

## GUC/LITIGATION TRUST AGREEMENT

This Litigation Trust Agreement (the “**Litigation Trust Agreement**”), dated as of December 29, 2017 (the “**Effective Date**”), by and among SunEdison, Inc. and certain of its affiliates (collectively, the “**Debtors**” and together with their non-Debtor affiliates, the “**Company**”) and Drivetrain, LLC, as the trustee (the “**Original Trustee**”), is executed in order to establish a litigation trust (the “**Litigation Trust**”) in connection with (i) the Committee Settlement incorporated as Annex II (the “**Committee Settlement**”) to the *Order (I) Authorizing Debtors to (a) Obtain Senior Secured, Superpriority, Replacement Postpetition Financing Pursuant to Bankruptcy Code Sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e), and (b) Utilize Cash Collateral Pursuant to Bankruptcy Code Section 363, (II) Authorizing Use of Proceeds to Repay Existing Senior Secured Superpriority, Postpetition Financing, and (III) Granting Adequate Protection to Prepetition Secured Parties Pursuant to Bankruptcy Code Sections 361, 362, 363 and 364* [ECF No. 2880] (together with all exhibits and annexes thereto, including, without limitation, the Committee Settlement, the “**Final DIP Order**”) and (ii) the *First Amended Joint Plan of Reorganization of SunEdison Inc. and its Debtor Affiliates* [ECF No. 3314—Exhibit A to the Disclosure Statement] (as amended, the “**Plan**”), including the *Term Sheet for Settlement Among Debtors, Tranche B Roll Up Lenders/Steering Committee of Prepetition Second Lien Lenders and Noteholders, the Official Committee of Unsecured Creditors, and BOKF, N.A.* incorporated therein [ECF No. 3314—Exhibit 6.1 to the Plan] (the “**Global Settlement Term Sheet**”). Capitalized terms used in this Litigation Trust Agreement and not otherwise defined shall have the meanings ascribed to them in the Plan.

### WITNESSETH

WHEREAS, commencing on April 21, 2016 and continuing from time to time thereafter, each Debtor commenced a case (collectively, the “**Chapter 11 Cases**”) by filing a petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the Southern District of New York (the “**Bankruptcy Court**”) which Chapter 11 Cases are jointly administered under case no. 16-10992 (SMB);

WHEREAS, on April 29, 2016, the United States Trustee for the Southern District of New York appointed an official committee of unsecured creditors (as may be reconstituted from time to time, the “**Creditors’ Committee**”) in the Chapter 11 Cases;

WHEREAS, on November 28, 2016, the Debtors funded \$10,000,000 into a segregated bank account with U.S. Bank National Association to be controlled by the Debtors for the benefit of the general unsecured creditors pending the establishment of the Litigation Trust;

WHEREAS, on May 1, 2017, the Bankruptcy Court entered the Final DIP Order, including the Committee Settlement attached thereto;

WHEREAS, on June 9, 2017, the Debtors, the Tranche B Roll Up Lenders/Steering Committee of Prepetition Second Lien Lenders and Noteholders (the “**Ad Hoc Group**”), the Creditors’ Committee, and BOKF, N.A. (“**BOKF**” or the “**Convertible Senior Notes Indenture Trustee**”) executed the Global Settlement Term Sheet;

WHEREAS, on June 11, 2017, the Debtors filed the Plan;

WHEREAS, on July 6, 2017, the Debtors filed the First Plan Supplement [ECF No. 3522] (the “**First Plan Supplement**”); on July 19, 2017, the Debtors filed the Second Plan Supplement [ECF No. 3661] (the “**Second Plan Supplement**”); and on July 20, 2017, the Debtors filed the Third Plan Supplement [ECF No. 3673] (the “**Third Plan Supplement**,” and collectively with the First Plan Supplement and the Second Plan Supplement, the “**Plan Supplement**”);

WHEREAS, on July 28, 2017, the Bankruptcy Court entered an order confirming the Plan [ECF No. 3735] (the “**Confirmation Order**”);

WHEREAS, the Litigation Trust is created pursuant to, and to effectuate certain provisions of, the Final DIP Order, the Committee Settlement contained therein, the Plan, and the Global Settlement Term Sheet, pursuant to which the Litigation Trust will hold the Litigation Trust Assets (as defined herein);

WHEREAS, the Litigation Trust is organized for the sole purpose of liquidating the Litigation Trust Assets in an expeditious but orderly manner for the benefit of the Litigation Trust Beneficiaries, including the investigation and prosecution of the Litigation Trust Causes of Action (as defined herein), with no objective to continue or engage in the conduct of a trade or business, except, to the extent reasonably necessary to effectuate, and consistent with, the liquidating purpose of the Litigation Trust;

WHEREAS, the Litigation Trust is intended to be classified for U.S. federal income tax purposes as a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) and thus as a “grantor trust” within the meaning of Sections 671 through 677 of the Internal Revenue Code of 1986, as amended (the “**IRC**”), with the Litigation Trust Beneficiaries treated for U.S. federal income tax purposes as the grantors and owners of their respective shares of the Litigation Trust Assets (as defined herein), other than with respect to any assets allocable to, or retained on account of, Disputed Claims (*i.e.*, the GUC Disputed Claims Reserve); and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, in the Final DIP Order, the Committee Settlement, the Plan, and the Global Settlement Term Sheet, the Debtors or, from and after the Effective Date, any successor thereto, by merger, consolidation, or otherwise (the “**Reorganized Debtors**”), the Creditors’ Committee and the Litigation Trustee (as defined herein) agree as follows:

## ARTICLE 1

### ESTABLISHMENT OF LITIGATION TRUST

#### 1.1 Establishment of Litigation Trust; Appointment of Original Trustee and Litigation Trust Oversight Board.

(a) Pursuant to the Final DIP Order, the Committee Settlement contained therein, the Plan, and the Global Settlement Term Sheet, the Debtors and the Creditors’

Committee hereby establish a trust which shall be known as the “SunEdison Litigation Trust” on behalf of holders of Class A Litigation Trust Interests (including and subject to the rights of the Convertible Senior Notes Indenture Trustee) and Class B Litigation Trust Interests (each as defined herein, and collectively, the “**Litigation Trust Beneficiaries**”) in accordance with the Plan and the Global Settlement Term Sheet.

(b) The Original Trustee is hereby appointed as trustee of the Litigation Trust and agrees to accept and hold the Litigation Trust Assets in trust for the Litigation Trust Beneficiaries subject to the terms of this Litigation Trust Agreement, the Plan, and the Confirmation Order. The Original Trustee and each successor trustee serving from time-to-time duly appointed hereunder (the “**Litigation Trustee**”) shall have all the rights, powers, and duties set forth herein. The term of the Original Trustee shall be for three (3) years, subject to an extension of such term by a majority vote of the Litigation Trust Oversight Board (as defined herein).

(c) A board created and selected by the Creditors’ Committee (the “**Litigation Trust Oversight Board**”) is hereby appointed to oversee the Litigation Trust and the activities of the Litigation Trustee. The Litigation Trust Oversight Board shall consist of three (3) members and each successor member serving from time-to-time duly appointed hereunder (each, a “**Litigation Trust Oversight Board Member**”), one of whom shall be the Litigation Trustee and a majority of whom shall be “United States persons” within the meaning of Section 7701(a)(30) of the IRC, and shall have all the rights, powers, and duties set forth herein. The term of each Litigation Trust Oversight Board Member, other than the Litigation Trustee (collectively, such other Litigation Trust Oversight Board Members, the “**Non-Trustee Oversight Board Members**”) shall be five (5) years, subject to an extension of such term by a majority vote of the Litigation Trust Oversight Board if the term of the Litigation Trust is extended beyond its original five (5) year term. The initial Litigation Trust Oversight Board Members are identified in Section 4.1 hereof.

## 1.2 Transfer of Assets and Rights to Litigation Trustee.

(a) On the Effective Date, the Debtors, pursuant to terms of the Global Settlement Term Sheet, the Plan, and the Confirmation Order, hereby transfer, assign and deliver to the Litigation Trust, without recourse, all of their respective rights, title, and interests, free and clear of any and all Liens, Claims (other than Claims in the nature of setoff or recoupment), encumbrances or interests of any kind in such property of any other Person or Entity, in and to:

(i) all Causes of Action of the Debtors’ Estates as of the Effective Date, including all Estate Avoidance Actions (other than Avoidance Actions against the YieldCos and Avoidance Actions against the Prepetition First Lien Secured Parties and the Second Lien Creditors), to the extent such Causes of Action are not released or settled with the consent of the Creditors’ Committee, pursuant to Article 11.5 of the Plan or released or settled pursuant to an Order of the Bankruptcy Court (including the order approving the D&O Settlement Agreement [ECF No. 3453] (the “**D&O Settlement Approval Order**”))<sup>1</sup> or the Global Settlement Term

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<sup>1</sup> For the avoidance of doubt, pursuant to the D&O Settlement Agreement and the D&O Settlement Approval Order, the only Estate Causes of Action against the Individual Defendants (as defined in the D&O Settlement Agreement) that are preserved for transfer to the Litigation Trust are preference actions that may be brought under section 547 of

Sheet prior to the Effective Date, including the Causes of Action set forth on **Exhibit A** (the “**Litigation Trust Causes of Action**”); and

(ii) Cash of \$57,500,000.00 representing the sum of (A) the initial funding for the Litigation Trust as contemplated by the Committee Settlement; (B) proceeds allocable from the D&O Insurance in the amount of \$32,000,000.00, pursuant to the terms of the D&O Settlement Agreement and the D&O Settlement Approval Order; and (C) the settlement of certain Avoidance Actions in connection with the YieldCo Settlement Motion; **plus** at least \$5,000,000.00 in Cash on account of Professional Fee Reductions (the “**Voluntary Professional Fee Reduction Amount**”), as well as all additional Voluntary Professional Fee Reductions that exceed the Voluntary Professional Fee Reduction Amount (collectively, the “**Litigation Trust Initial Cash Assets**”), and together with the Litigation Trust Causes of Action, the proceeds of the Litigation Trust Causes of Action, and the Net Avoidance Action Proceeds (as defined herein), the “**Litigation Trust Assets**”).

(b) On the Effective Date, the Litigation Trust shall assume responsibility for the Claims Reconciliation Process (as defined in Annex I of the Global Settlement Term Sheet), including with respect to the initiation or continuance of claims objection prosecution. Copies of the Debtors’ books and records that relate to claims objections shall be made available to the Litigation Trust promptly following the Effective Date. On and after the Effective Date, the Reorganized Debtors shall use commercially reasonable efforts to cooperate with the Litigation Trust in connection with due diligence and other reasonable assistance regarding the prosecution of the Claims Reconciliation Process and the Litigation Trust Causes of Action as may be reasonably requested by the Litigation Trust, including with respect to providing all relevant documents, evidence, and existing information in their possession or in the possession of their advisors or representatives on the Effective Date. Following the Effective Date, if the actual, reasonable, and documented out-of-pocket costs and expenses of the Reorganized Debtors (including fees and expenses of outside third-parties and/or firms; but not including charges for salaried employees of the Reorganized Debtors) incurred in carrying out the services described in this paragraph and/or Annex 1 of the Global Settlement Term Sheet exceed \$250,000 in the aggregate (the amount exceeding \$250,000 defined as “**Excess Expenses**”), the Litigation Trust shall promptly reimburse the Reorganized Debtors for the Excess Expenses. The parties shall agree in writing to the scope of work and expected charges regarding requests by the Litigation Trust that are expected to result in the incurrence of out-of-pocket costs prior to the Reorganized Debtors’ performance of such tasks or incurrence of such costs and expenses. The Litigation Trustee and/or the Litigation Trust Oversight Board shall raise any disputes relating to a reimbursement request within thirty (30) days of receipt thereof, and the Bankruptcy Court shall resolve any such disputes that are not resolved among the parties.

(c) To the extent any Litigation Trust Assets cannot be transferred to the Litigation Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other

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the Bankruptcy Code. To the extent any provision in the Plan (including this Litigation Trust Agreement and the other exhibits to the Plan Supplement) is inconsistent with the terms of the D&O Settlement Agreement or the D&O Settlement Approval Order, the D&O Settlement Agreement or the D&O Settlement Approval Order, as applicable, shall control.

provision of the Bankruptcy Code, such Litigation Trust Assets shall be deemed to have been retained by the Debtors and the Litigation Trustee shall be deemed to have been designated as a representative of the Debtors pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Litigation Trust Assets on behalf of the Debtors. Notwithstanding the foregoing, all net proceeds of such Litigation Trust Assets shall be transferred to the Litigation Trust to be distributed to the Litigation Trust Beneficiaries consistent with the Plan and the Global Settlement Term Sheet.

(d) The transfer of the Liquidating Trust Assets shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other tax, pursuant to section 1146(a) of the Bankruptcy Code.

