

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

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In re:

Phoenix Payment Systems, Inc.

Debtor.

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Chapter 11

Case No. 14-11848 (MFW)

**Re: Docket Nos. 469 & 470**

**SUPPLEMENT TO THE JOINT PLAN OF REORGANIZATION OF  
PHOENIX PAYMENT SYSTEMS, INC. PROPOSED BY THE DEBTOR  
AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

**PLEASE TAKE NOTICE THAT** Phoenix Payment Systems, Inc. (the “**Debtor**”) and the Official Committee of Unsecured Creditors appointed in this chapter 11 case (the “**Committee**”), hereby file the plan supplement (the “**Plan Supplement**”), in support of the *Joint Plan of Reorganization of Phoenix Payment Systems, Inc. Proposed by the Debtor and the Official Committee of Unsecured Creditors* [Docket No. 469] (the “**Plan**”),<sup>1</sup> filed in this chapter 11 case on December 23, 2014.

**PLEASE TAKE FURTHER NOTICE** that the Plan Supplement includes the following documents, as may be modified, amended or supplemented from time to time:

- **Exhibit I** – Certificate of Amendment of Certificate of Incorporation of Phoenix Payment Systems, Inc., indicating a change of the Debtor’s name, filed with the Office of the Secretary of State of the State of Delaware on November 3, 2014.
- **Exhibit II** – List of members of the New Board and the officers of the Reorganized Debtor
- **Exhibit III** – New Debtor Governing Documents
  - **EXHIBIT III.A** – Amended and Restated Certificate of Incorporation of PPSI Inc.
  - **EXHIBIT III.B** – Amended and Restated Bylaws of PPSI Inc.
- **Exhibit IV** – List of executory contracts and unexpired leases to be assumed pursuant to Section 6.3 of the Plan
- **Exhibit V** – Liquidating Trust Agreement

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

- **Exhibit VI** – List of actions in which the PPSI Liquidating Trust retains Litigation Rights

**PLEASE TAKE FURTHER NOTICE** that the forms of the documents contained in the Plan Supplement are integral to, and are considered part of, the Plan. If the Plan is approved, the documents contained in the Plan Supplement will be approved by the Bankruptcy Court pursuant to the order confirming the Plan.

**PLEASE TAKE FURTHER NOTICE** that the Debtor and the Committee reserve the right to alter, amend, modify or supplement any document in the Plan Supplement as provided by the Plan, *provided that* if any document in the Plan Supplement is materially altered, amended, modified or supplemented, the Debtor and the Committee will file a blackline of such document with the Bankruptcy Court.

**PLEASE TAKE FURTHER NOTICE** that the Debtor and the Committee will seek approval of the *Disclosure Statement with Respect to Joint Plan of Reorganization of Phoenix Payment Systems, Inc. Proposed by the Debtor and the Official Committee of Unsecured Creditors* [Docket No. 470] at a hearing scheduled for **Friday, January 30, 2015 at 10:30 a.m. (prevailing Eastern Time)** before the Honorable Mary F. Walrath, Judge for the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, at which time and at which place you may appear if you so desire.

**PLEASE TAKE FURTHER NOTICE** that the Debtor and the Committee will seek confirmation of the Plan at a hearing scheduled for **Tuesday, March 10, 2015 at 10:30 a.m. (prevailing Eastern Time)** before the Honorable Mary F. Walrath, Judge for the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, at which time and at which place you may appear if you so desire.

**PLEASE TAKE FURTHER NOTICE** that any objections to the Disclosure Statement must be filed and served so as to be actually received no later than **January 20, 2015 at 4:00 p.m. (prevailing Eastern Time)** by: (a) counsel for the Debtor, Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. and Russell C. Silberglieb, Esq.); (b) counsel for the Committee, Lowenstein Sandler LLP, 65 Livingston Avenue, Roseland, New Jersey 07068 (Attn: Sharon L. Levine, Esq. and Wojciech F. Jung, Esq.) and White and Williams LLP, 824 North Market Street, Suite 902, Wilmington, Delaware 19899 (Attn: Mark S. Casarino, Esq.); and (c) the United States Trustee, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lock Box 35, Wilmington, Delaware 19801 (Attn: Benjamin Hackman, Esq.) (collectively, the “**Notice Parties**”).

