

## **DISBURSING AGENT AGREEMENT**

among

**ALMATIS B.V.,  
DIC ALMATIS BIDCO B.V.,  
ALMATIS HOLDINGS 3 B.V.,  
ALMATIS HOLDINGS 9 B.V.,  
ALMATIS HOLDINGS 7 B.V.,  
ALMATIS US HOLDING, INC.,  
ALMATIS, INC.,  
ALMATIS ASSET HOLDINGS, LLC,  
BLITZ F07-NEUNHUNDERTSECHZIG-DREI GMBH,  
ALMATIS HOLDINGS GMBH, AND  
ALMATIS GMBH,**

as Debtors and Debtors in Possession;

**ALMATIS NEW EQUITY COMPANY N.V.,  
ALMATIS NEW HOLDING 1 B.V., AND  
ALMATIS NEW HOLDING 2 B.V.,**

as the New Tower Companies;

**STICHTING ALMATIS RESTRUCTURING**

as the Dutch Foundation; and

[\_\_\_\_\_]

as the Disbursing Agent

## TABLE OF CONTENTS

	<u>Page</u>
I. ENGAGEMENT, ASSIGNMENT OF CLAIMS AND DISTRIBUTIONS.....	6
Section 1.1 Engagement of the Disbursing Agent.....	6
Section 1.2 Claims List.....	6
Section 1.3 Senior Option List.....	8
Section 1.4 Amendment and Restatement of Organizational Documents; Entry into Call Option Agreement; Cancellation of Dutch Foundation Equityco Shares .....	8
Section 1.5 Establishment of an Escrow Account; the Consideration.....	11
Section 1.6 Assignment of Non-Restructured Lender Claims.....	12
Section 1.7 Letter of Transmittal .....	12
Section 1.8 Endorsements.....	16
Section 1.9 Tax Matters .....	16
Section 1.10 Distributions to Holders.....	17
Section 1.11 Unclaimed Property; Liquidation of Dutch Foundation .....	21
Section 1.12 Delivery of Lists to Equityco and Debtors .....	22
II. CONDITIONS AND COMPENSATION .....	22
Section 2.1 Conditions.....	22
Section 2.2 Compensation .....	22
III. LIABILITY.....	23
Section 3.1 Limitation of Responsibility; Liability for Actions or Omissions .....	23
Section 3.2 Independence of the Disbursing Agent.....	24
Section 3.3 Indemnification.....	24
Section 3.4 Inconsistent Claims .....	26
Section 3.5 Reliance.....	27
Section 3.6 No Bond.....	27
IV. GENERAL.....	27
Section 4.1 Amendments .....	27
Section 4.2 Assignment .....	28
Section 4.3 Resignation; Removal.....	28
Section 4.4 Court Supervision .....	28
Section 4.5 Counterparts.....	29
Section 4.6 Entire Agreement.....	29
Section 4.7 Governing Law .....	29
Section 4.8 Headings .....	29
Section 4.9 Notices .....	29

Section 4.10 Severability .....	31
Section 4.11 Successors .....	31
Section 4.12 Termination .....	31
Section 4.13 No Third Party Beneficiaries .....	31

## **EXHIBITS**

Exhibit A	Form of Non-Restructured Lender Claim Assignment Agreement
Exhibit B	Form of New Articles of Association of Equityco
Exhibit C	Form of New Articles of Association of Holdco
Exhibit D	Form of New Articles of Association of Holdco 2
Exhibit E	Form of Shareholder Agreement
Exhibit F	Form of Call Option Agreement
Exhibit G	Form of Letter of Transmittal
Exhibit H	Form of Disbursing Agent Ratification Letter
Exhibit I	Form of Power of Attorney
Exhibit J	Form of Equityco Class 2 Notarial Deed
Exhibit K	Form of Deed of Adherence
Exhibit L	Form of Agreement Binding Holder to New SFA, New ICA and Related Documents
Exhibit M	Form of Agreement Binding Holder to New Subordinated Agreement, New ICA and Related Documents
Exhibit N	Form of Equityco Class 3 Warrant Agreement
Exhibit O	Form of Equityco Class 4 Warrant Agreement
Exhibit P	Disbursing Agent Fee Schedule
Exhibit Q	Confirmation Statement
Exhibit R	Compliance Certificate

## **SCHEDULES**

Schedule 1	Cash Consideration
Schedule 2	Equityco Shares and rights pursuant to warrant agreements with respect to Equityco Shares
Schedule 3	New Senior Debt and New Junior Debt

## **DISBURSING AGENT AGREEMENT**

This Disbursing Agent Agreement (as may be amended, modified or supplemented from time to time, this “**Agreement**”), dated as of \_\_\_\_\_, 2010 is made and entered into by and among \_\_\_\_\_, (the “**Disbursing Agent**”), Stichting Almatris Restructuring, (the “**Dutch Foundation**”), Almatris B.V., DIC Almatris Bidco B.V., Almatris Holdings 3 B.V., Almatris Holdings 9 B.V., Almatris Holdings 7 B.V., Almatris US Holding, Inc., Almatris, Inc., Almatris Asset Holdings, LLC, Blitz F07-neunhundertsechzig-drei GmbH, Almatris Holdings GmbH, and Almatris GmbH, as debtors and debtors in possession (collectively, the “**Debtors**” and, for all purposes under this Agreement, after the Effective Date, references to the Debtors shall be deemed to refer to the Reorganized Debtors), and Almatris New Equity Company, N.V. (“**Equityco**”), Almatris New Holding 1 B.V. (“**Holdco**”) and Almatris New Holding 2 B.V. (“**Holdco 2**”) (Equityco, Holdco and Holdco 2 are sometimes collectively referred to as the “**New Tower Companies**”), for the purpose of effectuating certain transactions and making certain Distributions required by the *Joint Prepackaged Plan of Reorganization for the Debtors under Chapter 11 of the Bankruptcy Code* dated April 23, 2010 and all exhibits attached thereto or referenced therein (as the same may be amended, modified or supplemented from time to time, the “**Plan**”). Capitalized terms used but not defined herein shall have the same meaning as in the Plan, including Plan Appendix A (the Uniform Glossary of Defined Terms for Plan Documents).

### **RECITALS:**

**WHEREAS**, on [\_\_\_\_\_, 2010], the Dutch Foundation, the sole incorporator and sole director of which is Remco de Jong, incorporated (or caused to be incorporated), and was issued 100% of the outstanding shares of, Equityco (which totaled 4,500,000 Equityco Shares, each with a nominal amount of EUR0.01, the “**Dutch Foundation Equityco Shares**”), which in turn incorporated Holdco, as a wholly-owned subsidiary of

Equityco, which in turn incorporated Holdco 2, as a wholly-owned subsidiary of Holdco (Equityco being a public limited liability company and Holdco and Holdco 2 both being private companies with limited liability, all incorporated under the laws of the Netherlands);