(e) The Litigation Trust Trustee will seek to preserve and protect all applicable privileges and work-product relating to the Claims Reconciliation Process and the Litigation Trust Causes of Action, including but not limited to any attorney-client privilege or work-product privilege attaching to any documents or communications (whether written or oral). The Litigation Trust Trustee's receipt of such information shall not waive any privileges and all such privileges are preserved. Notwithstanding the foregoing, in the event the Litigation Trust Trustee seeks to waive any privilege on behalf of the Litigation Trust or the Debtors, as applicable, with respect to the Litigation Trust Assets, it shall get the prior written consent of the Reorganized Debtors, which consent shall not be unreasonably withheld.

### 1.3 Title to Litigation Trust Assets.

Transfer of the Litigation Trust Assets to the Litigation Trust shall be made for the benefit of the Litigation Trust Beneficiaries to the extent such Litigation Trust Beneficiaries are entitled to beneficial interests therein (the "**Litigation Trust Interests**"). The Litigation Trust Interests shall be comprised of two tranches of interests, which will be provided on the Effective Date to (a) holders of General Unsecured Claims (the "**Class A Litigation Trust Interests**") and (b) holders of Second Lien Claims (the "**Class B Litigation Trust Interests**"). The Litigation Trust Interests shall have the respective rights to share in the Litigation Trust Assets and the governance rights set forth on **Exhibit B** hereto (the "**Litigation Trust Interests Overview**"). Upon the transfer of the Litigation Trust Assets, the Litigation Trust shall succeed to all of the right, title, and interest of the Debtors in and to the Litigation Trust Assets and the Debtors shall not have any further interest in or with respect to the Litigation Trust Assets or the Litigation Trust.

### 1.4 Nature and Purpose of Litigation Trust.

(a) Purpose. The Litigation Trust is organized and established as a trust, subject to the terms and conditions contained herein, in the Final DIP Order, the Plan, and the Global Settlement Term Sheet, for the sole purpose of liquidating the Litigation Trust Assets in an expeditious but orderly manner for the benefit of the Litigation Trust Beneficiaries, including the investigation and prosecution of the Litigation Trust Causes of Action, with no objective to continue or engage in the conduct of a trade or business, except, to the extent reasonably necessary to effectuate, and consistent with, the liquidating purpose of the Litigation Trust.

(b) Fees and Expenses. From and after the Effective Date, the Litigation Trust shall pay fees and expenses of professionals retained by the Litigation Trustee incurred in the investigation and prosecution of Litigation Trust Causes of Action (“Investigation/Prosecution Fees and Expenses”) subject in all respects to the procedures and approvals to be established by the Litigation Trust Oversight Board (the “Approval Procedures”).

(c) Actions of Litigation Trustee. Subject to Section 3.8 hereof, the Litigation Trustee shall, in an expeditious but orderly manner, liquidate and convert to cash the Litigation Trust Assets, make timely distributions in accordance with Article 6 of this Litigation Trust Agreement, and not unduly prolong the duration of the Litigation Trust. The liquidation of the Litigation Trust Assets may be accomplished through the prosecution, compromise and settlement, abandonment, dismissal or assignment of any or all claims, rights or causes of action, or otherwise. With respect to Litigation Trust Assets involving asserted Claims of less than \$1,000,000, the Litigation Trustee shall have the absolute right to pursue, settle and compromise or not pursue any and all such Litigation Trust Assets as it determines is in the best interests of the Litigation Trust Beneficiaries and consistent with the purposes of the Litigation Trust, provided that notice shall be provided to the Litigation Trust Oversight Board upon the completion of such settlement or compromise. With respect to Litigation Trust Assets involving asserted Claims of \$1,000,000 or more, the Litigation Trustee shall have the right to pursue, settle and compromise or not pursue any and all such Litigation Trust Assets as it determines is in the best interests of the Litigation Trust Beneficiaries, and consistent with the purposes of the Litigation Trust, subject to approval by the majority vote of the Litigation Trust Oversight Board. The Litigation Trustee shall have no liability for the outcome of any such decision except for any damages caused by gross negligence, willful misconduct, or knowing violation of law.

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

#### 1.5 Incorporation of the Plan, Global Settlement Term Sheet, and Committee Settlement.

Both (i) the Plan (including the Global Settlement Term Sheet) and (ii) to the extent not superseded by the Plan (including the Global Settlement Term Sheet), the Final DIP Order (including the Committee Settlement) are hereby incorporated into this Litigation Trust Agreement and made a part hereof by this reference; *provided, however*, to the extent that there is a conflict between the provisions of the Litigation Trust Agreement and the Final DIP Order (including the Committee Settlement), the Plan (including the Global Settlement Term Sheet), or the Confirmation Order, the terms of the Confirmation Order shall control.

1.6 Appointment as Representative.

Upon the Effective Date, the Litigation Trustee is appointed as the duly appointed representative of the Debtors and their estates with respect to the Litigation Trust Assets, and, as such, upon such appointment, the Litigation Trustee succeeds to all of the rights and powers of a trustee in bankruptcy with respect to prosecution of the Litigation Trust Assets for the benefit of the Litigation Trust Beneficiaries.

1.7 Reservation of Rights Regarding Litigation Trust Causes of Action.

**No Entity may rely on the absence of a specific reference in the Plan or the Plan Supplement to any Litigation Trust Cause of Action against them as any indication that the Litigation Trust will not pursue any and all available Litigation Trust Causes of Action against them. The Litigation Trust expressly reserves all rights to prosecute any and all Litigation Trust Causes of Action against any Entity, except as otherwise provided in the Plan or an order of the Bankruptcy Court.** Unless a specific Litigation Trust Cause of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or an order of the Bankruptcy Court, the Litigation Trust expressly reserves such Litigation Trust Causes of Action for later adjudication.

ARTICLE 2

LITIGATION TRUST INTERESTS

2.1 Allocation of Litigation Trust Interests.

As of the Effective Date, the Litigation Trust shall be authorized to make distributions of Litigation Trust Interests to Litigation Trust Beneficiaries in accordance with the Plan (including the Global Settlement Term Sheet) and the Confirmation Order. The distribution of the Litigation Trust Interests shall be accomplished as and when determined by the Litigation Trustee in consultation with the Litigation Trust Oversight Board. The aggregate number and face value of the Class A Litigation Trust Interests to be distributed to holders of allowed General Unsecured Claims on a *pro rata* basis or Class B Litigation Trust Interests to be distributed to holders of allowed Second Lien Claims on a *pro rata* basis shall be determined by the Litigation Trustee, in accordance with the Plan (including the Global Settlement Term Sheet) and the Confirmation Order.

2.2 Interests Beneficial Only.

The ownership of a Litigation Trust Interest shall not entitle any Litigation Trust Beneficiary to any title in or to the assets of the Litigation Trust as such (which title shall be vested in the Litigation Trustee) or to any right to call for a partition or division of the assets of the Litigation Trust or to require an accounting.

2.3 Evidence of Beneficial Interests.

Subject to Section 2.5(c) hereof, the ownership of Litigation Trust Interests when issued initially shall be represented by the recording of such ownership in an electronic book-

entry system (“**Book Entry System**”) maintained by either the Litigation Trust or an agent of the Litigation Trust. A Litigation Trust Beneficiary shall be deemed the “holder of record” (hereinafter “holder”) of the Litigation Trust Interest(s) recorded in its name for purposes of all applicable United States federal and state laws, rules and regulations. The Litigation Trustee shall, upon the written request of a holder of a Litigation Trust Interest, provide reasonably adequate documentary evidence of such holder’s Litigation Trust Interest, as indicated in the Book Entry System. The expense of providing such documentation shall be borne by the requesting holder.

#### 2.4 Securities Law Registration.

It is intended that the Litigation Trust Interests shall not constitute “securities.” If the Litigation Trustee determines, with the advice of counsel, that the Litigation Trust is required to comply with registration and reporting requirements of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), or the Investment Company Act of 1940, as amended (the “**Investment Company Act**”), then the Litigation Trustee shall take any and all actions to comply with such registration and reporting requirements, if any, and file periodic reports with the Securities and Exchange Commission (the “**SEC**”). Notwithstanding the foregoing procedure, nothing herein shall be deemed to preclude the Litigation Trustee from amending this Litigation Trust Agreement to make such changes as are deemed necessary or appropriate by the Litigation Trustee, with the advice of counsel, to ensure that the Litigation Trust is not subject to registration or reporting requirements of the Exchange Act, or the Investment Company Act.

#### 2.5 Transferability; Records.

(a) The Litigation Trust Interests shall be freely negotiable and transferable to the extent provided herein and permitted by applicable securities laws.

(b) Pursuant to the Book Entry System, the Litigation Trust shall maintain, or cause an agent of the Litigation Trust to maintain, a copy of each assignment instrument delivered to it from time to time and a register (which may be electronic) for the recordation of the names and addresses of the Litigation Trust Beneficiaries, and the amount and class of their respective Litigation Trust Interests from time to time. Any transfer of a Litigation Trust Interest shall not be effective unless and until such transfer is recorded in the Book Entry System in accordance with the terms herein. Subject to Section 2.5(c), the entries in the Book Entry System shall be conclusive absent manifest error, and the Litigation Trust and the Litigation Trustee shall treat each person whose name is recorded in the Book Entry System pursuant to the terms hereof as the owner of Litigation Trust Interests indicated therein for all purposes of this Litigation Trust Agreement, notwithstanding notice to the contrary.

(c) Notwithstanding any provision to the contrary, the Litigation Trustee shall not recognize, and shall not record, any transfer of Litigation Trust Interests unless and until sufficient information regarding the sale and transferee (as reasonably determined by the Litigation Trustee) is provided using the litigation trust interest transfer form (attached hereto as **Exhibit C**, the “**Litigation Trust Interest Transfer Form**”) and such Litigation Trust Interest Transfer Form and any other information requested by the Litigation Trustee is received and approved by the Litigation Trustee, including, without limitation, any tax information (including,



without limitation, social security numbers or other tax identification numbers) and completed Internal Revenue Service (“**IRS**”) forms as the Litigation Trustee, in its sole discretion, deems necessary or appropriate.

(d) Transfers of Litigation Trust Interests shall be recorded on the Book Entry System in accordance with such practices and procedures as shall be prescribed by the Litigation Trustee under the supervision of the Litigation Trust Oversight Board, provided that the Litigation Trustee need not reflect any transfer and will give notice to such holder that no transfer has been recognized in the event the Litigation Trustee reasonably believes that such transfer (i) would constitute a violation of applicable laws or (ii) would cause the Litigation Trust to be required to register Litigation Trust Interests under, and/or to become subject to the reporting requirements of Sections 13 or 15(d) of the Exchange Act.

(e) In order to reimburse the Litigation Trustee and/or the Registrar for their extraordinary costs and expenses in reviewing and processing Litigation Trust Interest Transfer Forms for Litigation Trust Interests that are not recorded with DTC (the “**Non-DTC Interests**”) and the maintenance and recordkeeping of the register of holders of Litigation Trust Interests (the “**Register**”), the Litigation Trustee may impose a reasonable transfer fee (subject to approval of the Litigation Trust Oversight Board) solely for transfers among affiliates to be collected from transferors of Non-DTC Interests prior to the recording of such transfers in the Register, and may charge the Litigation Trust or the holders of Litigation Trust Interests (subject to approval of the Litigation Trust Oversight Board) for reasonable fees and out of pocket expenses in connection with the collection of related tax reporting forms and providing position confirmations.

## ARTICLE 3

### LITIGATION TRUSTEE

#### 3.1 Net Avoidance Action Proceeds.

All proceeds recovered by the Litigation Trust (or for the benefit of unsecured creditors) on account of Avoidance Actions (as defined in the Plan), net of fees and expenses expended to prosecute such Avoidance Actions (including fees paid on a contingency arrangement, any expenses of prosecuting the Litigation Trust Causes of Action or administering the Litigation Trust, including, without limitation, the costs associated with preparation of the Litigation Trust Reports (as defined below), and any taxes imposed on or with respect to such proceeds, all of which shall be deducted prior to any distribution of Net Avoidance Action Proceeds), other than proceeds from the Avoidance Actions against the YieldCos that are settled in connection with the YieldCo Avoidance Allocation, whether such Net Avoidance Action Proceeds are recovered pursuant to the successful prosecution or settlement of such Avoidance Actions (the “**Net Avoidance Action Proceeds**”) shall be added to the Litigation Trust Assets and held as part thereof (and to which title shall be vested in the Litigation Trustee).

### 3.2 Collection of Income.

The Litigation Trustee shall collect all income earned with respect to the Litigation Trust Assets, which shall thereupon become Litigation Trust Assets and held as a part of the Litigation Trust (and which title shall be vested in the Litigation Trust).