**PLEASE TAKE FURTHER NOTICE** that any objections to confirmation of the Plan, as well as any objections to the proposed rejection or proposed assumption of executory contracts and unexpired leases and the associated proposed cure amounts, if any, must be filed and served so as to be actually received no later than **February 27, 2015 at 4:00 p.m. (prevailing Eastern Time)** by the Notice Parties.

**PLEASE TAKE FURTHER NOTICE** that copies of the Plan, the Disclosure Statement, the Plan Supplement, and any other related documents are available upon request to

Rust Consulting/Omni Bankruptcy, the Debtor's balloting agent, at (818) 783-2737 or by visiting the website maintained in this chapter 11 case at <http://omnimgt.com/epx>. You may also obtain copies of any pleadings filed in this chapter 11 case for a fee via PACER at: <http://www.deb.uscourts.gov>.

Date: January 14, 2015  
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

/s/ Marisa A. Terranova  
Mark D. Collins (No. 2981)  
Russell C. Silberglied (No. 3462)  
Zachary I. Shapiro (No. 5103)  
Marisa A. Terranova (No. 5396)  
920 N. King Street  
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*Counsel for the Debtor*

and

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-and -

WHITE AND WILLIAMS LLP  
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*Counsel for the Committee*

**EXHIBIT I**

**CERTIFICATE OF AMENDMENT  
(NAME CHANGE)**

# Delaware

PAGE 1

*The First State*

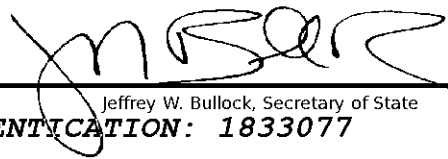
I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "PHOENIX PAYMENT SYSTEMS, INC.", CHANGING ITS NAME FROM "PHOENIX PAYMENT SYSTEMS, INC." TO "PPSI INC.", FILED IN THIS OFFICE ON THE THIRD DAY OF NOVEMBER, A.D. 2014, AT 4:01 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

3753155 8100

141365011



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 1833077

DATE: 11-03-14

**CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF  
PHOENIX PAYMENT SYSTEMS, INC.**

Pursuant to Sections 242 and 303  
of the General Corporation Law of the State of Delaware

Phoenix Payment Systems, Inc., a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. The Third Amended and Restated Certificate of Incorporation of the Corporation is hereby amended by deleting Article I thereof and inserting the following in lieu thereof:

**"ARTICLE I**

The name of the Corporation is PPSI Inc."

2. The foregoing amendment was duly adopted in accordance with the provisions of Sections 242 and 303 of the General Corporation Law of the State of Delaware.

3. Provision for the filing of this Certificate is contained in an order dated September 23, 2014, of the United States Bankruptcy Court for the District of Delaware, in *In re Phoenix Payment Systems, Inc.*, Case No. 14-11848 (MFW).

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be  
executed by its duly authorized officer on this 3<sup>rd</sup> day of November, 2014.

PHOENIX PAYMENT SYSTEMS, INC.

By: Michael Juddy  
Name: Michael Juddy  
Office: Chief Restructuring Officer

**EXHIBIT II**

**NEW BOARD AND OFFICERS OF REORGANIZED DEBTOR**



**Member of the New Board:**

Jane W. Mitnick of SM Financial Services Corporation.

**Officer of the Reorganized Debtor:**

Jane W. Mitnick of SM Financial Services Corporation, President.

**Exhibit III**

**New Debtor Governing Documents**

**EXHIBIT III.A**

**Amended and Restated Certificate of Incorporation of PPSI Inc.**

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
PPSI INC.**

**(Pursuant to Sections 242, 245 and 303 of the  
General Corporation Law of the State of Delaware)**

PPSI Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “General Corporation Law”),

**DOES HEREBY CERTIFY:**

**FIRST:** The name of this corporation is PPSI Inc. and this corporation was originally incorporated pursuant to the General Corporation Law on March 4, 2004 under the name Phoenix Payment Systems, Inc.