**WHEREAS**, on the Confirmation Date, the Dutch Foundation and its sole director will enter into a direction agreement with Almatris B.V. (the “**Equityco Direction Agreement**”) pursuant to which the Dutch Foundation will agree to adopt the requisite resolutions to permit and direct Equityco (i) to amend the Articles of Association of Equityco, Holdco and Holdco 2 to make them consistent with the New Articles of Association of Equityco, Holdco and Holdco 2, (ii) to sign the Shareholder Agreement, (iii) to cause Holdco to execute the Non-Restructured Lender Claim Assignment Agreement (as defined below) and take such actions as are contemplated therein, (iv) to authorize and determine the potential maximum number of Equityco Shares to be issued (which shall initially not be outstanding but shall be reserved), including those to be issued by Dutch law notarial deeds and by making the applicable notation on the Share Register of Equityco to the Holders of Allowed Claims that are entitled to such distributions) in accordance with the Final Plan Documents (as defined below), (v) to sign the Call Option Agreement, which shall be effective from the Effective Date until the Forfeiture Date (as defined below) and, upon exercise of the call options set forth therein, shall require Equityco to issue, by Dutch law notarial deed and by making the applicable notation on the Share Register of Equityco, the respective number of Equityco Shares in accordance with the terms of the Call Option Agreement directly to the Holders of Allowed Claims<sup>1</sup> that are entitled to such distribution in accordance with the Final Plan Documents, subject to the satisfaction of the Class 2 Option A Distribution Procedures and Class 2 Option B Distribution Procedures (the “**Distribution Procedures**”), as applicable, set forth in the Final Plan Documents, and subject to

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<sup>1</sup> For the purposes of this Agreement, reference to Holders of Allowed Claims includes such Holders’ nominees, if and as applicable.

the other conditions set forth in this Agreement, (vi) subject to the satisfaction of the relevant Distribution Procedures, to sign the Equityco Class 3 Warrant Agreement and Equityco Class 4 Warrant Agreement and deliver to the relevant Holders of Class 3 Claims and Class 4 Claims, Equityco Class 3 Warrants and Equityco Class 4 Warrants, respectively, thereunder, (vii) after call options have been exercised under the Call Option Agreement such that Equityco has issued to the Holders of Allowed Claims that are entitled to such distributions in accordance with the Final Plan Documents, by Dutch law notarial deed and by making the applicable notation on the Share Register of Equityco, Equityco Shares in the aggregate nominal amount of EUR 45,000 in accordance with the terms of this Agreement, to cancel the Dutch Foundation Equityco Shares against repayment of their nominal value in accordance with the terms of this Agreement and (viii) on the Forfeiture Date with respect to Equityco Shares reserved on account of Holders of Allowed Claims that constitute Non-Restructured Lender Claims that are entitled to such distribution in accordance with the Final Plan Documents and that have not satisfied the applicable Distribution Procedures and that therefore (a) are not issued pursuant to the Call Option Agreement, which terminates as of the Forfeiture Date [or (b) are associated with an Equityco Warrant that has not been issued or delivered by the Forfeiture Date and therefore constitutes Unclaimed Property, if any], in each case in accordance with the terms of this Agreement (the “**Forfeited Equityco Shares**”), to deliver, for no additional consideration, the Forfeited Equityco Shares to the Dutch Foundation by Dutch law notarial deed and by making the applicable notation on the Share Register of Equityco and, immediately following such delivery, to cancel the Forfeited Equityco Shares. Also pursuant to the Equityco Direction Agreement, the parties thereto will agree that (i) if no Forfeited Equityco Shares exist on the Forfeiture Date, the Dutch Foundation will be liquidated promptly after the Forfeiture Date and (ii) if Forfeited Equityco Shares are delivered to the Dutch Foundation on the Forfeiture Date, the Dutch Foundation will be liquidated promptly after all Forfeited Equityco Shares have been cancelled in accordance with the Equityco Direction Agreement and this Agreement;

**WHEREAS**, Article VIII of the Plan specifies that Holders of Allowed Senior Lender Claims, Allowed Second Lien Claims and Allowed Mezzanine Claims in Classes 2, 3 and 4, respectively, will receive from a disbursing agent and other parties Distributions in exchange for their Allowed Claims against the Debtors;

**WHEREAS**, the Debtors and New Tower Companies wish to retain the Disbursing Agent, and the Disbursing Agent has agreed to act as the disbursing agent under the Final Plan Documents and take such actions, including making Distributions of Cash to the relevant Holders of Allowed Senior Lender Claims (or as such Holders shall direct) referenced in this Agreement, subject to the Confirmation Order, satisfaction of the relevant Distribution Procedures, and the terms and conditions of this Agreement;

**WHEREAS**, pursuant to the Confirmation Order (together with the Plan Documents, the “***Final Plan Documents***”), on the Effective Date, and on behalf of the Holders of Allowed Claims in Classes 2, 3 and 4, the Disbursing Agent shall assign certain Non-Restructured Lender Claims to Holdco set forth in the Implementation Memorandum and the Disbursing Agent and Holdco shall be authorized to execute an assignment agreement substantially in the form attached hereto as Exhibit A (the “***Non-Restructured Lender Claim Assignment Agreement***”) to document such assignment;

**WHEREAS**, pursuant to the Final Plan Documents, on the Effective Date, the Debtors will transfer Cash to the Disbursing Agent in an amount sufficient to pay the Option A Cash Consideration to be held in escrow pending distribution by the Disbursing Agent to the Holders of Allowed Senior Lender Claims that have not made the Senior Lender Election and are entitled to such Consideration in accordance with the Final Plan Documents, or such other party as any such Holder shall direct, subject to the satisfaction of the Class 2 Option A Distribution Procedures set forth in the Final Plan Documents and the other conditions set forth in Section 1.7(g) of this Agreement;

**WHEREAS**, on the Effective Date and immediately following execution of the Non-Restructured Lender Claim Assignment Agreement, an external Dutch accountant will issue

a certificate to Equityco stating that the value of the Non-Restructured Lender Claims so assigned equals at least the aggregate nominal amount of the potential maximum number of Equityco Shares to be issued to the Holders of Allowed Claims that are entitled to such distributions in accordance with the Final Plan Documents and this Agreement, which certificate shall be based on a description of the Non-Restructured Lender Claims to be assigned pursuant to the Non-Restructured Lender Claim Assignment Agreement, which constitute the capital contribution made pursuant to the Non-Restructured Lender Claim Assignment Agreement, prepared by the management board of Equityco;

**WHEREAS**, on and after the Effective Date, at such times as the Holders of Allowed Claims in Classes 2(a)-(k) comply with the relevant Distribution Procedures set forth in the Final Plan Documents and the other conditions set forth herein, (1) the Disbursing Agent will make Distributions of Cash (being the Option A Cash Consideration) to (or as directed by) such Holders in the amounts and form specified in the Final Plan Documents and this Agreement and on the basis of elections made by such Holders, to the extent relevant, (2) the Disbursing Agent will exercise the call options set forth in the Call Option Agreement which will require Equityco to issue Equityco Shares to Holders entitled to receive such Equityco Shares in accordance with the Final Plan Documents and (3) the Debtors will notify the New Senior Facility Agent under the New SFA and the New Junior Facility Agent under the New Subordinated Agreement, as the case may be, that the Distribution Procedures have been satisfied, whereupon, in connection with the Final Plan Documents, the New Senior Facility Agent and the New Junior Facility Agent (as appropriate) will countersign the relevant Accession Letter (as defined below) entitling them to receive the debt stated therein in accordance with the Final Plan Documents, the New SFA and the New Subordinated Agreement, as applicable;

**WHEREAS**, after call options have been exercised under the Call Option Agreement such that Equityco has issued to the Holders of Allowed Senior Lender Claims entitled to receive such distributions in accordance with the Final Plan Documents and this Agreement, by Dutch law notarial deed and by making the applicable notation on the Share

Register of Equityco, Equityco Shares in the aggregate nominal amount of EUR 45,000, all Dutch Foundation Equityco Shares shall be cancelled by Equityco against repayment of their nominal value; and

**WHEREAS**, pursuant to this Agreement, the Disbursing Agent, the Debtors, the New Tower Companies and the Dutch Foundation desire to set forth the terms and conditions pursuant to which the Disbursing Agent will perform its obligations.