### 3.3 Funding and Payment of Litigation Trust Expenses.

(a) The Litigation Trustee shall maintain a litigation expense fund (the “**Litigation Expense Fund**”) in an amount (i) as is reasonably necessary to meet contingent liabilities and to maintain the value of the assets of the Litigation Trust during litigation, (ii) to pay reasonable administrative expenses (including but not limited to, the costs and expenses of the Litigation Trustee (including reasonable fees, costs, and expenses of professionals), any taxes imposed on the Litigation Trust or fees and expenses in connection with, arising out of or related to the Litigation Trust Assets), and (iii) to satisfy other liabilities incurred or assumed by the Litigation Trust (or to which the assets are otherwise subject) in accordance with this Litigation Trust Agreement. The amounts held in the Litigation Expense Fund shall be subject to periodic review by the Litigation Trust Oversight Board.

(b) The Litigation Expense Fund shall initially be funded from the Litigation Trust Initial Cash Assets and, thereafter, from any other Litigation Trust Assets. Accordingly, the Litigation Trustee may retain from the Net Avoidance Action Proceeds and proceeds of other Litigation Trust Causes of Action and add to the Litigation Expense Fund such amounts as the Litigation Trustee deems reasonable and appropriate to ensure that the Litigation Expense Fund will be adequate to meet the expenses and liabilities described in subsection (a) of this Section.

### 3.4 Distributions.

The Litigation Trustee shall distribute the net distributable assets of the Litigation Trust to the Litigation Trust Beneficiaries in accordance with the provisions of Article 6.

### 3.5 Tenure, Removal, and Replacement of Litigation Trustee.

(a) The Litigation Trustee shall serve for three (3) years, until resignation and the appointment of a successor pursuant to subsection (b) below, removal pursuant to subsection (c) below, or death (if applicable). The Litigation Trust Oversight Board shall be authorized to extend the term of the Litigation Trustee.

(b) The Litigation Trustee may resign by giving not less than sixty (60) days’ prior written notice to the Litigation Trust Oversight Board, with a copy to counsel for the holders of Class B Litigation Trust Interests. Such resignation shall become effective on the later to occur of: (i) the day specified in such notice and (ii) the appointment of a successor trustee as provided herein and the acceptance by such successor trustee of such appointment. If a successor trustee is not appointed or does not accept its appointment within sixty (60) days following delivery of notice of resignation, the Litigation Trustee may file a motion with the Bankruptcy Court, upon notice and hearing, for the appointment of a successor trustee.

(c) The Litigation Trustee may be removed by the affirmative vote of the majority of Litigation Trust Oversight Board by written consent or at the meeting of the Litigation Trust Oversight Board called for the purpose of removing the Litigation Trustee. Such removal shall become effective on the date action is taken by the Litigation Trust Oversight Board.

(d) In the event of the death (in the case of a Litigation Trustee that is a natural person), dissolution (in the case of a Litigation Trustee that is not a natural person), resignation pursuant to Section 3.5(b) hereof, or removal of the Litigation Trustee pursuant to Section 3.5(c) hereof, the Litigation Trust Oversight Board may appoint a successor Litigation Trustee subject to the requirement that any successor Litigation Trustee be a “United States person” within the meaning of Section 7701(a)(30) of the IRC. Such appointment shall specify the date on which such appointment shall be effective. Notice of the appointment of a successor Litigation Trustee shall be filed with the Bankruptcy Court.

(e) Immediately upon the appointment of any successor Litigation Trustee, all rights, powers, duties, authority, and privileges of the predecessor Litigation Trustee hereunder shall be vested in and undertaken by the successor trustee without any further act. The successor Litigation Trustee shall not be liable personally for any act of the predecessor Litigation Trustee.

(f) Upon the appointment of a successor Litigation Trustee, the predecessor Litigation Trustee (or the duly appointed legal representative of a deceased Litigation Trustee) shall, if applicable, when requested in writing by the successor Litigation Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor trustee upon the trust herein expressed, without recourse to the predecessor Litigation Trustee, all the estates, properties, rights, powers and trusts of such predecessor Litigation Trustee, and shall duly assign, transfer, and deliver to such successor Litigation Trustee all property and money held hereunder, and all other assets and documents relating to the Litigation Trust, the Litigation Trust Assets, or the Litigation Trust Interests then in its possession and held hereunder.

(g) The appointment of a successor Litigation Trustee will be evidenced by the successor Litigation Trustee’s filing with the Bankruptcy Court of a notice of appointment, which notice will include the name, address, and telephone number of the successor Litigation Trustee.

### 3.6 Acceptance of Appointment by Successor Litigation Trustee.

Any successor Litigation Trustee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations of the predecessor Litigation Trustee hereunder and thereupon the successor Litigation Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of its predecessor in the Litigation Trust hereunder with like effect as if originally named herein.

### 3.7 Role of Litigation Trustee.

In furtherance of and consistent with the purpose of the Litigation Trust, the Litigation Trustee shall have the power to (i) prosecute, compromise and settle, abandon, assign, or dismiss for the benefit of the Litigation Trust Beneficiaries all claims, rights, and causes of

action transferred to the Litigation Trust (whether such suits are brought in the name of the Litigation Trustee or otherwise), and (ii) otherwise perform the functions and take the actions provided or permitted in this Litigation Trust Agreement, subject to the terms and conditions contained herein (including approval by the majority of the Litigation Trust Oversight Board for actions related to Litigation Trust Assets involving asserted Claims of \$1,000,000 or more, as described in Section 2.1(c)). In all circumstances, the Litigation Trustee shall act in the best interests of all the Litigation Trust Beneficiaries and in furtherance of the purpose of the Litigation Trust.

### 3.8 Authority of Litigation Trustee.

Subject to any limitations contained herein, in the Plan, the Confirmation Order, or the Global Settlement Term Sheet, the Litigation Trustee shall have the following powers and authorities:

(a) hold legal title to any and all rights of the holders of the Litigation Trust Interests in or arising from the Litigation Trust Assets, including, without limitation, collecting and receiving any and all money and other property belonging to the Litigation Trust and the right to vote any claim or interest relating to a Litigation Trust Asset in a case under the Bankruptcy Code and receive any distribution thereon;

(b) perform the duties, exercise the powers, and assert the rights of a trustee under sections 704 and 1106 of the Bankruptcy Code, including, without limitation, commencing, prosecuting or settling causes of action, enforcing contracts or asserting claims, defenses, offsets and privileges, but only as such duties and powers relate to the Litigation Trust Assets;

(c) protect and enforce the rights to the Litigation Trust Assets by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(d) obtain (with the Litigation Expense Fund) reasonable insurance coverage with respect to the liabilities and obligations of the Litigation Trustee and the Litigation Trust Oversight Board under this Litigation Trust Agreement (in the form of an errors and omissions policy or otherwise);

(e) obtain (with the Litigation Expense Fund) insurance coverage with respect to real and personal property that may become assets of the Litigation Trust, if any;

(f) retain and pay out of the Net Avoidance Action Proceeds such counsel and other professionals, including, without limitation, any professionals previously retained by the Creditors' Committee, as the Litigation Trustee shall select to assist the Litigation Trustee in its duties, on such terms as the Litigation Trustee deems reasonable and appropriate, without Bankruptcy Court approval; the Litigation Trustee may commit the Litigation Trust to and shall pay such counsel and other professionals reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred pursuant to the Approval Procedures; *provided, that* the Litigation Trustee shall file a notice summarizing the key terms of any retention (including the economic terms thereof) regarding the retention of any such advisors

on a contingency fee basis (other than the Litigation Trustee) (each such notice, a “**Contingency Fee Advisor Retention Notice**”) on the docket of the Bankruptcy Court and, following the filing of any Contingency Fee Advisor Retention Notice, at the request of any of the holders of Class B Litigation Trust Interests (or their advisor at the instruction of a holder), the Litigation Trustee shall provide additional information regarding the proposed contingency fee engagement (including the actual engagement letter on a confidential basis, if so requested).

(g) retain and pay out of the Litigation Trust Expense Fund an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Litigation Trust as may be required by the SEC and applicable securities laws and as may be reasonable and appropriate in the Litigation Trustee’s discretion and to prepare and file any tax returns, information returns, or periodic or current reports as required by applicable securities laws, for the Litigation Trust as may be required; the Litigation Trustee may commit the Litigation Trust to and shall pay such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred;

(h) retain and pay out of the Net Avoidance Action Proceeds such third parties to assist the Litigation Trustee in carrying out its powers and duties under this Litigation Trust Agreement; the Litigation Trustee may commit the Litigation Trust to and shall pay all such persons or entities reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred pursuant to the Approval Procedures, as well as commit the Litigation Trust to indemnify any such parties in connection with the performance of services (provided that such indemnity shall not cover any losses, costs, damages, expenses or liabilities that result from the recklessness, gross negligence, willful misconduct, or knowing violation of law by such party);

(i) subject to section 1.2(e), waive any privilege or any defense on behalf of the Litigation Trust or the Debtors, as applicable, with respect to the Litigation Trust Assets;

(j) compromise, adjust, arbitrate, sue on or defend, pursue, prosecute, abandon, exercise rights, powers, and privileges with respect to, or otherwise deal with and settle, in accordance with the terms set forth herein, the Litigation Trust Assets;

(k) with respect to the Litigation Trust Causes of Action, commence actions to avoid and recover transfers of the Debtors’ property as permitted by the Plan and as may be permitted by the Bankruptcy Code or applicable state law;

(l) invest any moneys held as part of the Litigation Trust in accordance with the terms of Section 3.15 hereof;

(m) exercise all of the powers and authorities of the Litigation Trustee contained in Article 5 hereof;

(n) subject to applicable securities laws, if any, establish and maintain a website for the purpose of providing notice of Litigation Trust activities in lieu of sending written notice to holders of Litigation Trust Interests, subject to providing notice of such website to such holders;

(o) seek the examination of any entity, subject to the provisions of the Federal Rules of Evidence or any other applicable law or rule; and

(p) take or refrain from taking any and all other actions that the Litigation Trustee, reasonably deems necessary or convenient for the continuation, protection and maximization of the Litigation Trust Assets or to carry out the purposes hereof.

### 3.9 Limitation of Litigation Trustee's Authority.

The Litigation Trustee shall, on behalf of the Litigation Trust, hold the Litigation Trust out as a trust in the process of liquidation and not as an investment company. Notwithstanding anything herein to the contrary, the Litigation Trustee shall not (i) be authorized to engage in any trade or business, (ii) take such actions inconsistent with the orderly liquidation of the assets of the Litigation Trust as are required or contemplated by applicable law, the Final DIP Order, the Plan, the Confirmation Order, and this Litigation Trust Agreement, or (iii) be authorized to engage in any investments or activities inconsistent with the treatment of the Litigation Trust as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684.

### 3.10 Books and Records.

The Litigation Trustee shall maintain books and records relating to the Litigation Trust Assets and income of the Litigation Trust and the payment of expenses of, and liabilities of claims against or assumed by, the Litigation Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting and securities law requirements of the Litigation Trust. Nothing in this Litigation Trust Agreement requires the Litigation Trustee to file any accounting or seek approval of any court with respect to the administration of the Litigation Trust, or as a condition for managing any payment or distribution out of the assets of the Litigation Trust.

### 3.11 Inquiries into Trustee's Authority.

Except as otherwise set forth in the Litigation Trust Agreement, no Person dealing with the Litigation Trust shall be obligated to inquire into the authority of the Litigation Trustee in connection with the protection, conservation, or disposition of the Litigation Trust Assets.

### 3.12 Compliance with Laws.

Any and all distributions of assets of the Litigation Trust and proceeds of borrowings, if any, shall be in compliance with applicable laws, including, without limitation, applicable federal and state securities laws.

### 3.13 Compensation of Litigation Trustee.

The Litigation Trustee shall be reasonably compensated out of the Litigation Trust Expense Fund or the Net Avoidance Action Proceeds for its services, and reimbursed out

of the Litigation Trust Initial Cash Assets or the Net Avoidance Action Proceeds for its reasonable expenses in accordance with the compensation schedule attached hereto as **Exhibit D** (the “**Trustee Compensation Schedule**”) approved by the Creditors’ Committee, subject to the approval of the Bankruptcy Court prior to the entry of the Confirmation Order. The terms of the Litigation Trustee’s engagement shall include a monthly compensation arrangement for the first two (2) years of the engagement (with the Litigation Trustee having the ability to reasonably negotiate for further monthly compensation thereafter, subject to the approval of the Non-Trustee Oversight Board Members) and tiered contingent compensation arrangement for Net Avoidance Action Proceeds collected in accordance with the terms of the Trustee Compensation Schedule.

### 3.14 Reliance by Litigation Trustee.

Except as otherwise provided herein:

(a) the Litigation Trustee 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 Litigation Trustee to be genuine and to have been signed or presented by the proper party or parties; and

(b) Persons dealing with the Litigation Trustee shall look only to the Litigation Trust Assets to satisfy any liability incurred by the Litigation Trustee to such Person in carrying out the terms of this Litigation Trust Agreement, and the Litigation Trustee shall not have any personal obligation to satisfy any such liability.

