendix F – Global Trade Statement of Work (1/4/16) Exhibit B Pricing Schedule (5/19/05)	\$64,540.87
Crest Data Systems Private Limited	Consulting Agreement (8/11/16)	\$30,000.00
DecisionOne Corporation	Statement of Work (3/4/14) General Terms and Conditions (4/8/15)	\$108,451.88
Dell Computer Corporation	Trade Payables	\$1,788.99
FalconStor Software, Inc.	OEM License, Development and Support Agreement (7/31/13, as amended 10/29/14)	\$0.00
Flextronics Telecom Systems, Ltd. Flex International USA Inc. Flex America, LLC	Flextronics Manufacturing Services Agreement (5/13/11) Statement of Work #1 and Addendum #1 (3/6/15)	\$107,070.74 \$32,349.67
Macnica Americas, Inc.	Trade Payables	\$286,000.00
oberhumer.com GmbH	License Agreement (11/26/14)	\$15,089.68

TMF VAT Services Limited	Trade Payables	\$4,933.02
Toshiba Corporation Toshiba America Electronic Components, Inc.	Sales Agreement (6/27/11) Trade Payables	\$760,076.06
TUV Rheinhold of North America	Trade Payables	\$2,942.00

Note 1: Each contract identified herein and assumed pursuant to the Plan shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such contract.

Note 2: The Debtor and Plan Sponsor reserve the right to alter, amend, modify, or supplement this Assumption Schedule as set forth in the Plan or as otherwise agreed to by the Debtor or Plan Sponsor and the applicable counterparty.

EXHIBIT C

Section 1129(a)(5) Disclosures

New Directors

Pursuant to Section 6.3(b) of the Plan, the Plan Sponsor has designated the following persons, who are employed with the Plan Sponsor or its affiliates, as members of the board of directors of the Reorganized Debtor as of the Effective Date:

- Nareg Esayan
- Matthew Goh

Insiders

As of the date hereof, there is no agreement in place for any insider to be employed or retained by the Reorganized Debtor after the Effective Date. To the extent necessary, the Debtor and Plan Sponsor will supplement this disclosure in advance of the Confirmation Hearing.