#### **AGREEMENT:**

**NOW, THEREFORE**, in consideration of the foregoing recitals and the agreements herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

#### **I. ENGAGEMENT, ASSIGNMENT OF CLAIMS AND DISTRIBUTIONS**

**Section 1.1 Engagement of the Disbursing Agent.** The Debtors and the New Tower Companies hereby engage the Disbursing Agent and appoint the Disbursing Agent as the disbursing agent under the Final Plan Documents to make the assignments, make the Cash Distributions and otherwise perform the other tasks described in this Agreement and the Final Plan Documents. The Disbursing Agent is willing and does hereby accept the appointment to serve as disbursing agent, pursuant to the terms of this Agreement, including satisfaction or waiver of the conditions set forth in Article II of this Agreement, and the Final Plan Documents. The Disbursing Agent may execute its rights, powers and responsibilities hereunder directly or the Disbursing Agent may engage the services of and delegate its powers to such employees, agents, attorneys, accountants, consultants and other persons upon such terms or conditions as it may deem necessary or advisable to carry out the purposes of this Agreement and the Final Plan Documents.

**Section 1.2 Claims List.** As of the close of business on the Distribution Record Date or as soon as reasonably practicable thereafter but in any event no later than three (3) Business Days after the Distribution Record Date, the Debtors will cause the Facility Agent

under the Senior Credit Agreement (the “**Senior Facility Agent**”) and the Facility Agent under the Mezzanine Credit Agreement (the “**Mezz Facility Agent**”) to deliver to the Disbursing Agent and Almatris B.V. lists (in the format agreed between the Disbursing Agent and the Senior Facility Agent and/or Mezz Facility Agent, as applicable), which shall include the following information for each Holder of a Senior Lender Claim, a Second Lien Claim and a Mezzanine Claim (as appropriate and to the extent held by the Senior Facility Agent and/or the Mezz Facility Agent (as applicable)) as of the Distribution Record Date: (i) name and contact address, [(ii) tax identification number,] and (iii) aggregate principal amount of Claims outstanding for each of Classes 2(a)-(k), 3(a)-(k) and 4(a)-(k), and promptly following receipt thereof but in any event no later than three (3) Business Days after receipt, the Debtors will deliver to the Senior Facility Agent, the Mezz Facility Agent and the Disbursing Agent (with copies to the New Senior Agent and New Junior Facility Agent) an update of such lists to indicate the amount of such outstanding Senior Lender Claims, Second Lien Claims and Mezzanine Claims set forth in clause (iii) that constitute Allowed Claims that are Non-Restructured Lender Claims and the aggregate amount of Claims set forth in clause (iv) that are Non-Restructured Lender Claims, certified by the Debtors (collectively, the “**Claims List**”). Notwithstanding anything in this Agreement or the Final Plan Documents, the Disbursing Agent shall be entitled to rely upon the Claims List as the definitive list of Holders of Senior Lender Claims, Second Lien Claims, and Mezzanine Claims as of the Distribution Record Date in making the Cash Distributions and otherwise acting or refraining from acting under this Agreement without any obligation to make any independent investigation as to the accuracy or reliability of such Claims List. In accordance with Section 8.16 of the Plan, a Claim shall be reduced and disallowed to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or the Disbursing Agent. [In such a case, other than in connection with an assignment or other transfer of a Claim, the Debtors will cause the Senior Facility Agent and the Mezz Facility Agent to deliver to the Disbursing Agent an amended and restated Claims List to reflect reduction and disallowance of such Holder’s Allowed Claim.] In accordance with the Final Plan

Documents, with respect to an assignment or other transfer of a Claim prior to the Distribution Record Date, the assignor and assignee of such Claim shall be responsible for notifying the Debtors and Disbursing Agent of any such assignment or other transfer prior to the Distribution Record Date and the Disbursing Agent shall be authorized and directed to update the Claims List upon receipt of notification signed by both the assignor and assignee of such Claim. The Disbursing Agent shall be entitled to act or refrain from acting under this Agreement in accordance with such notification without any obligation to make any independent investigation as to the accuracy or reliability of such notification.

**Section 1.3 Senior Option List.** As of the close of business on the Distribution Record Date or as soon as reasonably practicable thereafter but in any event no later than three (3) Business Days after the Distribution Record Date, the Debtors will deliver to the Disbursing Agent lists (in computer readable format or otherwise as the Disbursing Agent shall reasonably specify), which shall be certified by the Debtors and shall indicate, as to each Holder of an Allowed Senior Lender Claim, whether such Holder is entitled to receive Option A Consideration or Option B Consideration and the portion of such Allowed Senior Lender Claim that constitutes a Non-Restructured Lender Claim (collectively, the “*Senior Option List*”). Upon the assignment or other transfer of a Claim prior to the Distribution Record Date, the Disbursing Agent shall be authorized and directed to update the Senior Option List upon receipt of notification signed by both the assignor and the assignee of such Claim. Notwithstanding anything in this Agreement or the Final Plan Documents to the contrary, the Disbursing Agent shall be entitled to rely upon the Senior Option List in making the Cash Distributions and otherwise acting or refraining from acting under this Agreement without any obligation to make any independent investigation as to the accuracy or reliability of the Senior Option List.

**Section 1.4 Amendment and Restatement of Organizational Documents; Entry into Call Option Agreement; Cancellation of Dutch Foundation Equityco Shares.** On [\_\_\_\_\_], 2010, the Dutch Foundation incorporated (or caused to be incorporated) Equityco and was issued the Dutch Foundation Equityco Shares and caused Equityco to

incorporate Holdco as a wholly-owned subsidiary of Equityco, which in turn incorporated Holdco 2 as a wholly-owned subsidiary of Holdco. Pursuant to the Equityco Direction Agreement, on the Confirmation Date, the Dutch Foundation will adopt the requisite resolutions permitting and directing Equityco to (i) amend the Articles of Association of Equityco, Holdco and Holdco 2 to make them consistent with the New Articles of Association of Equityco, Holdco and Holdco 2, which are attached hereto as Exhibit B, Exhibit C and Exhibit D, respectively, (ii) sign the Shareholder Agreement, which shall be substantially in the form attached hereto as Exhibit E, (iii) cause Holdco to execute the Non-Restructured Lender Claim Assignment Agreement and take such actions as are contemplated therein, (iv) authorize and determine the potential maximum number of Equityco Shares to be issued (which shall initially not be outstanding but shall be reserved), including those to be issued by Dutch law notarial deeds and by making the applicable notation on the Share Register of Equityco to the Holders of Allowed Senior Lender Claims that are entitled to such distribution in accordance with the Final Plan Documents and this Agreement, or to their nominees, as appropriate, (v) sign the Call Option Agreement, which shall be substantially in the form attached hereto as Exhibit F and which shall be effective from the Effective Date until the Forfeiture Date, and, upon exercise of the call options set forth therein, shall require Equityco to issue the relevant number of Equityco Shares, by Dutch law notarial deed and by making the applicable notation on the Share Register of Equityco, in accordance with the terms thereof directly to the Holders of Allowed Claims that are entitled to such distribution in accordance with the Final Plan Documents, subject to the satisfaction of the relevant Distribution Procedures and the other conditions set forth in this Agreement, (vi) subject to the satisfaction of the relevant Distribution Procedures, sign the Equityco Class 3 Warrant Agreement and Equityco Class 4 Warrant Agreement and deliver, to the relevant Holders of Class 3 Claims and Class 4 Claims, Equityco Class 3 Warrants and Equityco Class 4 Warrants, respectively, thereunder, (vii) after call options have been exercised under the Call Option Agreement such that Equityco has issued to the Holders of Allowed Claims entitled to receive such distribution in accordance with the Final Plan Documents and this

Agreement, by Dutch law notarial deed and by making the applicable notation on the Share Register of Equityco, Equityco Shares in the aggregate nominal amount of EUR 45,000 in accordance with the terms of this Agreement and the Call Option Agreement, cancel the Dutch Foundation Equityco Shares against repayment of their nominal value in accordance with the terms of this Agreement and (viii) on the Forfeiture Date, with respect to the Forfeited Equityco Shares, deliver, for no additional consideration, the Forfeited Equityco Shares to the Dutch Foundation by Dutch law notarial deed and by making the applicable notation on the Share Register of Equityco and Equityco shall, immediately following such delivery, cancel the Forfeited Equityco Shares. For the avoidance of doubt, Equityco shall neither issue nor deliver physical share certificates; rather Equityco shall make a notation on its Share Register of Equityco recording and evidencing the issuance and delivery of Equityco Shares to any Holder of an Allowed Claim.