**SECOND:** On August 4, 2014, this corporation filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). On December 23, 2014, this corporation filed that certain Joint Plan of Reorganization (the “Plan”), as supplemented by that certain Plan Supplement (the “Plan Supplement”), which was confirmed on [●], 2014 by order (the “Order”) of the Bankruptcy Court.

**THIRD:** This Amended and Restated Certificate of Incorporation, which has been duly adopted in accordance with Sections 242, 245 and 303 of the General Corporation Law, is being filed as required by the Plan, as confirmed by the Order.

**FOURTH:** In accordance with Sections 242, 245 and 303 of the General Corporation Law, the certificate of incorporation of this corporation is hereby amended and restated as follows:

**ARTICLE I**

The name of this corporation is PPSI Inc.

**ARTICLE II**

The address of the registered office of this corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Zip Code 19801. The name of its registered agent at such address is the Corporation Trust Company.

### **ARTICLE III**

This corporation has been formed for the following purposes:

(a) entering into, executing and delivering, and performing its obligations under, the agreements set forth in Exhibit IV of the Plan Supplement, as such agreements may be amended, restated, modified or supplemented from time to time (collectively, the “Plan Supplement Agreements”); and

(b) engaging in all other lawful acts or activities that are necessary or convenient to (1) entering into, executing and delivering, and performing its obligations under, the Plan Supplement Agreements, and (2) exercising, preserving or protecting its rights, privileges or benefits under or arising from any such agreement, including by taking action, whether at law, in equity or by means of any other dispute resolution mechanism, to enforce any such agreement or taking any other action necessary or advisable to cause any counterparty to any such agreement to comply with its obligations thereunder.

### **ARTICLE IV**

The total number of shares of all classes of capital stock which this corporation shall have the authority to issue is one (1) share of common stock, par value \$.01 per share.

This corporation shall not issue any non-voting equity securities to the extent prohibited by Section 1123 of the Bankruptcy Code as in effect on the effective date of the Plan (the “Effective Date”); provided, however, that this sentence (a) shall have no further force and effect beyond that required under Section 1123 of the Bankruptcy Code, (b) shall have such force and effect, if any, only for so long as such section of the Bankruptcy Code is in effect and applicable to this corporation, and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

### **ARTICLE V**

This corporation shall not have perpetual existence and the duration of this corporation shall be limited to March 10, 2018.

### **ARTICLE VI**

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter or repeal the Bylaws of this corporation.

### **ARTICLE VII**

Elections of directors need not be by written ballot unless the Bylaws of this corporation so provide.

### **ARTICLE VIII**

A director of this corporation shall not be liable to this corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law as the same exists or may hereafter be amended. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director of this corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

#### **ARTICLE IX**

The Board of Directors may from time to time appoint such officers and agents as the business of this corporation requires and such officers and agents shall have the authority to take any and all actions for, on behalf of and in the name of this corporation, to cause this corporation to perform its obligations under the Plan Supplement Agreements, and to take such other actions as may be provided in any resolution of the Board of Directors, and any such officer or agent shall, by reference to this Article IX, have the express power and authority to bind this corporation when acting in such capacity.

#### **ARTICLE X**

This corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of any nature conferred upon stockholders, directors or any other persons by and pursuant to this Amended and Restated Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this Article X. Notwithstanding the foregoing, this corporation shall not, without first obtaining the consent of the Liquidating Trustee, amend, alter, change or repeal, or adopt any provision inconsistent with, Article III whether by amendment, merger, consolidation or otherwise, and any such amendment, alteration, change, repeal or adoption without such consent shall be null and void *ab initio*, and of no force and effect. For purposes of this Article X, "Liquidating Trustee" shall mean PMCM 2, LLC, as the liquidating trustee of the PPSI Liquidating Trust, and any successor thereto.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, this Amended and Restated Certificate of Incorporation has been duly executed by a duly authorized officer of this corporation on this \_\_\_\_ day of \_\_\_\_\_, 2015.