### 3.15 Investment and Safekeeping of Litigation Trust Assets.

The Litigation Trustee shall invest all Cash assets transferred to the Litigation Trust, all Net Avoidance Action Proceeds, the Litigation Expense Fund, and all income earned by the Litigation Trust only in cash, cash equivalents, U.S. Treasury securities, money market investments, and similar investments; *provided, however*, that (a) the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the guidelines of the IRS, whether set forth in IRS rulings, other IRS pronouncements or otherwise and (b) the Litigation Trustee may retain any Net Avoidance Action Proceeds received that are not cash only for so long as may be required for the prompt and orderly liquidation of such assets in cash.

### 3.16 Standard of Care; Exculpation.

Neither the Litigation Trustee nor any of its duly designated agents or representatives or professionals shall be liable for any act or omission taken or omitted to be taken by the Litigation Trustee in good faith, other than acts or omissions resulting from the Litigation Trustee’s own gross negligence, recklessness, willful misconduct, or knowing violation of law. The Litigation Trustee may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such Persons. Notwithstanding such

authority, the Litigation Trustee shall be under no obligation to consult with its attorneys, accountants, financial advisors or agents, and its good faith determination not to do so shall not result in the imposition of liability on the Litigation Trustee, unless such determination is based on gross negligence, recklessness, willful misconduct, or knowing violation of law.

3.17 Restriction as to Subsidiaries.

The Litigation Trust shall not hold 50% or more of the stock (in either vote or value) of any entity that is treated as a corporation for U.S. federal income tax purposes, nor be the sole member of a limited liability company, nor have any interest in an entity that is treated as a partnership for U.S. federal income tax purposes, unless such stock, membership interest, or partnership interest was obtained involuntarily or as a matter of practical economic necessity in order to preserve the value of the assets of the Litigation Trust.

ARTICLE 4

LITIGATION TRUST OVERSIGHT BOARD

4.1 Litigation Trust Oversight Board.

At all times during the existence of the Litigation Trust, there shall be a three-member Litigation Trust Oversight Board, which shall consist of (i) two (2) Non-Trustee Oversight Board Members and (ii) the Litigation Trustee, *provided, that* the remaining members of the Litigation Trust Oversight Board Members may elect not to fill a Non-Trustee Oversight Board Member vacancy, after making reasonable efforts fill such vacancy, pursuant to Section 4.2 of this Litigation Trust Agreement. On the Effective Date, the Litigation Trust Oversight Board shall become effective and shall consist of the Original Trustee, Mr. Robert Egan, a designee (the “**Flex Designee**”) of Flextronics Industrial Ltd. (“**Flextronics**”), and Mr. Neal Goldman, a designee representing the interests of the Convertible Senior Noteholders. The Litigation Trust Oversight Board Members shall owe fiduciary duties to the Litigation Trust Beneficiaries. Upon appointment, the Litigation Trust Oversight Board shall have the rights, powers, and duties described herein and shall have such other rights to operate and manage the Litigation Trust as are not inconsistent with the terms of this Litigation Trust Agreement.

4.2 Authority of Litigation Trust Oversight Board.

The Litigation Trust Oversight Board shall have the authority and responsibility to (i) oversee, review, and guide the activities and performance of the Litigation Trustee (ii) approve, by a majority vote, the prosecution, compromise and settlement, abandonment, dismissal, or assignment of Litigation Trust Causes of Action relating to asserted Claims of \$1,000,000.00 or more; (iii) remove the Litigation Trustee in accordance with the provisions of Article 3 herein; (iv) adjust the minimum threshold value for the settlement or other resolution of Claims subject to its approval as set forth in section (ii) of this provision; (v) fill any Non-Trustee Oversight Board Member vacancy on the Litigation Trust Oversight Board or elect not to fill such vacancy after making reasonable efforts to fill such vacancy; and (vi) act in a manner consistent with such other rights, powers, and duties described in this Litigation Trust Agreement. The Litigation Trustee shall consult with and provide information to the Litigation Trust Oversight Board in accordance with and pursuant to the terms of this Litigation Trust



Agreement, the Plan (including the Global Settlement Term Sheet), and the Confirmation Order. The Litigation Trust Oversight Board shall have the authority to select and engage such Persons, and select and engage such professional advisors, in accordance with the Plan (including the Global Settlement Term Sheet), the Confirmation Order, and this Litigation Trust Agreement as the Litigation Trust Oversight Board deems necessary and desirable to assist the Litigation Trust Oversight Board in fulfilling its obligations under this Litigation Trust Agreement, and the Litigation Trustee shall pay, out of the Net Avoidance Action Proceeds or the Litigation Trust Initial Cash Assets, the reasonable fees of such Persons (including on an hourly, contingency, or modified contingency basis) and reimburse such Persons for their reasonable and documented out-of-pocket costs and expenses consistent with the terms of this Litigation Trust Agreement.

#### 4.3 Regular Meetings of Litigation Trustee and Litigation Trust Oversight Board.

Meetings of the Litigation Trustee and the Litigation Trust Oversight Board are to be held with such frequency and at such place as the Litigation Trust Oversight Board may determine in its sole discretion, but in no event shall such meetings be held less frequently than quarterly.

#### 4.4 Special Meetings of Litigation Trustee and Litigation Trust Oversight Board.

Special meetings of the Litigation Trustee and the Litigation Trust Oversight Board may be held whenever and wherever called for by the Litigation Trustee or at least two members of the Litigation Trust Oversight Board.

#### 4.5 Notice of and Waiver of Notice for, Litigation Trustee and Litigation Trust Oversight Board.

Notice of the time and place (but not necessarily the purpose or all of the purposes) of any regular or special meeting shall be given to the Litigation Trustee and the members of the Litigation Trust Oversight Board in person or by telephone, or via email or electronic mail. Notice to the Litigation Trustee and the members of the Litigation Trust Oversight Board of any such special meeting shall be deemed given sufficiently in advance when (i) if given by mail, the same is deposited in the United States mail at least ten (10) calendar days before the meeting date, with postage thereon prepaid, (ii) if given by electronic mail, the same is transmitted at least three (3) Business Days prior to the convening of the meeting (to the extent reasonably possible), or (iii) if personally delivered (including by overnight courier) or given by telephone, the same is handed, or the substance thereof is communicated over the telephone to the Litigation Trustee and the members of the Litigation Trust Oversight Board or to an adult member of his/her office staff or household, at least one (1) Business Day prior to the convening of the meeting. The Litigation Trustee and any member of the Litigation Trust Oversight Board may waive notice of any meeting and any adjournment thereof at any time before, during, or after it is held, as provided by law. Except as provided in the next sentence below, the waiver must be in writing, signed by the Litigation Trustee or the applicable member or members of the Litigation Trust Oversight Board entitled to the notice, and filed with the minutes or records of the Litigation Trust. The attendance of the Litigation Trustee or a member of the Litigation Trust Oversight Board at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the

meeting, to the transaction of any business because the meeting is not lawfully called or convened.

#### 4.6 Manner of Acting.

(a) A majority of the total number of members of the Litigation Trust Oversight Board then in office shall constitute a quorum for the transaction of business at any meeting of the Litigation Trust Oversight Board. The affirmative vote of a majority of the members of the Litigation Trust Oversight Board present and entitled to vote at a meeting at which a quorum is present shall be the act of the Litigation Trust Oversight Board except as otherwise required by law or as provided in this Litigation Trust Oversight Board. In the event that a vote of the Litigation Trust Oversight Board taken at a meeting at which a quorum is present results in a tie, the vote of the Litigation Trustee shall determine whether the proposed action is approved by the Litigation Trust Oversight Board. The Litigation Trust Oversight Board may also take action by written consent in accordance with Section 4.7 hereof.

(b) Any or all of the members of the Litigation Trust Oversight Board may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone or similar communications equipment by means of which persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition to the place) for the holding thereof. The Litigation Trustee or any member of the Litigation Trust Oversight Board participating in a meeting by this means is deemed to be present in person at the meeting. Voting may, if approved by the majority of the members at a meeting, be conducted by electronic mail or individual communications by the Litigation Trustee and each member of the Litigation Trust Oversight Board.

(c) Any member of the Litigation Trust Oversight Board who is present and entitled to vote at a meeting of the Litigation Trust Oversight Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Litigation Trust Oversight Board unless: (i) such member of the Litigation Trust Oversight Board objects at the beginning of the meeting (or promptly upon his/her arrival) to holding it or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic transmission) of his/her dissent or abstention to the Litigation Trust Oversight Board before its adjournment. The right of dissent or abstention is not available to any member of the Litigation Trust Oversight Board who votes in favor of the action taken.

(d) Prior to the taking of a vote on any matter or issue or the taking of any action with respect to any matter or issue, each member of the Litigation Trust Oversight Board shall report to the Litigation Trust Oversight Board any conflict of interest such member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such member might have with respect to or in connection with such matter or issue, other than solely as a Litigation Trust Beneficiary). A member who has or who may have a conflict of interest shall be deemed to be a “conflicted member” who shall not be entitled to vote or take part in any action with respect to such matter or issue (however such

member shall be counted for purposes of determining the existence of a quorum); the vote or action with respect to such matter or issue shall be undertaken only by members of the Litigation Trust Oversight Board who are not “conflicted members.”

#### 4.7 Litigation Trust Oversight Board’s Action without a Meeting.

Any action required or permitted to be taken by the Litigation Trust Oversight Board at a meeting may be taken without a meeting if the action is taken by unanimous written consent of the Litigation Trust Oversight Board as evidenced by one or more written consents describing the action taken, signed by all members of the Litigation Trust Oversight Board and recorded in the minutes or other transcript of proceedings of the Litigation Trust Oversight Board and the required notice of meeting has been given in accordance with Section 4.5 hereof.

#### 4.8 Tenure, Removal and Replacement of Non-Trustee Oversight Board Members.

The authority of the Non-Trustee Oversight Board Members shall be effective as of the Effective Date and shall remain and continue in full force and effect until the Litigation Trust is terminated in accordance with Section 10.1 hereof. The service of the members of the Non-Trustee Oversight Board Members shall be subject to the following:

(a) The Non-Trustee Oversight Board Members will serve for five (5) years (subject to extension of such term by a majority vote of the Litigation Trust Oversight Board if the term of the Litigation Trust is extended beyond its original five (5) year term), until death or resignation pursuant to subsection (b) below or removal pursuant to subsection (c) below.

(b) A Non-Trustee Oversight Board Member may resign at any time by providing a written notice of resignation to the remaining members of the Litigation Trust Oversight Board. Any Non-Trustee Oversight Board Member who resigns shall continue to serve until the earlier of (i) the appointment of his or her successor; (ii) a determination by a majority of the remaining Litigation Trust Oversight Board Members not to fill the vacancy created by the resigning Non-Trustee Oversight Board Member after making reasonable efforts to fill such vacancy; and (iii) ninety (90) days after the delivery of such written notice.

(c) A Non-Trustee Oversight Board Member may be removed by the majority vote of the other members of the Litigation Trust Oversight Board, written resolution of which shall be delivered to the removed Litigation Trust Oversight Board member; provided, however, that such removal may only be made for Cause. For purposes of this Section 4.8(c), “Cause” shall be defined as: (i) such Litigation Trust Oversight Board member’s theft or embezzlement or attempted theft or embezzlement of money or tangible or intangible assets or property; (ii) such Litigation Trust Oversight Board member’s violation of any law (whether foreign or domestic), which results in a felony indictment or similar judicial proceeding; (iii) such Litigation Trust Oversight Board member’s recklessness, gross negligence, willful misconduct, or knowing violation of law, in the performance of his or her duties; or (iv) such Litigation Trust Oversight Board member’s failure to perform any of his or her other material duties under this Litigation Trust Agreement (including the regular attendance at meetings); *provided, however*, that such Litigation Trust Oversight Board member shall have been given a reasonable period to

cure any alleged cause under clause (iii) (other than willful misconduct or violation of law that results in a felony indictment or similar judicial proceeding) and clause (iv).

(d) In the event of a vacancy on the Litigation Trust Oversight Board due to the removal, death, or resignation of a Non-Trustee Oversight Board Member, a new member may be appointed to fill such position by the remaining members of the Litigation Trust Oversight Board, provided, however, that Flextronics shall have the right to appoint a successor for the Flex Designee, so long as Flextronics is still a holder of Litigation Trust Interests. In the event that there are no remaining members of the Litigation Trust Oversight Board, appointments to fill such vacancies that would have been made by the remaining members of the Litigation Trust Oversight Board shall be made upon an order entered after an opportunity for a hearing by the Bankruptcy Court, upon motion of the Litigation Trustee. Successor members appointed to be Non-Trustee Oversight Board Members must satisfy the requirement that a majority of the Litigation Trust Oversight Board Members be “United States persons” within the meaning of Section 7701(a)(30) of the IRC.

(e) Immediately upon the appointment of any successor member of the Litigation Trust Oversight Board, all rights, powers, duties, authority, and privileges of the predecessor member of the Litigation Trust Oversight Board hereunder shall be vested in and undertaken by the successor member of the Litigation Trust Oversight Board without any further act; and the successor member of the Litigation Trust Oversight Board shall not be liable personally for any act or omission of the predecessor member of the Litigation Trust Oversight Board.