The Call Option Agreement will set forth the potential maximum number of Equityco Shares that may be issued by Equityco to Holders of Allowed Claims in Class 2 that are Non-Restructured Lender Claims. The Call Option Agreement shall provide that upon the satisfaction of the relevant Distribution Procedures and terms of this Agreement by a Holder of an Allowed Senior Lender Claim entitled to receive Equityco Shares thereunder, and in accordance with the Final Plan Documents, the Disbursing Agent shall be authorized and directed to promptly exercise call options set forth in the Call Option Agreement with respect to the number of Equityco Shares that such Holder is entitled to receive and, upon exercise of such call options, Equityco shall cause the execution of the Dutch law notarial deed, make the applicable notation on the Share Register of Equityco to evidence the ownership by the Holder or its nominee, as applicable, of the relevant number of Equityco Shares and notify the Disbursing Agent and the relevant Complying Holder (as defined below) that it has made such placement and notation. After call options have been exercised under the Call Option Agreement such that Equityco has issued to the relevant Holders of Allowed Senior Lender Claims Equityco Shares in the aggregate nominal amount of EUR 45,000, all Dutch Foundation Equityco Shares shall be

cancelled by Equityco against repayment of their nominal value. The Call Option Agreement shall terminate as of the Forfeiture Date.

As of the Effective Date, pursuant to the Equityco Direction Agreement and the transactions contemplated thereby, (1) the corporate governance and equity structure of Equityco, Holdco and Holdco 2 shall be as set forth in the New Articles of Association of each entity and the Shareholders Agreement, (2) the Equityco Shares shall be subject to the provisions of the Shareholder Agreement and (3) the Disbursing Agent shall have the exclusive authority to exercise call options under the Call Option Agreement that require the placing of Equityco Shares with the Holders of Allowed Claims in Class 2 that constitute Non-Restructured Lender Claims, to the extent provided in the Final Plan Documents and this Agreement, and to take the other actions described in this Agreement, following the exercise of each such call option, and Equityco shall have the obligation to issue such Equityco Shares to the relevant Holders or their nominees, as applicable, by Dutch law notarial deed and by making the applicable notation on the Share Register of Equityco.

**Section 1.5 Establishment of an Escrow Account; the Consideration.**

(a) The Disbursing Agent will promptly, and in any case on or before the Effective Date, cause to be opened a fully segregated escrow account, which escrow account shall be entitled [ ] (the “*Escrow Account*”) for the purpose of holding in escrow the Option A Cash Consideration for the Holders of Allowed Senior Lender Claims entitled to such Option A Cash Consideration in accordance with the Final Plan Documents and the terms and conditions of this Agreement.

(b) Deposits. Wire transfers to the Escrow Account shall be made in federal funds transferred as follows:

[Disbursing Agent]  
ABA No. [ ]  
ATTN: [ ]  
ACCOUNT NO. [ ]  
RE: [ ]

(c) Consideration. In accordance with the Final Plan Documents, on the Effective Date, the Debtors shall deposit into the Escrow Account the Option A Cash Consideration. The Option A Cash Consideration, the Equityco Shares, the rights pursuant to the Equityco Class 3 Warrant Agreement and the Equityco Class 4 Warrant Agreement, as listed on Schedule 2 hereto and the New Senior Debt and New Junior Debt listed on Schedule 3 shall sometimes collectively be referred to herein as the “**Consideration.**” The Cash Consideration shall be held in the Escrow Account pending distribution, but shall not be invested by the Disbursing Agent. Withdrawals from the Escrow Account can only be made by the Disbursing Agent, and only to pay the Option A Consideration to Holders of Allowed Senior Lender Claims entitled to such Option A Consideration under the Final Plan Documents.

(d) No Interest in the Escrow Account. The Disbursing Agent does not have any interest in either the Option A Cash Consideration or the Non-Restructured Lender Claims assigned to the Disbursing Agent under the Final Plan Documents and deposited in the Escrow Account, but is serving as escrow holder only and having only possession thereof.

**Section 1.6 Assignment of Non-Restructured Lender Claims.** On the Effective Date, the Disbursing Agent, acting on behalf of the Holders of the Senior Lender Claims, Second Lien Claims, and Mezzanine Claims that are Non-Restructured Lender Claims, shall assign and transfer certain of the Non-Restructured Lender Claims to Holdco (as provided in the Confirmation Order and in the Non-Restructured Lender Claim Assignment Agreement), in exchange for receipt from the relevant Reorganized Debtors and Equityco, as the case may be, of the Option A Cash Consideration, the Equityco Shares the Equityco Class 3 Warrants, the Equityco Class 4 Warrants, the New Senior Debt and the New Junior Debt, in each case to be delivered or distributed to such Holders in accordance with the terms of this Agreement, the New SFA, the New Subordinated Agreement, the Call Option Agreement, the Escrow Agreement and the Final Plan Documents, as applicable.

**Section 1.7 Letter of Transmittal.** As soon as practicable but in any event within three (3) Business Days after receipt by the Disbursing Agent of the Claims List pursuant

to Section 1.2 and the Senior Option List pursuant to Section 1.3, the Disbursing Agent shall send a letter of transmittal substantially in the form attached hereto as Exhibit G (a “**Letter of Transmittal**”) to each Holder of an Allowed Senior Lender Claim, an Allowed Second Lien Claim and an Allowed Mezzanine Claim in each case that constitute Non-Restructured Lender Claims listed on the Claims List. The Letter of Transmittal shall instruct each such Holder to furnish the information requested in the Letter of Transmittal and then return an executed original of the Letter of Transmittal to the Reorganized Debtors, along with executed originals of the supporting documentation listed in the Letter of Transmittal and required to fulfill the relevant Distribution Procedures specified in the Final Plan Documents (the “**Supporting Documentation**”) and to furnish a copy of the Letter of Transmittal and Supporting Documentation to the Disbursing Agent. The Supporting Documentation shall be limited to the following, as applicable:

- a. In the case of a Holder of Senior Lender Claims receiving Option A Consideration:
  - i. a ratification letter, ratifying all acts performed by the Disbursing Agent on behalf of such Holder, substantially in the form attached hereto as Exhibit H (the “**Disbursing Agent Ratification Letter**”);
  - ii. a power of attorney, substantially in the form attached hereto as Exhibit I, (a “**Power of Attorney**”) authorizing the Dutch Representative to execute on behalf of such Holder a Dutch law notarial deed of issuance of shares, substantially in the form attached hereto as Exhibit J, between the Holder and Equityco, pursuant to which the Holder will be issued the Equityco Shares accruing to such Holder under the Plan (a “**Class 2 Equityco Shares Notarial Deed**”);
  - iii. a confirmation statement issued by a lawyer admitted to practice under the laws of the jurisdiction governing the Holder, which may include in-house counsel, confirming the existence and authority of the Holder, substantially in the form attached hereto as Exhibit Q (a “**Confirmation Statement**”);