(f) The appointment of a successor member of the Litigation Trust Oversight Board shall be evidenced by the Litigation Trustee’s filing with the Bankruptcy Court of a notice of appointment, which notice shall include the name, address, and telephone number of the successor member of the Litigation Trust Oversight Board.

#### 4.9 Compensation of Litigation Trust Oversight Board.

Each Non-Trustee Oversight Board Member of the Litigation Trust Oversight Board shall be paid, by the Litigation Trust out of the Litigation Trust Expense Fund, (i) the amount of \$25,000 annually as compensation for performance of its duties and services hereunder (all such duties or services are referred to herein as the “**Duties**”) and reasonable out-of-pocket expenses related to the Duties, and (ii) reimbursement from the Litigation Trust for reasonable, documented out-of-pocket expenses incurred in the performance of such member’s Duties. For the avoidance of doubt, Non-Trustee Oversight Board Members shall not be entitled to reimbursement of expenses incurred relating to their own attorneys or professionals.

#### 4.10 Standard of Care; Exculpation.

None of the Litigation Trust Oversight Board, its members, designees or professionals, nor any of their duly designated agents or representatives, shall be liable for the act or omission of any other member, agent or representative of the Litigation Trust Oversight Board, nor shall the Litigation Trust Oversight Board or any of its members be liable for any act or omission taken or omitted to be taken by the Litigation Trust Oversight Board in good faith,

other than acts or omissions resulting from such person's own gross negligence, recklessness, willful misconduct, or knowing violation of law. The Litigation Trust Oversight Board and each of its members may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in good faith in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, neither the Litigation Trust Oversight Board nor any of its members shall be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and its determination not to do so shall not result in the imposition of liability on the Litigation Trust Oversight Board or, as applicable, its members or designees, unless such determination is shown to have been made in bad faith based on gross negligence, willful misconduct, or knowing violation of law.

#### 4.11 Limitation of Litigation Trust Oversight Board's Authority.

Notwithstanding anything herein to the contrary, the Litigation Trust Oversight Board shall not (i) be authorized to engaged in any trade or business; (ii) take any action inconsistent with the orderly liquidation of the assets of the Litigation Trust as is required or contemplated by applicable law, the Final DIP Order, this Litigation Trust Agreement, the Confirmation Order, or the Plan; or (iii) be authorized to engage in any investments or activities inconsistent with the treatment of the Litigation Trust as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) and in accordance with Rev. Proc. 94-45, 1994-2 C.B. 684.

## ARTICLE 5

### TAX MATTERS

#### 5.1 Tax Reporting.

(a) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Litigation Trustee) and Section 5.1(d), the Litigation Trust shall be treated as a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d) and thus as a "grantor trust" within the meaning of Sections 671 through 677 of the IRC, and all parties to the Litigation Trust (including, without limitation, the Litigation Trustee, the Debtors, the Reorganized Debtors, and the Liquidating Trust Beneficiaries) shall report consistently therewith for U.S. federal income tax purposes. Accordingly, for U.S. federal income tax purposes, the Litigation Trust Assets shall be treated by all parties as (i) having been distributed (subject to any obligations relating to such assets) by the Debtors to the Litigation Trust Beneficiaries (other than any assets allocable to the GUC Disputed Claims Reserve) in satisfaction of Allowed General Unsecured Claims and in partial satisfaction of Allowed Second Lien Claims and (ii) immediately thereafter contributed by the holder of such Claims to the Litigation Trust in exchange for Litigation Trust Interests. Accordingly, the Litigation Trust Beneficiaries shall be treated for U.S. federal income tax purposes as the grantors and owners of their respective share of the Litigation Trust Assets (other than such Litigation Trust Assets that

are allocable to the GUC Disputed Claims Reserve). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local tax purposes.

(b) As soon as practicable after the Effective Date, (i) the Litigation Trustee, in consultation with the Litigation Trust Oversight Board and the Reorganized Debtors, shall determine the fair market value as of the Effective Date of all Litigation Trust Assets, and such determined fair market value shall be used consistently by all parties to the Litigation Trust Agreement (including the Reorganized Debtors, the Litigation Trustee, and the Litigation Trust Beneficiaries) for all U.S. federal income tax purposes, and (ii) the Litigation Trustee shall make such valuation available from time to time to all parties to the Litigation Trust, to the extent relevant to such parties for tax purposes.

(c) The Litigation Trustee shall file returns for the Litigation Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and in accordance with this Article 5. The Litigation Trustee shall, in its discretion, make any applicable tax elections on behalf of the Litigation Trust. The Litigation Trustee shall annually send to each Litigation Trust Beneficiary a separate statement setting forth such Litigation Trust Beneficiary's share of items of income, gain, loss, deduction, or credit, in accordance with applicable Treasury Regulations and Rev. Proc. 94-45, 1994-2 C.B. 684, file (or cause to be filed) any other statements, returns (including any information returns) or disclosures relating to the Litigation Trust that is required by any governmental authority or applicable law, and pay taxes, if any, properly payable by the Litigation Trust.

(d) Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Litigation Trustee), the Litigation Trustee shall (i) timely elect to treat any Litigation Trust Assets allocable to, or retained on account of, the GUC Disputed Claims Reserve as a "disputed ownership fund" governed by Treasury Regulation Section 1.468B-9, and (ii) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties to the Litigation Trust Agreement (including the Litigation Trustee, the Reorganized Debtors and the Litigation Trust Beneficiaries) shall report for U.S. federal, state and local income tax purposes consistently with the foregoing.

(e) The Litigation Trustee may request an expedited determination of taxes of the Litigation Trust, including the GUC Disputed Claims Reserve, under section 505(b) of the Bankruptcy Code for all tax returns filed for, or on behalf of, the Litigation Trust for all taxable periods through the dissolution of the Litigation Trust.

## 5.2 Trust Taxable Income; Allocations.

(a) Subject to Section 5.2(c) hereof, all Litigation Trust earnings shall be taxable to the Litigation Trust Beneficiaries.

(b) Subject to Section 5.2(c) hereof, allocations of Litigation Trust taxable income shall be determined by reference to the manner in which an amount of cash equal to such

taxable income would be distributed if, immediately prior to such deemed distribution, the Litigation Trust had distributed all of its other assets (valued for this purpose at their tax book value) to the Litigation Trust Beneficiaries, taking into account all prior and concurrent distributions from the Litigation Trust (including all distributions held in the GUC Disputed Claims Reserve). Similarly, taxable loss of the Litigation Trust will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the Litigation Trust. The tax book value of the Litigation Trust Assets for this purpose shall equal their fair market value upon the Effective Date, adjusted in either case in accordance with tax accounting principles prescribed by the IRC, the regulations and other applicable administrative and judicial authorities and pronouncements.

(c) The Litigation Trustee shall be responsible for payment, out of the Litigation Trust Assets, of any taxes imposed on the Litigation Trust or its assets, including the GUC Disputed Claims Reserve (in the latter instance, first out of any Cash allocable to, or retained on account of, the Disputed Claim to which such tax relates), including any income that may arise upon the distribution of the assets from the GUC Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of a Disputed Claim is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of such claim such that such portion of the taxes is paid (in whole or in part) from other available Cash, such other cash sources shall be (i) reimbursed from any subsequent Cash amounts retained on account of such claim, or (ii) to the extent such claim has subsequently been resolved, deducted from any amounts otherwise distributable by the Litigation Trustee as a result of the resolution of such claim.

### 5.3 Withholding.

The Litigation Trustee may withhold and pay to the appropriate taxing authority all amounts required to be withheld pursuant to the IRC or any provision of any foreign, state, or local tax law with respect to any payment or distribution by the Litigation Trust to or any amounts received or earned by the Litigation Trust (including with respect to Net Avoidance Action Proceeds) distributable or allocable to the Litigation Trust Beneficiaries (including beneficiaries that are not “United States persons” within the meaning of the IRC). The Litigation Trustee may effect any withholding with respect to a Litigation Trust Beneficiary by reducing the amount currently or subsequently distributable to such beneficiary by the amount withheld. All such amounts withheld from distributions and paid to the appropriate taxing authority shall be treated as amounts distributed to such Litigation Trust Beneficiaries for all purposes of this Litigation Trust Agreement. The Litigation Trustee shall be authorized to collect such tax information from the Litigation Trust Beneficiaries (including, without limitation, social security numbers or other tax identification numbers) as, in its sole discretion, the Litigation Trustee deems necessary to effectuate this Litigation Trust Agreement, the Plan (including the Global Settlement Term Sheet), or the Confirmation Order. In order to receive distributions pursuant to this Litigation Trust Agreement, all Litigation Trust Beneficiaries shall be required to identify themselves to the Litigation Trustee and provide tax information and the specifics of their holdings, to the extent the Litigation Trustee deems appropriate in the manner and in accordance with the procedures from time to time established by the Litigation Trustee for these purposes. This identification requirement generally applies to all holders, including those who hold their claims in “street name.” The Litigation Trustee may refuse to make a distribution to any

Liquidation Trust Beneficiary that fails to furnish such information in a timely fashion, until such information is delivered, and may treat such beneficiary's Litigation Trust Interests as in respect of a Disputed Claim and, in the event such information is not received within one year of being first requested, may treat such beneficiary's Litigation Trust Interests as forfeited; *provided, however*, that, upon the delivery of such information by a Litigation Trust Beneficiary within one year of being so requested, the Litigation Trustee shall make such distribution to which the Litigation Trust Beneficiary is entitled, without additional interest occasioned by such beneficiary's delay in providing tax information; and, *provided, further* that, if the Litigation Trustee fails to withhold in respect of amounts received or distributable with respect to any such beneficiary and the Litigation Trustee is later held liable for the amount of such withholding, such beneficiary shall reimburse the Litigation Trustee for such liability (to the extent such amounts were actually distributed to such beneficiary).

## ARTICLE 6

### DISTRIBUTIONS

#### 6.1 Effective Date Distributions and Initial Cash Distribution.

(a) On the Effective Date, or as soon as practicable thereafter, the Litigation Trustee shall:

- (i) arrange for the distribution of Litigation Trust Interests; and
- (ii) pay \$2,000,000.00 of Cash from the Litigation Trust to the Convertible Senior Notes Indenture Trustee as partial payment of its fees and expenses incurred in connection with the Chapter 11 Cases (the "**Effective Date BOKF Professional Fees Distribution**").

(b) The Litigation Trustee, subject to the determination of the Litigation Trustee as to any holdback necessary to fund or maintain the GUC Disputed Claims Reserve (pursuant to Section 6.6 hereof) and the Litigation Expense Fund (in consultation with the Litigation Trust Oversight Board) and subject to Section 6.1(c) herein, shall make an initial distribution (the "**Initial Cash Distribution**") of all remaining available Cash to holders of Class A Litigation Trust Interests within sixty (60) days of the Effective Date; *provided, however*, (i) in no event shall the Initial Cash Distribution be less than fifty percent (50%) of Litigation Trust Initial Cash Assets, and (ii) the Trustee shall not make the Initial Cash Distribution until at least thirty (30) days after the date that the Convertible Senior Notes Indenture Trustee provides the certification required by Section 6.1(c).

(c) On or before the date that is five (5) days after the Effective Date, the Convertible Senior Notes Indenture Trustee shall (i) certify to the Litigation Trustee and (ii) provide notice through DTC to the Convertible Senior Noteholders of the amount of any outstanding and estimated costs, fees, and expenses that may be properly charged against any distribution to the Convertible Senior Noteholders pursuant to the terms of the Convertible Senior Notes Indentures (the "**Outstanding Indenture Trustee Fees and Expenses**") which amount, for the avoidance of doubt, shall be net of the Effective Date BOKF Professional Fees Distribution. Provided that there is no temporary restraining order or injunction then in effect



with respect to payment of the Outstanding Indenture Trustee Fees and Expenses, on the date of the Initial Cash Distribution the Litigation Trustee shall first pay the Outstanding Indenture Trustee Fees and Expenses to (and in the amount certified by) the Convertible Senior Notes Indenture Trustee from the Initial Cash Distribution on account of the Class A Litigation Trust Interests held by the Convertible Senior Noteholders; provided, that if the amount of the Initial Cash Distribution to be distributed to Convertible Senior Noteholders (or their assignees) on account of their Class A Litigation Trust Interests is less than the Outstanding Indenture Trustee Fees and Expenses, then all Cash otherwise distributable to Convertible Senior Noteholders in respect of their Class A Litigation Trust Interests upon the Initial Cash Distribution shall be paid to the Convertible Senior Note Trustee in partial payment of the Outstanding Indenture Trustee Fees and Expenses. Until the Outstanding Indenture Trustee Fees and Expenses are paid in full to the Senior Convertible Notes Indenture Trustee, the Senior Convertible Notes Indenture Trustee shall be paid on a priority basis from cash distributions otherwise payable to the Convertible Senior Noteholders and its charging lien or priority rights from distributions shall be deemed to attach to Cash distributions upon or through the Class A Litigation Trust Interests issued or distributed in respect to the Convertible Senior Note Claims. For the avoidance of doubt, the Cash distributed to the Convertible Senior Notes Indenture Trustee for the Outstanding Indenture Trustee Fees and Expenses shall be deemed to be part of the Initial Cash Distribution to Convertible Senior Noteholders (or their assignees) and shall not reduce the Initial Cash Distribution made to other Holders of General Unsecured Claims (or their assignees).

(d) The Litigation Trustee shall have no liability for, and shall be held harmless from, any claims asserted by Convertible Senior Noteholder or any other party arising from the Litigation Trustee's reliance on the certification provided by the Convertible Senior Notes Indenture Trustee pursuant to Section 6.1(c).

## 6.2 Annual Distribution.

Subsequent to the Initial Cash Distribution, the Litigation Trustee shall, on at least an annual basis and subject to the terms of the Plan and the Global Settlement Term Sheet regarding the treatment of holders Class A Litigation Trust Interests and Class B Litigation Trust Interests, (i) distribute to the holders of Class A Litigation Trust Interests and Class B Litigation Trust Interests the Net Avoidance Action Proceeds in accordance with their respective rights under the Plan and the Global Settlement Term Sheet and (ii) distribute to the holders of Class A Litigation Trust Interests all other available Cash (treating as Cash for this purpose all investments in accordance with Section 3.15); *provided, however*, that the Litigation Trust shall retain such amounts as necessary or appropriate to maintain the GUC Disputed Claims Reserve and the Litigation Expense Fund. Subject to and in accordance with Section 5.3 hereof, the Litigation Trustee may withhold from amounts distributable to any Person any and all amounts, determined in the Litigation Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement; *provided, further*, that the Litigation Trustee shall not be required to make a distribution pursuant this Section 6.2 if the aggregate, net amount of unrestricted Cash available for distribution is sufficiently small in amount as to make the distribution impracticable as reasonably determined by the Litigation Trustee, with the consent of the Litigation Trust Oversight Board, in accordance with the law.

## 6.3 Manner of Payment or Distribution.

(a) All distributions made by the Litigation Trustee to or for the benefit of holders of Litigation Trust Interests shall be payable in Cash to the holders of Litigation Trust Interests of record as of the twentieth (20th) day prior to the date scheduled for the distribution, unless such day is not a business day, then such day shall be the following business day. The Litigation Trustee shall distribute such cash by wire, check, or such other method as the Litigation Trustee deems appropriate under the circumstances.

(b) To the extent the Debtors become liable for the payment of any Claims arising under section 502(h) of the Bankruptcy Code on account of Litigation Trust Assets (including the Net Avoidance Action Proceeds), the Litigation Trustee will be responsible for making distributions on account of such claims pursuant to Section 8.2 herein.

#### 6.4 Delivery of Litigation Trust Distributions.

All distributions under this Litigation Trust Agreement to any holder of Litigation Trust Interests shall be made at the address of such holder as set forth in the Book Entry System or at such other address or in such other manner as such holder of Litigation Trust Interests shall have specified for payment purposes in a written notice to the Litigation Trustee at least twenty (20) days prior to such distribution date. In the event that any distribution to any holder is returned as undeliverable, the Litigation Trustee shall be entitled to rely on the most current information available from the Debtors to determine the current address of such holder, but no distribution to such holder shall be made unless and until the Litigation Trustee has determined the then current address of such holder, at which time such distribution shall be made to such holder without interest; *provided, however*, that such undeliverable or unclaimed distributions shall be deemed unclaimed property at the expiration of one year from the date of distribution. The Litigation Trustee shall reallocate the undeliverable and unclaimed distributions for the benefit of all other Litigation Trust Beneficiaries holding Litigation Trust Interests in the applicable class.

#### 6.5 Cash Distributions.

No Cash distributions shall be required to be made to any Litigation Trust Beneficiary in an amount less than \$100.00. Any funds so withheld and not distributed shall be held in reserve and distributed in subsequent distributions. Notwithstanding the foregoing, all Cash shall be distributed in the final distribution of the Litigation Trust.

#### 6.6 Disputed Claims Reserve.

(a) From and after the Effective Date, the Litigation Trustee shall hold and maintain the GUC Disputed Claims Reserve for the benefit of the Holders of such Disputed General Unsecured Claims, including any Cash and any other Litigation Trust Assets allocable to such Disputed Claims (*i.e.*, as if such Holders had received Litigation Trust Interests on the Effective Date and such Disputed Claims had been Allowed Claims on the Effective Date), determined based on (i) the asserted amount of such Disputed Claim, (ii) such other amount as may be agreed upon by the Holder of such Disputed Claim and the Litigation Trustee or (iii) except with respect to any Disputed General Unsecured Claims asserted by Vivint Solar, Inc., such other amount as may be deemed appropriate by the Litigation Trustee in accordance with

the terms of this Litigation Trust Agreement (in each case, net of any taxes imposed on, or with respect to, the GUC Disputed Claims Reserve as relates to such Claim, including in connection with such distributions).

(b) Holders of Disputed Claims that become Allowed Claims after the Initial Cash Distribution Date shall receive any distributions of Cash and/or Litigation Trust Interests to which they are entitled under the Plan on the next Distribution Date; *provided, however*, that the Litigation Trustee may determine in its discretion (subject to the approval of the Litigation Trust Oversight Board, if necessary, pursuant to the terms of this Litigation Trust Agreement) to make an immediate distribution to the holder of such Claim.

(c) Any taxes incurred by the Litigation Trust with respect to assets allocable to, or retained on account of, a Disputed Claim (including any taxes that would be incurred upon a distribution of such assets as a result of the resolution of the Disputed Claim) will be netted against the amounts otherwise distributable from the GUC Disputed Claims Reserve in respect of, or as a result of the resolution of, such Claim. *See also* Section 5.2(c) herein. No assets allocable to, or retained on account of, a Disputed Claim will be released from the GUC Disputed Claims Reserve until such time as the Cash otherwise distributable as a result of the resolution of such Claim is sufficient to pay any taxes incurred or that would be incurred upon the distribution.

## ARTICLE 7

### INDEMNIFICATION

#### 7.1 Indemnification of Litigation Trustee.

(a) To the fullest extent permitted by law, the Litigation Trust, to the extent of its assets legally available for that purpose, shall indemnify and hold harmless the Litigation Trustee and the Litigation Trust Oversight Board Members and each of their and the Litigation Trustee's and the Trust's respective directors, members, shareholders, partners, officers, agents, employees, attorneys and other professionals (collectively, the "**Indemnified Persons**") from and against any and all losses, costs, damages, reasonable and documented out-of-pocket expenses (including, without limitation, fees and expenses of attorneys and other advisors and any court costs incurred by any Indemnified Person) or liability by reason of anything any Indemnified Person did, does, or refrains from doing for the business or affairs of the Litigation Trust, except to the extent that the loss, cost, damage, expense or liability resulted primarily from the Indemnified Person's recklessness, gross negligence, willful misconduct, or knowing violation of the law. To the extent reasonable, the Litigation Trust shall pay in advance or reimburse reasonable and documented out-of-pocket expenses (including advancing reasonable costs of defense) incurred by the Indemnified Person who is or is threatened to be named or made a defendant or a respondent in a proceeding concerning the business and affairs of the Litigation Trust.

(b) Any Indemnified Person may waive the benefits of indemnification under this Section 7.1, but only by an instrument in writing executed by such Indemnified Person.

(c) The rights to indemnification under this Section 7.1 are not exclusive of other rights which any Indemnified Person may otherwise have at law or in equity, including without limitation common law rights to indemnification or contribution. Nothing in this Section 7.1 will affect the rights or obligations of any Person (or the limitations on those rights or obligations) under this Litigation Trust Agreement, or any other agreement or instrument to which that Person is a party.

## ARTICLE 8

### NET LITIGATION TRUST RECOVERY

#### 8.1 No Effect on Mutuality.

Notwithstanding anything contained in this Litigation Trust Agreement to the contrary, nothing herein shall affect the mutuality of obligations, if any, of any holder of any claim under section 553 of the Bankruptcy Code.

#### 8.2 Bankruptcy Code Section 502(h).

Notwithstanding anything contained in this Litigation Trust Agreement to the contrary, in the event that a compromise and settlement of a Litigation Trust Cause of Action or a final order with respect to a Litigation Trust Cause of Action provides for the allowance of a claim pursuant to section 502(h) of the Bankruptcy Code against one or more of the Debtors the distributions to be made on account of such claim pursuant to the Plan shall be funded by the Litigation Trust, in the amount(s), from time to time, that all similarly situated holders of claims are entitled to receive under the Plan.

#### 8.3 Net Litigation Trust Recovery.

Notwithstanding anything contained in this Litigation Trust Agreement to the contrary, in the event that a defendant in a litigation brought by the Litigation Trustee for and on behalf of the Litigation Trust (i) is required by a final order to make payment to the Litigation Trust (the “**Judgment Amount**”) and (ii) is permitted by a final order to assert a right of setoff under sections 553, 555, 556, 559, 560 and 561 of the Bankruptcy Code or applicable non-bankruptcy law against the Judgment Amount (a “**Valid Setoff**”), (y) such defendant shall be obligated to pay only the excess, if any, of the Judgment Amount over the Valid Setoff and (z) none of the Litigation Trust or the holders of the Litigation Trust Interests shall be entitled to assert a claim against the Debtors with respect to the Valid Setoff.

## ARTICLE 9

### REPORTS TO LITIGATION TRUST BENEFICIARIES

#### 9.1 Reports.

(a) The Litigation Trustee shall cause to be prepared, as applicable, either at such times as may be required by the Exchange Act, if applicable, or, not less than semi-annually, financial statements of the Litigation Trust (the “**Litigation Trust Reports**”), to be

delivered to the Litigation Trust Beneficiaries together with annual income tax reporting of the Litigation Trust. The Litigation Trust Reports shall include, among other things, descriptions in reasonable detail of all Net Avoidance Actions Proceeds collected during the relevant quarter and all fees and expenses expended in connection therewith. To the extent required by law, the financial statements prepared as of the end of the fiscal year shall be audited by nationally recognized independent accountants in accordance with U.S. generally accepted accounting principles. The materiality and scope of audit determinations shall be established between the Litigation Trustee and the appointed auditors with a view toward safeguarding the value of the assets of the Litigation Trust, but nothing relating to the mutually agreed scope of work shall result in any limitation of audit scope that would cause the auditors to qualify their opinion as to scope of work with respect to such financial statements.

(b) Within ten (10) Business Days after the end of the relevant report preparation period the Litigation Trustee shall cause any information reported pursuant to Section 9.1(a) hereof to be mailed to such Litigation Trust Beneficiaries and to be filed with the Bankruptcy Court.

(c) Any report (other than any report of confidential tax information) required to be distributed by the Litigation Trustee under Section 9.1(a) hereof shall also be distributed to the Persons listed in Section 12.6 hereof within ten (10) Business Days of its distribution to the Litigation Trust Beneficiaries under Section 9.1 hereof. The Litigation Trustee may post any report required to be provided under this Section 9 on a web site maintained by the Litigation Trustee in lieu of actual notice to the Litigation Trust Beneficiaries (unless otherwise required by law) subject to providing notice to the Persons listed in Section 12.6 herein.

## ARTICLE 10

### TERM; TERMINATION OF LITIGATION TRUST

#### 10.1 Term; Termination of Litigation Trust.

(a) The Litigation Trustee and the Litigation Trust may be discharged or dissolved, as the case may be, at such time as (i) all of the Litigation Trust Assets have been distributed pursuant to the Litigation Trust Agreement and the Plan, (ii) the Litigation Trustee determines, in its sole discretion, that the administration of any remaining Litigation Trust assets is not likely to yield sufficient additional Litigation Trust Asset Recoveries to justify further pursuit, or (iii) all distributions required to be made by the Litigation Trustee under this Litigation Trust Agreement have been made. The Litigation Trust shall have an initial term of five (5) years. The Bankruptcy Court, upon motion by the Litigation Trustee, on notice with an opportunity for hearing, within six (6) months before the expiration of the original term or any extended term, may extend, for a fixed period, the term of the Litigation Trust if it is necessary to facilitate or complete the liquidation of the assets of the Litigation Trust, and not unduly extend the term of the Litigation Trust; *provided, that*, the Litigation Trustee receive a favorable private letter ruling from the IRS or an opinion of counsel satisfactory to the Litigation Trustee and the Litigation Trust Oversight Board that any extension would not adversely affect the status of the Litigation Trust as a “liquidating trust” for United States federal income tax purposes. The Bankruptcy Court may approve multiple extensions of the term of the Litigation Trust.

(b) The Litigation Trust may be terminated earlier than its scheduled termination if (i) the Bankruptcy Court has entered a final order closing all of or the last of the Chapter 11 Cases pursuant to section 350(a) of the Bankruptcy Code; and (ii) the Litigation Trustee has administered all assets of the Litigation Trust and performed all other duties required by this Litigation Trust Agreement.