- iv. a deed of adherence binding such Holder to the provisions of the Shareholder Agreement, which deed shall be substantially in the form attached hereto as Exhibit K (a “**Deed of Adherence**”);
  - v. an accession letter binding such Holder to the provisions of the New SFA, the New ICA, and [other finance documents], which accession letter shall be substantially in the form attached hereto as Exhibit L (the “**Senior Accession Letter**”);
  - vi. such information and documentation as the Debtors and the Disbursing Agent may reasonably require to ensure compliance with applicable withholding and reporting requirements, including delivery of the applicable Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9, as applicable (collectively, the “**Tax Information**”); and
  - vii. any other item reasonably requested by the Debtors or the Disbursing Agent.
- b. In the case of a Holder of An Allowed Senior Claim receiving Option B Consideration:
- i. the Disbursing Agent Ratification Letter;
  - ii. a Power of Attorney authorizing the Dutch Representative to execute on behalf of such Holder a Class 2 Equityco Shares Notarial Deed;
  - iii. a Confirmation Statement;
  - iv. a Deed of Adherence;
  - v. an accession letter binding such Holder to the provisions of the New Subordinated Agreement, the New ICA, and the other finance documents related thereto, which accession letter shall be substantially in the form attached hereto as Exhibit M (the “**Junior Accession Letter**” and, together with the Senior Accession Letter, the “**Accession Letters**”);
  - vi. the Tax Information; and

- vii. any other item reasonably requested by the Debtors or the Disbursing Agent.
- c. In the case of a Holder of any Class 3 Claims:
  - i. the Disbursing Agent Ratification Letter;
  - ii. a warrant agreement between Equityco and the Holder with respect to the Equityco Class 3 Warrants, substantially in the form attached hereto as Exhibit N (an “***Equityco Class 3 Warrant Agreement***”);
  - iii. the Tax Information; and
  - iv. any other item reasonably requested by the Debtors or the Disbursing Agent.
- d. In the case of a Holder of any Class 4 Claims:
  - i. the Disbursing Agent Ratification Letter;
  - ii. a warrant agreement between Equityco and the Holder with respect to the Equityco Class 4 Warrants, substantially in the form attached hereto as Exhibit O (an “***Equityco Class 4 Warrant Agreement***”);
  - iii. the Tax Information; and
  - iv. any other item reasonably requested by the Debtors or the Disbursing Agent.

Upon receipt of a duly executed Letter of Transmittal and Supporting Documentation from any Holder, the Debtors and their advisors shall review the submitted documents in order to determine if the Holder has properly completed such documents and satisfied the relevant Distribution Procedures. The Debtors and their advisors shall promptly, and in any event within three (3) Business Days after receipt of the executed Letter of Transmittal and Supporting Documentation from any Holder determine whether or not such

Holder has properly completed such documents and satisfied the relevant Distribution Procedures. If the Debtors and their advisors determine that such Holder has satisfied all relevant requirements then the Debtors shall deem such Holder to be a “**Complying Holder**” and the Debtors shall promptly, but in no event later than two (2) Business Days after making such determination, provide the Disbursing Agent and such Holder with written notice of this fact. If the Debtors determine that a Holder is not a Complying Holder, the Debtors shall promptly, but in no event later than two (2) Business Days after making such determination, return to such Holder the Letter of Transmittal and the Supporting Documentation, along with a letter explaining the deficiencies in the Letter of Transmittal and/or the Supporting Documentation. If any Holder fails to deliver or redeliver to the Debtors a complying Letter of Transmittal or complying Supporting Documentation, as relevant, before the date that is one (1) year from the Effective Date (the “**Forfeiture Date**”), then the Holder shall be deemed to have failed to have met the requirements for an assignment or distribution from the Disbursing Agent pursuant to this Agreement and the Final Plan Documents and the provisions of Section 1.11 of this Agreement shall apply in respect of the Consideration that would otherwise have been received by such Holders; provided, however, that with respect to an error or deficiency in the Tax Information, the Debtors must make at least three (3) attempts to obtain such Tax Information and if, notwithstanding such commercially reasonable efforts, the Debtors are unable to obtain such Tax Information, Distributions to which such Holder would be otherwise entitled under the Plan will be treated as Unclaimed Property on the Forfeiture Date in accordance with Section 1.11 of this Agreement.

**Section 1.8 Endorsements.** If the Letter of Transmittal or any Supporting Documentation is executed or endorsed on behalf of a Holder by an attorney, executor, administrator, guardian or other fiduciary, or by an officer of a corporation or other entity, the Person executing the endorsement must give his or her full title in such capacity.

**Section 1.9 Tax Matters.** The Disbursing Agent shall comply with any information and other reporting obligations imposed by the Internal Revenue Service and any

other federal, state, local or foreign tax authority. The Disbursing Agent shall, to the extent required by applicable law, withhold amounts from Cash Distributions paid to Holders based on the Tax Information provided by each Holder under Section 1.7 of this Agreement.

**Section 1.10 Distributions to Holders.** As promptly as practicable and in any event within two (2) Business Days after the Disbursing Agent receives written notice from the Debtors that a Holder is a Complying Holder, (i) on the Effective Date for a Holder that is a Complying Holder at least two (2) Business Days prior to the Effective Date and (ii) after the Effective Date for a Holder that is not a Complying Holder at least two (2) Business Days prior to the Effective Date, (1) the Debtors shall, with respect to Complying Holders in Class 2, issue a notice to the New Senior Facility Agent or the New Junior Facility Agent, as applicable, informing it that such Holder is a Complying Holder and has satisfied the relevant Distribution Procedures whereupon, in connection with the Final Plan Documents the New SFA and the New Subordinated Agreement, as applicable, the New Senior Facility Agent or the New Junior Facility Agent, as applicable, will countersign the relevant Accession Letter delivered by the Complying Holder and insert the name of such Complying Holder in the New SFA or New Subordinated Agreement, as appropriate, (2) the Disbursing Agent shall take such actions as are required to make the Cash Distributions to Complying Holders as set forth below, (3) Equityco shall execute the Equityco Class 3 Warrant Agreement and Equityco Class 4 Warrant Agreement and issue Equityco Class 3 Warrants and Equityco Class 4 Warrants to Complying Holders as set forth below, and (4) the Disbursing Agent shall exercise the call options set forth in the Call Option Agreement and, pursuant to the exercise of such call options, Equityco shall issue Equityco Shares to Complying Holders as set forth below.

**A. Class 2 Option A Consideration.** Each Complying Holder of an Allowed Senior Lender Claim that does not make the Senior Lender Election shall, as specified in Section 4.2.2 of the Plan, receive the benefits of Section 4.2.4 of the Plan and the Option A Consideration which, as specified in the Plan, shall consist of (i) New Senior Debt in a nominal amount equal to 80% of the

principal amount of such Holder's Senior Lender Claim (the amount of which New Senior Debt, to the extent issued in Euros, shall be calculated using the Exchange Rate (as defined below)), plus (ii) the Option A Cash Consideration plus (iii) the principal amount of such Holder's Senior Lender Claim multiplied by US\$0.01, which shall be applied towards a subscription of Equityco Shares at par, which Equityco Shares have a nominal value of EUR0.01 (which subscription shall be effectuated by having the Disbursing Agent exercise call options under the Call Option Agreement, thereby obligating Equityco to issue Equityco Shares to such Holder by Dutch law notarial deed and by making the applicable notation on the Share Register of Equityco to reflect the purchase). The exchange rate used to determine the number of Equityco Shares to be delivered to such a Complying Holder shall be the U.S. dollar to Euro exchange rate of [\_\_\_\_\_] <sup>2</sup> (the "*Exchange Rate*"). For any amount remaining after such conversion that is less than EUR0.01, no Equityco Shares shall be delivered.