(c) If at any time the Litigation Trustee determines, in reliance upon such professionals as the Litigation Trustee may retain, that the expense of administering the Litigation Trust so as to make a final distribution to the Litigation Trust Beneficiaries is likely to exceed the value of the assets remaining in the Litigation Trust, the Litigation Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amount necessary to dissolve the Litigation Trust, (ii) donate any balance to a charitable organization (A) described in Section 501(c)(3) of the IRC, (B) exempt from U.S. federal income tax under Section 501(a) of the IRC, (C) that is not a “private foundation”, as defined in Section 509(a) of the IRC, and (D) that is unrelated to the Debtors, the Reorganized Debtors, the Litigation Trust, and any insider of the Litigation Trustee, and (iii) dissolve the Litigation Trust. Upon receipt of such authority from the Bankruptcy Court, the Litigation Trustee shall (X) notify each Litigation Trust Beneficiary and (Y) file a Certificate of Cancellation with the Secretary of State of the State of Delaware.

#### 10.2 Continuance of Trust for Winding Up.

After the termination of the Litigation Trust and for the purpose of litigation and winding up the affairs of the Litigation Trust, the Litigation Trustee shall continue to act as such until its duties have been fully performed. Prior to the final distribution of all of the remaining assets of the Litigation Trust, the Litigation Trustee shall be entitled to reserve from such assets any and all amounts required to provide for its own costs and expenses, in accordance with Section 3.13 herein, until such time as the winding up of the Litigation Trust is completed. Upon termination of the Litigation Trust, the Litigation Trustee shall retain for a period of three years the books, records, Litigation Trust Beneficiary lists, the Trust Register, and certificates and other documents and files that have been delivered to or created by the Litigation Trustee. At the Litigation Trustee’s discretion, all of such records and documents may, but need not, be destroyed at any time after three years from the completion and winding up of the affairs of the Litigation Trust. Except as otherwise specifically provided herein, upon the termination of the Litigation Trust, the Litigation Trustee shall have no further duties or obligations hereunder.

### ARTICLE 11

#### AMENDMENT AND WAIVER

##### 11.1 Amendment and Waiver.

(a) The Litigation Trustee may amend, supplement or waive any provision of, this Litigation Trust Agreement, without notice to or the consent of any Litigation Trust Beneficiary or the approval of the Bankruptcy Court: (i) to cure any ambiguity, omission, defect or inconsistency in this Litigation Trust Agreement provided that such amendments, supplements or waivers shall not contravene or otherwise be inconsistent with the terms of the Final DIP Order, the Committee Settlement, the D&O Settlement Agreement, the D&O Settlement

Approval Order, the Plan (including the Global Settlement Term Sheet), and the Confirmation Order, adversely affect the distributions to be made or other rights under this Litigation Trust Agreement to any of the Litigation Trust Beneficiaries, the Second Lien Notes Indenture Trustee, or the Convertible Senior Notes Indenture Trustee, or adversely affect the U.S. federal income tax status of the Litigation Trust as a “liquidating trust”; (ii) to comply with any requirements in connection with the U.S. federal income tax status of the Litigation Trust as a “litigation trust”; (iii) to comply with any requirements in connection with maintaining that the Litigation Trust is not subject to registration or reporting requirements of the Exchange Act or the Investment Company Act; (iv) to make the Litigation Trust a reporting entity and, in such event, to comply with any requirements of the Exchange Act or the Investment Company Act; and (v) to evidence and provide for the acceptance of appointment hereunder by a successor trustee in accordance with the terms of this Litigation Trust Agreement.

(b) Subject to Section 11.1(c) below, any substantive provision of this Litigation Trust Agreement may be amended or waived by the Litigation Trustee, subject to the prior approval of a majority of both the Litigation Trust Oversight Board and the holders of Class A Litigation Trust Interests held by “United States persons” within the meaning of Section 7701(a)(30) of the IRC, with the approval of the Bankruptcy Court upon notice and an opportunity for a hearing; *provided, however*, that no change may be made to this Litigation Trust Agreement that contravenes or is otherwise inconsistent with the terms of the Committee Settlement, the D&O Settlement Agreement, the D&O Settlement Approval Order, the Plan (including the Global Settlement Term Sheet), and the Confirmation Order, would adversely affect the distributions to be made under this Litigation Trust Agreement to any of the Litigation Trust Beneficiaries, the Second Lien Notes Indenture Trustee, or the Convertible Senior Notes Indenture Trustee, or adversely affect the U.S. federal income tax status of the Litigation Trust as a “liquidating trust.” Notwithstanding this Section 11.1, any amendments to this Litigation Trust Agreement shall not be inconsistent with the purpose and intention of the Litigation Trust to liquidate in an expeditious but orderly manner the Litigation Trust Assets in accordance with Treasury Regulation Section 301.7701-4(d).

(c) The Litigation Trust Agreement may not be amended to change the distribution of Net Avoidance Action Proceeds and Additional Net Avoidance Action Proceeds as described in the Litigation Trust Interests Overview without the consent of 75% of the holders (in amount of Class B Litigation Trust Interests held, not number of holders) of the Class B Litigation Trust Interests that are “United States persons” within the meaning of Section 7701(a)(30) of the IRC and the requisite consent of the Litigation Trust Oversight Board and the holders of the Class A Litigation Trust Interests in accordance with Section 11.1(b).

## ARTICLE 12

### MISCELLANEOUS PROVISIONS

#### 12.1 Intention of Parties to Establish a Liquidating Trust.

This Litigation Trust Agreement is intended to create a “liquidating trust” for U.S. federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith

and, if necessary, this Litigation Trust Agreement may be amended in accordance with Section 11.1 hereof to comply with such U.S. federal income tax laws, which amendments may apply retroactively.

#### 12.2 Reimbursement of Trust Litigation Costs.

If the Litigation Trustee or the Litigation Trust, as the case may be, is the prevailing party in a dispute regarding the provisions of this Litigation Trust Agreement or the enforcement thereof, the Litigation Trustee or the Litigation Trust, as the case may be, shall be entitled to collect any and all costs, reasonable and documented out-of-pocket expenses and fees, including attorneys' fees, from the non-prevailing party incurred in connection with such dispute or enforcement action. To the extent that the Litigation Trust has advanced such amounts, the Litigation Trust may recover such amounts from the non-prevailing party.

#### 12.3 Laws as to Construction.

This Litigation Trust Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to whether any conflicts of law would require the application of the law of another jurisdiction.

#### 12.4 Jurisdiction.

Without limiting any Person or entity's right to appeal any order of the Bankruptcy Court or to seek withdrawal of the reference with regard to any matter, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Litigation Trust Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Litigation Trust Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties, including the Litigation Trust Beneficiaries and holders of General Unsecured Claims and Second Lien Claims, hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court.

#### 12.5 Severability.

If any provision of this Litigation Trust Agreement or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid, or unenforceable to any extent, the remainder of this Litigation Trust Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Litigation Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

#### 12.6 Notices.

All notices, requests or other communications to the parties hereto shall be in writing and shall be sufficiently given only if (i) delivered in person; (ii) sent by electronic mail or facsimile communication (as evidenced by a confirmed fax transmission report); (iii) sent by registered or certified mail, return receipt requested; or (iv) sent by commercial delivery service or courier. Until a change of address is communicated, as provided below, all notices, requests



and other communications shall be sent to the parties at the following addresses or facsimile numbers:

If to the Litigation Trustee to:

Drivetrain, LLC  
630 Third Ave., 21st Floor  
New York, NY 10017  
Attn: Alan J. Carr  
Tim Daileader  
Email: acarr@drivetrainadvisors.com; tdaileader@drivetrainadvisors.com

With a copy to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10065  
Attn: Matthew S. Barr, Esq.  
Jill Frizzley, Esq.  
Email: Matthew.Barr@weil.com; jill.frizzley@weil.com

If to the Debtors to:

c/o SunEdison, Inc.  
Two City Place Drive, 2nd Floor  
St. Louis, MO 63141  
Attn: General Counsel

With a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, New York 10036-6522  
Attn: J. Eric Ivester, Esq.  
James J. Mazza, Jr., Esq.  
Louis S. Chiappetta, Esq.  
Email: eric.ivester@skadden.com; james.mazza@skadden.com;  
louis.chiappetta@skadden.com

If to the Holder of Class B Interests to:

Two CityPlace Drive, 2nd Floor  
St. Louis, MO 63141

Attn.: Rich Katz  
Email: rich.katz@torquepointllc.com

With a copy to:

Akin, Gump, Strauss, Hauer, & Feld LLP  
One Bryant Park  
Bank of America Tower  
New York, New York 10036  
Attn: Arik Preis  
Yochun Katie Lee  
Email: apreis@akingump.com; kylee@akingump.com

If to the Convertible Senior Notes Indenture Trustee, to:

BOKF, N.A.  
1600 Broadway, 3rd Floor  
Denver, CO 80202  
Attn: George F. Kubin  
Email: gkubin@bokf.com

With a copy to:

White & Case LLP  
1221 Avenue of the Americas  
New York, NY 10020  
Attn: J. Christopher Shore, Harrison L. Denman, and Michele J. Meises  
Email: cshore@whitecase.com; Harrison.denman@whitecase.com;  
michele.meises@whitecase.com

and:

Foley & Lardner LLP  
321 North Clark Street, Suite 2800  
Chicago, IL 60654-5313  
Attn: Harold L. Kaplan; Mark F. Hebbeln and Lars A. Peterson  
Email: hkaplan@foley.com; mhebbeln@foley.com; lapeterson@foley.com

If to the Flextronics Industrial Ltd. or the Flex Designee, to:

Flextronics Industrial Ltd.  
50 Plymouth Street  
Johnson City, NY 13790  
Attn: Bob Egan  
Email: [bob.egan@flex.com](mailto:bob.egan@flex.com)

With a copy to:  
Curtis, Mallet-Prevost, Colt & Mosle LLP  
101 Park Avenue  
New York, NY 10178-0061  
Attn: Steven J. Reisman  
Email: sreisman@curtis.com

If to the Creditors' Committee, to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10065  
Attn: Matthew S. Barr, Esq.  
Jill Frizzley, Esq.  
Email: Matthew.Barr@weil.com; jill.frizzley@weil.com

All notices shall be effective and shall be deemed delivered: (i) if by personal delivery, delivery service or courier, on the date of delivery; (ii) if by electronic mail on the date of receipt; and (iii) if by mail, on the date of receipt. Any party from time to time may change its address, electronic mail address, or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto.

12.7 Fiscal Year.

The fiscal year of the Litigation Trust will begin on the first day of January and end on the last day of December of each year.

12.8 Headings.

The section headings contained in this Litigation Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Litigation Trust Agreement or of any term or provision hereof.

12.9 Counterparts.

This Litigation Trust Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all together shall constitute one agreement.

12.10. Confidentiality.

The Litigation Trustee and each successor trustee and any member of the Litigation Trust Oversight Board (each a "**Covered Person**") shall, during the period that they serve in such capacity under this Litigation Trust Agreement and following either the termination of this Litigation Trust Agreement or such individual's removal, incapacity, or registration hereunder, hold strictly confidential and not use for personal gain any material, non-public

information of or pertaining to any entity to which any of the assets of the Litigation Trust relates or of which it has become aware in its capacity (the “**Information**”), except to the extent disclosure is required by applicable law, order, regulation or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar legal process) to disclose any Information, such Covered Person will furnish only that portion of the Information, which the Covered Person, advised by counsel, is legally required to and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.


#### 12.11 Entire Agreement.

This Litigation Trust Agreement (including the Recitals), the Final DIP Order, the Committee Settlement, the Confirmation Order, and the Plan (including the Global Settlement Term Sheet) constitute the entire agreement by and among the parties hereto with respect to the subject matter hereof, and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This Litigation Trust Agreement, the Final DIP Order, and the Plan (including the Global Settlement Term Sheet) supersede all prior and contemporaneous agreements, understandings, negotiations, discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein, in the Final DIP Order, the D&O Settlement Approval Order, the Confirmation Order, or in the Plan (including the Global Settlement Term Sheet), nothing in this Litigation Trust Agreement is intended or shall be construed to confer upon or to give any person other than the parties thereto and their respective heirs, administrators, executors, successors, or assigns any right to remedies under or by reason of this Litigation Trust Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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

DEBTORS:

  
\_\_\_\_\_  
By: John S. Dubel  
Title: CRO

CREDITORS' COMMITTEE:

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

LITIGATION TRUSTEE:

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

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

DEBTORS:

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

CREDITORS' COMMITTEE:

/s/ Jacqueline Marcus  
By: Jacqueline Marcus  
Title: Counsel to the Creditors'  
Committee

LITIGATION TRUSTEE:

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

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

DEBTORS:

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

CREDITORS' COMMITTEE:

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

LITIGATION TRUSTEE:

  
\_\_\_\_\_  
By: Alan J. Carr  
as Managing Member for  
Drivetrain, LLC

**Exhibit A**

**Litigation Trust Causes of Action**

Litigation Trust Causes of Action shall mean “GUC/Litigation Trust Causes of Action” as defined in the Plan, including Exhibit 7.6 thereto.