**B. Class 2 Option B Consideration.** Each Complying Holder of an Allowed Senior Lender Claim that makes the Senior Lender Election shall, as specified in Section 4.2.3 of the Plan, receive the benefits of Section 4.2.4 of the Plan and the Option B Consideration which, as specified in the Plan, shall consist of (i) New Junior Debt in a nominal amount equal to 45% of the principal amount of such Holder's Senior Lender Claim (the amount of which New Junior Debt, to the extent issued in Euros, shall be calculated using the Exchange Rate), plus (ii) an amount equal to the principal amount of such

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<sup>2</sup> NTD: Confirm the Petition Date exchange rate to be used.

Holder's Senior Lender Claim multiplied by US\$0.075, which shall be applied towards a subscription of Equityco Shares at par, which Equityco Shares have a nominal value of EUR0.01 (which subscription shall be effectuated by having the Disbursing Agent exercise call options, thereby obligating Equityco to issue Equityco Shares to such Holder by Dutch law notarial deed and by making the applicable notation on the Share Register of Equityco to reflect the purchase). The Exchange Rate shall be used to determine the number of Equityco Shares to be issued to such a Holder. For any amount remaining after such conversion that is less than EUR0.01, no Equityco Shares shall be issued. The Equityco Shares issued to each Complying Holder of a Senior Lender Claim who makes the Senior Lender Election and receives Option B Consideration shall be stapled to the New Junior Debt, which will be reflected in the Shareholders Agreement and/or noted on the Share Register of Equityco.

**C. Class 3 Second Lien Claims.** Each Complying Holder of an Allowed Second Lien Claim shall receive an Equityco Class 3 Warrant representing its Pro Rata Share of the Equityco Class 3 Warrants, as set forth in the Equityco Class 3 Warrant Agreement.

**D. Class 4 Mezzanine Claims.** Each Complying Holder of a Class 4 Allowed Mezzanine Claim shall receive an Equityco Class 4 Warrant representing its Pro Rata Share of the Equityco Class 4 Warrants, as set forth in the Equityco Class 4 Warrant Agreement.

The Distributions pursuant to this Section 1.10 shall be calculated based solely upon the principal amount of the Claims held by a Holder. Notwithstanding anything herein or in the Final Plan Documents to the contrary, the Disbursing Agent shall not be required to make any Cash payment less than twenty-five dollars (\$25.00) to any Holder unless a request thereof is made in writing to the Debtors or Disbursing Agent, as applicable.

If the Distribution to any Holder of an Allowed Claim set forth on the Claims List is returned as undeliverable, the Debtors shall use commercially reasonable efforts to determine the current address of such Holder and provide such information to the Disbursing Agent. The Disbursing Agent shall make additional attempts to deliver such Distribution in accordance with any new contact details provided by the Debtors. If, notwithstanding such commercially reasonable efforts, the Debtors are unable to determine the correct contact details or the Distribution is otherwise returned as undeliverable, such Distribution will be treated as Unclaimed Property on the Forfeiture Date in accordance with Section 1.11 of this Agreement.

Notwithstanding anything in this Agreement, including this Section 1.10, or the Final Plan Documents to the contrary, with respect to any Holder of an Allowed Senior Lender Claim that constitutes a Non-Restructured Lender Claim set forth on the Claims List that receives the Option A Consideration that is a “Fund” (as defined in the Senior Credit Agreement), such Holder may elect to have any Option A Cash Consideration that would otherwise be payable to it instead transferred to an escrow account with an escrow agent to be held in escrow in the name of and in trust for and on behalf of such Holder and such transfer shall satisfy any obligation on the part of the Debtors and the Disbursing Agent to pay that Option A Cash Consideration to such Holder. Any amount of such Option A Cash Consideration held by an escrow agent with respect to such escrow account may, at the written request of such Holder, be withdrawn at any time. Without limiting the right of such Holder to apply any withdrawal from such escrow account in any manner and for any purpose such Holder sees fit, any withdrawal from such escrow account may be applied (at the sole discretion of that Holder) towards any subscription for (i) equity in Equityco, (ii) any Junior Instrument (as defined in [\_\_\_\_\_] <sup>3</sup>) or (iii) any rights to subscribe for or convert any instrument into equity in

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<sup>3</sup> NTD: Where is this expected to be defined?

Equityco or a Junior Instrument after the Effective Date. [The Disbursing Agent agrees, subject to entering into one or more separate escrow agreements in form and substance satisfactory to the Disbursing Agent, to act in a capacity of “escrow agent” thereunder on behalf of any such Holder and any fees or expenses accrued pursuant to such arrangement will be the responsibility of such Holder.]

**Section 1.11 Unclaimed Property; Liquidation of Dutch Foundation.** If the Disbursing Agent is holding unclaimed Cash Consideration on the Forfeiture Date, the Disbursing Agent shall remit any such unclaimed Cash to Almatris B.V., and such Cash shall be used to pay down outstanding amounts under the New SFA. With respect to Unclaimed Property relating to a Holder of a Class 2 Claim, the Disbursing Agent will notify the New Senior Facility Agent and the New Junior Facility Agent, as applicable, of any Holder that is not a Complying Holder as of the Forfeiture Date and the New Senior Facility Agent and the New Junior Facility Agent, as applicable, will have no obligation to sign the relevant Accession Letter and enter the name of the Holding into the register of Lenders on behalf of such Holder. The Disbursing Agent will notify Equityco of any Unclaimed Property relating to any Holder of an Allowed Claim that constitutes a Non-Restructured Lender Claim and, (i) in accordance with the terms of the Equityco Direction Agreement, on the Forfeiture Date Equityco will deliver, for no additional consideration, the Forfeited Equityco Shares to the Dutch Foundation by Dutch law notarial deed and by making the applicable notation on the Share Register of Equityco and shall, immediately following such delivery, cancel the Forfeited Equityco Shares and (ii) in accordance with the Call Option Agreement, on the Forfeiture Date but prior to the transfer of the Forfeited Equityco Shares, the Call Option Agreement shall terminate and the call options associated with any Forfeited Equityco Shares shall be cancelled without any consideration.

After payment of any Cash in accordance with this Section 1.11, the Disbursing Agent shall be released from all obligations to distribute such property hereunder. With respect to the Dutch Foundation, (i) if no Forfeited Equityco Shares exist on the Forfeiture Date, the Dutch Foundation will be liquidated promptly after the Forfeiture Date and (ii) if Forfeited

Equityco Shares are delivered to the Dutch Foundation on the Forfeiture Date, the Dutch Foundation will be liquidated promptly after all Forfeited Equityco Shares have been cancelled in accordance with the Equityco Direction Agreement and this Agreement.

**Section 1.12 Delivery of Lists to Equityco and Debtors.** On a monthly basis up to and including the Termination Date, the Disbursing Agent will deliver to Equityco, the Debtors, and the Facility Agents a list of the Holders that have received Distributions, a description of the Distributions received by such Holders by the Disbursing Agent and an accounting of any remaining Cash held by the Disbursing Agent.

## **II. CONDITIONS AND COMPENSATION**

**Section 2.1 Conditions.** This Agreement is subject to, and shall not be binding on any party hereto until, the satisfaction or waiver of the condition that all of the Disbursing Agent's fees are paid in advance to the Disbursing Agent in accordance with Section 2.2 hereof and/or any order of the Bankruptcy Court. The Disbursing Agent's continuing performance hereunder shall be further conditioned upon the payment when due of the Disbursing Agent's costs and expenses in accordance with Section 2.2 hereof.

**Section 2.2 Compensation.** As consideration for performing its duties as enumerated hereunder, the Disbursing Agent will be paid in accordance with the fee schedule attached hereto as Exhibit P. The Disbursing Agent will also be reimbursed for its reasonable, documented costs and expenses incurred in connection with its duties hereunder (including the reasonable fees and expenses, not to exceed [\$\_\_\_\_\_], of one counsel to the Disbursing Agent). All such fees, costs and expenses, other than those that are prepaid by the Debtors and approved by the Bankruptcy Court, are chargeable to and will be paid by Equityco. All payments of fees and actual, reasonable expenses (including attorneys' fees) are nonrefundable and shall be made in advance. In the event that additional tasks are required to be performed, that are not specifically enumerated hereunder as the Disbursing Agent's responsibility, the Disbursing Agent will not be required to perform such tasks unless the parties hereto agree on an

additional fee for such tasks. The Disbursing Agent shall not be required to perform additional tasks not enumerated hereunder without its express written consent.

### III. LIABILITY

#### Section 3.1 Limitation of Responsibility; Liability for Actions or Omissions.

The Disbursing Agent shall not be required to exercise any discretion or take, or omit to take, any action, except any action it is required to take or omit to take under this Agreement and the other agreements to which it is a party, as set forth in this Agreement. No implied covenants or obligations shall be inferred from this Agreement against the Disbursing Agent, nor shall the Disbursing Agent be bound by the provisions of any agreement among the Debtors or New Tower Companies beyond the specific terms hereof unless specifically referenced and set forth herein. The Disbursing Agent makes no representation as to the validity, value, genuineness or collectability of any security or other document or instrument held by or delivered to it. The Disbursing Agent shall not be called upon to advise any party as to selling or retaining, or taking or refraining from taking any action with respect to, any securities or other property deposited hereunder or delivered or caused to be delivered in accordance with this Agreement. No provision of this Agreement shall require the Disbursing Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

The Disbursing Agent shall not be liable for any action or omission that it or any of its affiliates or any of their respective agents, directors, employees, trustees, representatives, officers, legal, financial and other advisors and other consultants and agents of or to the Disbursing Agent or any of its Affiliates (the “*Related Persons*”) takes or fails to take in good faith in accordance with this Agreement or the Final Plan Documents, except for acts or omissions constituting gross negligence, willful misconduct or fraud. Notwithstanding the foregoing in this Section 3.1, the Disbursing Agent shall not be required to take, or omit to take, any action (i) unless, upon demand, the Disbursing Agent receives an indemnification satisfactory to it from the Debtors and the New Tower Companies (or, to the extent applicable

and acceptable to the Disbursing Agent, any other Person) against all liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Disbursing Agent or any Related Person thereof or (ii) that is, in the opinion of the Disbursing Agent or its counsel or any other experts selected by it, contrary to this Agreement or any applicable requirement of law.

**Section 3.2 Independence of the Disbursing Agent.** The parties hereto hereby acknowledge that the Disbursing Agent shall not serve as a fiduciary nor have any fiduciary obligations or duties under this Agreement and that the Disbursing Agent shall only have such duties and obligations as are specifically set forth in this Agreement or as may otherwise be agreed to in writing by the parties hereto.

**Section 3.3 Indemnification.**

(a) The Debtors and the New Tower Companies, on a joint and several basis, hereby agree to indemnify the Disbursing Agent and each of its Related Persons and, solely with respect to the actions contemplated by this Agreement and without prejudice to any other indemnity provided to such person, the Senior Facility Agent, the Mezz Facility Agent, the New Senior Facility Agent and the New Junior Facility Agent, and each of their respective Related Persons (collectively, the “*Indemnitees*”) from and against all liabilities that may be imposed on, incurred by or asserted against the Indemnitees in any matter relating to or arising out of, in connection with or as a result of this Agreement and any agreement or document specifically contemplated herein, or any other act, event or transaction related, contemplated in or attendant to any such agreement or document, or, in each case, any action taken or omitted to be taken by any of the Indemnitees under or with respect to any of the foregoing; provided, however, that no Debtor or New Tower Company<sup>4</sup> shall be liable to an Indemnatee to the extent such liability has

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<sup>4</sup> NTD: How would the Debtors and New Tower Companies share any liabilities?

resulted primarily from the gross negligence, willful misconduct or fraud of such Indemnatee, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

(b) In case any action, suit or proceeding subject to the indemnity of this Section 3.3 shall be brought against any Indemnatee, such Indemnatee shall promptly notify the Debtors and the New Tower Companies of the commencement thereof.

(c) Equityco shall be entitled, at its expense, acting through counsel acceptable to such Indemnatee, to participate in, and, to the extent that Equityco desires, to assume and control the defense thereof. Such Indemnatee shall be entitled, at its expense, to participate in any action, suit or proceeding the defense of which has been assumed by Equityco. Notwithstanding the foregoing, Equityco shall not be entitled to assume and control the defenses of any such action, suit or proceedings if and to the extent that, in the opinion of such Indemnatee and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability upon such Indemnatee or a potential or actual conflict of interest between such Indemnatee and Equityco, and in such event (other than with respect to disputes between such Indemnatee and another Indemnatee) Equityco shall pay the reasonable expenses of such Indemnatee in such defense; provided that Equityco shall not be required to pay any such expenses of more than one counsel for each Indemnatee.

(d) Equityco shall report to such Indemnatee on the status of such action, suit or proceeding from time to time as requested by such Indemnatee (but not more frequently than every thirty (30) days) and shall deliver to such Indemnatee a copy of each document filed or served on any party in such action, suit or proceeding, and each material document which Equityco possesses relating to such action, suit or proceeding.

(e) Upon payment of any claim by the Debtors or the New Tower Companies pursuant to this Section 3.3, the Debtors and the New Tower Companies, without any further action, shall be subrogated to any and all claims that such Indemnatee may have relating thereto, and such Indemnatee shall cooperate with the Debtors and the New Tower Companies and give

such further assurances as are necessary or advisable to enable the Debtors and the New Tower Companies vigorously to pursue such claims.

(f) Any amounts payable by the Debtors and the New Tower Companies pursuant to this Section 3.3 shall be regularly payable within thirty (30) days after the Debtors and the New Tower Companies receive an invoice for such amounts from any applicable Indemnatee, and if not paid within such thirty (30)-day period then such amount shall bear interest at a rate of interest per annum published in the Wall Street Journal as the “prime rate” as in effect from time to time (such rate to change on the date of any change therein as so published), or if the Wall Street Journal shall cease to publish a “prime rate”, as published in such other nationally available financial publication as the Disbursing Agent shall select (the “***Prime Rate***”) plus three percent (3%).

**Section 3.4 Inconsistent Claims.** In the event that the Disbursing Agent should at any time be confronted with inconsistent claims or demands by any of the parties hereto, the Senior Facility Agent, the Mezz Facility Agent, the New Senior Facility Agent, the New Junior Facility Agent, the Security Trustee or the Holders, or any transferee, assignee, heir, representative or legatee thereof, the Disbursing Agent shall be entitled, at its sole election, to refuse to comply with any such conflicting claims or demands. In so refusing, the Disbursing Agent may elect to make no payment or distribution to the Holder or other party involved, and in so doing the Disbursing Agent shall not be or become liable to any of such parties for its failure or refusal to comply with any of such conflicting claims or demands. The Disbursing Agent shall be entitled to refrain and refuse to act until (i) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court or other court of competent jurisdiction or (ii) all differences have been adjusted by valid written agreement among all of such parties, and the Disbursing Agent shall have been furnished with an executed counterpart of such agreement or (iii) the Disbursing Agent shall have been furnished a surety bond or other security satisfactory to the Disbursing Agent, as it shall deem appropriate to fully indemnify it as between all conflicting claims or demands.