## Exhibit B

### **Litigation Trust Interests Overview**

#### **Class A Litigation Trust Interests**

The holders of Class A Litigation Trust Interests shall be entitled to:

- (a) Litigation Trust Initial Cash Assets;
- (b) All proceeds of Litigation Trust Assets other than Net Avoidance Action Proceeds;
- (c) The initial \$63.0 million of Net Avoidance Action Proceeds recovered by the Litigation Trustee; and
- (d) Fifty-two percent (52%) of any Net Avoidance Actions Proceeds recovered that exceed \$63.0 million in the aggregate (the “**Additional Net Avoidance Action Proceeds**”).

#### **Class B Litigation Trust Interests**

Holders of Class B Litigation Trust Interests in the Litigation Trust shall only be entitled to the following:

##### Economic Rights:

- (a) Forty-eight percent (48%) of the Additional Net Avoidance Action Proceeds.

##### Governance Rights:

- (b) Delivery of the Litigation Trust Reports and reasonable periodic access to the Litigation Trustee solely through Akin, Gump, Strauss, Hauer, & Feld LLP, counsel to the holders of the Class B Litigation Trust Interests;
- (c) following the filing of any Contingency Fee Advisor Retention Notice, at the request of any of the holders of Class B Litigation Trust Interests (or their advisor at the instruction of a holder) the Litigation Trustee will provide additional information regarding the proposed contingency fee engagement (including the actual engagement letter on a confidential basis, if so requested). Holders of Class B Litigation Trust Interests (or their advisors at the instruction of a holder) shall have ten (10) Business Days from the date of the filing of the Contingency Fee Advisor Retention Notice to file with the Bankruptcy Court a pleading seeking to prohibit such retention on the grounds that such retention is not consistent with the purpose of the Global Settlement Term Sheet because the engagement does not provide a sufficient incentive for such contingency fee advisor to procure Additional Net Avoidance Action Proceeds, and the Litigation Trust, Litigation Trustee, Litigation Trust Oversight Board, or the Committee may oppose such pleading (but solely with respect to such issue), and the Bankruptcy Court shall retain jurisdiction to settle such dispute;
- (d) enforcement rights with regard to any and all of the above rights (and clause (e) below) (as well as the fiduciary duties owed to all holders of Litigation Trust Interests by the Litigation Trustee and the Litigation Trust Oversight Board as set forth below); and
- (e) reasonable consent rights with regard to any modifications,

amendments, or supplements of the Litigation Trust Agreement that affect the terms of the “Economic Rights” or “Governance Rights” sections above.

Holders of Class B Litigation Trust Interests shall have a “silent” interest in the Litigation Trust solely to the extent of the Additional Net Avoidance Action Proceeds and the other rights set forth in the “Economic Rights” or the “Governance Rights” sections above (*i.e.*, they shall not, among other things, appoint the Litigation Trustee or the Litigation Trust Oversight Board).

**Exhibit C**

**Litigation Trust Interest Transfer Form**

**FORM OF TRANSFER NOTICE (Litigation Trust Interests)<sup>2</sup>**

**Class A Litigation Trust Interests  
Class B Litigation Trust Interests**

To: [Drivetrain, LLC or other named registrar], in its capacity as Registrar (the "**Registrar**")  
Cc: Drivetrain, LLC, as Original Trustee (the "**Trustee**") for the SunEdison Litigation Trust (the "**Litigation Trust**")  
Transferor: [insert legal name of the proposed transferor] (the "**Transferor**")  
Transferee: [insert legal name of the proposed transferee] (the "**Transferee**")  
Date: [insert date, must be identical on counterpart Transfer Notices]

1. The undersigned Transferor and Transferee hereby confirm to the Registrar that the Transferor has agreed to transfer to the Transferee the following Litigation Trust Interests<sup>2</sup> of the Litigation Trust:
  - (a) [Class A] Litigation Trust Interests in aggregate number and face value of [# and \$xx. xx] and all rights in respect thereof; and
  - (b) [Class B] Litigation Trust Interests in aggregate number and face value of [# and \$xx. xx] and all rights in respect thereof; and
2. The Transferor and the Transferee request the Trustee and the Registrar to effect the transfer of the [Class A or Class B] Litigation Trust Interests, the subject of this Transfer Notice, in accordance with the Litigation Trust Agreement.
3. The Litigation Trust Interests have not been and will not be registered under the federal laws of the United States, under the securities laws of any State of the United States of America or any other jurisdiction. The Litigation Trust Interests are not "restricted securities" within the meaning of Rule 144(a)(3) made under the Securities Act of 1933, as amended (the "**Securities Act**") and may be immediately resold following issuance, without restriction under the Securities Act, by holders of Litigation Trust Interests who are not "affiliates" (as defined under the Securities Act) of the Reorganized Debtors or the Litigation Trust and have not been "affiliates" (as so defined) of the Reorganized Debtors or the Litigation Trust within the period of ninety (90) calendar days ending on the date of issuance of the Litigation Trust Interest under the Plan of Reorganization and Litigation Trust Agreement.
4. The Transferor [is/is not] an "affiliate" (as defined in the U.S. Securities Act of 1933) of the Reorganized Debtors.
5. The Transferee:
  - (a) [is/is not] an existing holder of Class A Litigation Trust Interests; and
  - (b) [is/is not] an existing holder of Class B Litigation Trust Interests.
6. All payments in respect of the Litigation Trust Interests transferred to the Transferee are to be made (unless otherwise instructed by the Transferee) to the following account, which shall (until

further notice) be the registered account of the Transferee for the purposes of the Litigation Trust Agreement:

**Name of bank** :  
**Address of bank** :  
**For the account of** :  
**EUR account number:**  
**IBAN** :  
**SWIFT code** :

7. The registered address, e-mail address and contact information of the Transferee for the purposes of the register of interest holders (the “**Register**”) of the Trust is stated below:

*[Insert Transferee's address, e-mail address and contact information. If the Transferee is already a holder of Litigation Trust Interests, the information provided to the Registrar (both in terms of payments and contact information) must be identical to the information already noted in the Register, or the Transferee may replace this paragraph 7 with a confirmation that the payment and contact details already noted on the Register shall apply to the transferred Litigation Trust Interests.]*

8. The Transferee acknowledges that a transfer of title to the Litigation Trust Interests is determined solely by the entry of the transfer into the Register and that entries on the Register are conclusive evidence of title to the Litigation Trust Interests and of the date of transfer of title to Litigation Trust Interests, absent manifest error.
9. None of the Trustee or the Registrar is required, or shall have any obligation, to accept any application for a transfer of Litigation Trust Interests, or to make any payment under or in respect of the Litigation Trust Interest to a purported Transferee, in any circumstance where any applicable requirement specified in the Litigation Trust Agreement has not been satisfied. Without limitation to the foregoing, the Trustee may refuse to register any transfer of Litigation Trust Interest unless it has received (directly or via the Registrar) a valid Transfer Notice.
10. The Trustee, with the consultation of or at the direction of the Litigation Trust Oversight Board may restrict the effect of any transfer of Litigation Trust Interests if, in its own discretion, such transfer may subject the Trust to reporting or registration requirements under the Securities Exchange Act of 1934, or if such effect of transfer may alter or effect Article 5 of the Litigation Trust Agreement.
11. This Transfer Notice may be executed by the Transferor and the Transferee in counterparts, each of which shall constitute an original and both of which taken together shall constitute one and the same Transfer Notice.
12. Terms defined in the Litigation Trust Agreement shall have the same meaning in this Transfer Notice.

\_\_\_\_\_  
[insert name of Transferor]

By: [insert name of signatory] [Authorised Signatory]  
[insert title, for persons signing on behalf of corporate entities]

\_\_\_\_\_  
[insert name of Transferee]

By: [insert name of signatory] [Authorised Signatory]  
[insert title, for persons signing on behalf of corporate entities]

Acknowledged By:

\_\_\_\_\_ Effective Date: \_\_\_\_\_  
Drivetrain, LLC, as Trustee to the SunEdison Litigation Trust

Name:

Title:

**Enclosures:** KYC Information for the Transferee

## Exhibit D

### Trustee Compensation Schedule

#### Compensation Terms

The Original Trustee (“Drivetrain”) shall be entitled to the following compensation:

- Fees. As consideration for the services provided by Drivetrain beginning on August 1, 2017 until the Effective Date, and for services to be provided following the Effective Date, the Litigation Trust shall pay Drivetrain in accordance with a fixed monthly fee arrangement (the “**Monthly Fees**”) based on the amounts set forth in the chart below. The Monthly Fees shall be payable in advance each month on the first day of each month until the termination of Drivetrain’s appointment pursuant to the Litigation Trust Agreement,<sup>3</sup> the Plan, and the Confirmation Order; provided, that the Monthly Fee payable for the first and last month of Drivetrain’s engagement shall be prorated for the actual number of days Drivetrain is engaged during each such month. The Monthly Fees shall be fully earned as of the first day of such month. The payment for services performed by Drivetrain beginning on August 1, 2017 until the Effective Date shall be fully earned as of the Effective Date and paid to the Litigation Trustee at the Year 1 rate within five (5) days thereof.

YEAR (post Effective Date)	MONTHLY RATES
1 <sup>st</sup>	\$ 19,500
2 <sup>nd</sup>	\$ 15,000
3 <sup>rd</sup>	To be determined by agreement between Drivetrain and the Litigation Trust Oversight Board

- Expense Reimbursement. In addition to any Monthly Fees and the Additional Compensation (as defined below) payable to Drivetrain, the Litigation Trust shall promptly reimburse Drivetrain, following delivery to the Litigation Trust of a reasonably detailed written invoice, for all reasonable, documented out-of-pocket expenses (including reasonable expenses of counsel and other professionals), travel and lodging, data processing and communications charges, courier services and other expenditures

<sup>3</sup> Unless otherwise defined, capitalized terms shall have the meaning ascribed to such terms in the *Second Amended Joint Plan of Reorganization of SunEdison Inc. and its Debtor Affiliates* [ECF No. 3735 - Exhibit A to the Confirmation Order], or, if not defined therein, the Litigation Trust Agreement, dated as of [\_\_\_\_\_], 2017.

incurred in connection with, or arising out of Drivetrain's services provided as Original Trustee under the Litigation Trust Agreement ("Expense Reimbursement").

- Additional Compensation. In addition to Monthly Fees and the Expense Reimbursement, the Litigation Trust shall pay Drivetrain the following (the "Additional Compensation"):
  - As used herein, "Net Litigation Trust Proceeds" means, on any date of determination, the aggregate amount of Litigation Trust Proceeds actually received by the Litigation Trust, less the aggregate amount of all costs and expenses, as set forth in the Litigation Trust's books and records, actually incurred (whether or not paid) by the Litigation Trust in connection with investigating, prosecuting, settling, liquidating, or disposing of the Litigation Trust Causes of Action.
  - At such time as Net Litigation Trust Proceeds equal or exceed \$50,000,000, an amount in Cash equal to 1.25% of such Net Litigation Proceeds up to \$75,000,000; plus
  - An amount in Cash equal to 1.35% of the Net Litigation Trust Proceeds, as determined on such Distribution Date, that equal or exceed \$75,000,000 but are less than \$100,000,000; plus
  - An amount in Cash equal to 1.45% of the Net Litigation Trust Proceeds, as determined on such Distribution Date, that equal or exceed \$100,000,000 but are less than \$125,000,000; plus
  - An amount in Cash equal to 1.55% of the Net Litigation Trust Proceeds, as determined on such Distribution Date, that equal or exceed \$125,000,000.
  - For the avoidance of doubt, the Additional Compensation is earned only if more than \$50 million in Net Litigation proceeds are distributed to the Litigation Trust's beneficiaries.

The Additional Compensation, if earned, shall be paid to Drivetrain contemporaneously with the discharge of Drivetrain and termination of the Litigation Trust. In the event Drivetrain is removed as Litigation Trustee by the Litigation Trust Oversight Board pursuant to Section 3.5 of the Litigation Trust Agreement for any reason (other as a result of its gross negligence, fraud or willful misconduct), Drivetrain shall continue to be entitled to be paid Additional Compensation on further distributions based upon the schedule above when such distributions are made.

- General Terms.
  - It is expected that Alan Carr and Tim Daileader will have primary responsibility on this matter.
  - No amounts payable hereunder shall be subject to reduction, setoff, disgorgement or reimbursement, other than pursuant to a Final Order or with the prior written consent of Drivetrain.



- o No fee or amount paid or payable to any other Entity by the Litigation Trust or by any other Entity shall reduce or otherwise affect the Monthly Fees, Additional Compensation, or Expense Reimbursement paid or payable to Drivetrain, except to the extent used in calculating Net Litigation Trust Proceeds.
- o All amounts paid to Drivetrain shall be in cash, in United States currency, and on or by the dates set forth herein.
- o All other terms of Drivetrain's engagement are set forth in the Litigation Trust Agreement, the Plan, and the Confirmation Order.