In this regard, the Disbursing Agent shall have the right to interplead said parties in the Bankruptcy Court and deposit the property, if any, which is the subject of that dispute with the Bankruptcy Court pursuant to Bankruptcy Rule 7022, and request that the Bankruptcy Court determine the respective rights of the parties with respect to this Agreement. Upon doing so, the Disbursing Agent automatically shall be released from any and all obligations or liability hereunder with respect to, or as a consequence of, such claims or demands, unless such liability was the result of gross negligence, willful misconduct or fraud of the Disbursing Agent or any of its Related Persons.

**Section 3.5 Reliance.** The Disbursing Agent shall be entitled to rely upon (i) any order, judgment, certification, instruction, notice, opinion or other writing delivered to it in compliance with the provisions of this Agreement, the Claims List and Senior Option List and any other document which it believes in good faith to be genuine without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity of service thereof, (ii) any instrument comporting with the provisions of this Agreement or signature believed by it to be genuine and may assume that any person purporting to give notice or receipt or advice or make any statement or execute any document in connection with the provisions hereof has been duly authorized to do so and (iii) any opinion of counsel or any expert obtained by it in good faith, and may act upon any of the foregoing without liability.

**Section 3.6 No Bond.** The Disbursing Agent need not post any bond for so acting.

#### **IV. GENERAL**

**Section 4.1 Amendments.** No amendment, modification, or waiver of any of the provisions of this Agreement shall be effective unless in writing and signed by the party or parties affected thereby and, if such amendment, modification or waiver of any provisions of this Agreement materially adversely affects the rights of the Senior Lenders, the Requisite Senior Lenders.

**Section 4.2 Assignment.** The Disbursing Agent may not assign its benefits or delegate its duties hereunder without the prior written consent of the parties hereto; provided, however, that if the Disbursing Agent consolidates, merges, or converts into or transfers all or substantially all of its corporate trust business to another entity that (i) is a corporation organized and doing business under the laws of the United States of America or of any state thereof authorized under such laws to exercise corporate trust power; (ii) is subject to supervision or examination by Federal authority and (iii) has a combined capital surplus of at least [\_\_\_\_], no such consent will be necessary for any such successor to act as Disbursing Agent hereunder.

**Section 4.3 Resignation; Removal.** The Disbursing Agent may resign or be removed without cause by all the parties hereto at any time by giving written notice hereof to the other parties. Such resignation or removal shall be effective thirty (30) days after giving such notice, at which time the Disbursing Agent shall deliver to its successor, or as otherwise instructed by all the other parties hereto, all of the Consideration then in its possession. However, in the event the Disbursing Agent is removed without cause or if the Disbursing Agent resigns for cause, it shall not be required to refund all or any portion of its fee or other compensation received by it pursuant to this Agreement. In no event shall the Disbursing Agent be required to refund any funds it receives as reimbursement of actual, reasonable expenses (including reasonable attorneys' fees) pursuant to this Agreement, and the Disbursing Agent's right to be reimbursed for actual, reasonable expenses incurred by it as of the date of its resignation or removal shall not be impaired by the fact of resignation or removal. In the event of the resignation or removal of the Disbursing Agent, its successor shall be chosen by the board of Equityco.

**Section 4.4 Court Supervision.** The Disbursing Agent shall have the right to commence any proceeding in the Bankruptcy Court under the retention of jurisdiction provisions of the Plan or any other court of competent jurisdiction.

**Section 4.5 Counterparts.** This Agreement may be executed in any number of counterparts and/or by a signature transmitted by facsimile or PDF. Each counterpart shall be deemed to be an original agreement, but all counterparts shall constitute one and the same agreement.

**Section 4.6 Entire Agreement.** This Agreement, together with the Final Plan Documents, constitutes the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings, both written and oral, with respect to the subject matter contained herein.

**Section 4.7 Governing Law.** THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED ACCORDING TO, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK AND SUCH FEDERAL LAWS AS MAY APPLY, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICT OF LAWS THEREOF AND TO THE EXTENT, IF ANY, REQUIRED TO SUSTAIN AND ENFORCE THE TERMS AND PROVISIONS HEREOF, SHALL BE GOVERNED BY SECTION 1142(A) OF THE BANKRUPTCY CODE AND THE CONFIRMATION ORDER. TO THE EXTENT THIS AGREEMENT IS INCONSISTENT WITH THE CONFIRMATION ORDER OR THE PLAN, THOSE INSTRUMENTS SHALL GOVERN AND THE PROVISIONS HEREOF SHALL (WITHOUT NEED FOR FORMAL AMENDMENT OR SUPPLEMENT) BE SUBJECT THERETO.

**Section 4.8 Headings.** Article and section headings are used herein only as a matter of convenience, are not part of this Agreement, and shall not have any effect upon the constructions or interpretation hereof.

**Section 4.9 Notices.** All notices or other communications required or permitted to be given hereunder shall be in writing addressed to a party at its address set forth below and shall be considered as properly given (a) if delivered in person; (b) if sent by a nationally recognized overnight delivery service; (c) in the event overnight delivery services are not readily available, if mailed by first class mail, postage prepaid, registered or certified with return receipt

requested; or (d) if sent by facsimile with confirmation of receipt or (e) if sent by electronic transmission solely with respect to those types of communications as the Disbursing Agent shall have designated to the Debtors and the New Tower Companies may be delivered by electronic transmission. Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by facsimile or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Business Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location by giving thirty (30) days' prior written notice of the change to the other parties in the manner set forth hereinabove.

If to the Disbursing Agent:

Copy to:

If to the Debtors:

Copy to:

If to the New Tower Companies:

Copy to:

If to the Dutch Foundation:

Copy to:

If New Senior Facility Agent:

Copy to:

If New Junior Facility Agent:

**Section 4.10 Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability (but shall be construed and given effect to the extent possible), without invalidating the remaining provisions thereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

**Section 4.11 Successors.** This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, provided that this Agreement may not be assigned by any party without the prior written consent of the other parties. Any assignment in contravention of this provision shall be null and void.

**Section 4.12 Termination.** This Agreement shall terminate and the Disbursing Agent shall cease to have any obligations hereunder, and the Disbursing Agent shall be fully and completely released from any obligations or liabilities assumed under this Agreement, on the earlier to occur of (i) the date after the Effective Date on which the Disbursing Agent is holding no Consideration to be distributed hereunder, or (ii) the Forfeiture Date (the “*Termination Date*”). Notwithstanding the foregoing, the provisions of Section 3.1 and the indemnity in Section 3.3 hereof shall survive any such termination.

**Section 4.13 No Third Party Beneficiaries.** Nothing in this Agreement, expressed or implied, shall be construed to confer upon any person (other than the parties hereto and, solely with respect to the indemnification provisions in Section 3.3 the parties entitled to such indemnity) any legal or equitable right, remedy, benefit, interest or claim under or by reason of this Agreement.

**[Signature Page Follows]**

DRAFT DISBURSING AGREEMENT

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this Agreement as of the date first written above.

[SIGNATURE BLOCKS TO BE ADDED]