**PPSI INC.**

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

**EXHIBIT III.B**

**Amended and Restated Bylaws of PPSI Inc.**



**AMENDED AND RESTATED BYLAWS  
OF  
PPSI INC.**

**ARTICLE I**

Meetings of Stockholders

Section 1.1. Annual Meetings. If required by applicable law, an annual meeting of stockholders shall be held for the election of directors at such date, time and place, if any, either within or without the State of Delaware, as may be designated by resolution of the Board of Directors from time to time. Any other proper business may be transacted at the annual meeting. The corporation may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.

Section 1.2. Special Meetings. Special meetings of stockholders for any purpose or purposes may be called at any time by the Board of Directors, but such special meetings may not be called by any other person or persons. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice. The corporation may postpone, reschedule or cancel any special meeting of stockholders previously scheduled by the Board of Directors.

Section 1.3. Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given that shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the certificate of incorporation or these bylaws, the notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at the meeting as of the record date for determining the stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation.

Section 1.4. Adjournments. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of

Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

Section 1.5. Quorum. Except as otherwise provided by law, the certificate of incorporation or these bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of a majority in voting power of the outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. In the absence of a quorum, the stockholders so present may, by a majority in voting power thereof, adjourn the meeting from time to time in the manner provided in Section 1.4 of these bylaws until a quorum shall attend. Shares of its own stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the corporation or any subsidiary of the corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 1.6. Organization. Meetings of stockholders shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in his or her absence by the President, or in his or her absence by a Vice President, or in the absence of the foregoing persons by a chairperson designated by the Board of Directors, or in the absence of such designation by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 1.7. Voting; Proxies. Except as otherwise provided by or pursuant to the provisions of the certificate of incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder which has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders or to express consent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the corporation a revocation of the proxy or a new proxy bearing a later date. Voting at meetings of stockholders need not be by written ballot. At all meetings of stockholders for the election of directors at which a quorum is present a plurality of the votes cast shall be sufficient to elect. All other elections and questions presented to the stockholders at a meeting at which a quorum is present shall, unless otherwise provided by the certificate of incorporation, these bylaws, the rules or regulations of any stock exchange applicable to the corporation, or applicable law or pursuant to any regulation applicable to the corporation or its securities, be decided by the affirmative vote of the holders of a majority in voting power of the shares of stock of the corporation which are present in person or by proxy and entitled to vote thereon.

Section 1.8. Fixing Date for Determination of Stockholders of Record.

(a) In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than sixty (60) days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(c) Unless otherwise restricted by the certificate of incorporation, in order that the corporation may determine the stockholders entitled to express consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date for determining stockholders entitled to express consent to corporate action in writing without a meeting is fixed by the Board of Directors, (i) when no prior action of the Board of Directors is required by law, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, and (ii) if prior action by the Board of Directors is required by law, the record date for such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 1.9. List of Stockholders Entitled to Vote. The officer who has charge of the stock ledger shall prepare and make, at least ten (10) days before every meeting of

stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary business hours at the principal place of business of the corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 1.9 or to vote in person or by proxy at any meeting of stockholders.

Section 1.10. Action By Written Consent of Stockholders. Unless otherwise restricted by the certificate of incorporation, any action required or permitted to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which minutes of proceedings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall, to the extent required by law, be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the corporation.

Section 1.11. Inspectors of Election. The corporation may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the corporation outstanding and the voting power of each such share, (ii)

determine the shares of capital stock of the corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

Section 1.12. Conduct of Meetings. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

## ARTICLE II

### Board of Directors

Section 2.1. Number; Qualifications. Subject to the certificate of incorporation of the corporation, the number of directors constituting the Board of Directors shall be one (1) until thereafter changed from time to time by resolution of the Board of Directors or of the stockholders. Directors need not be stockholders.

Section 2.2. Election; Resignation; Vacancies. At each annual meeting of stockholders, the stockholders shall elect directors each of whom shall hold office for a term of one year or until his or her successor is duly elected and qualified, subject to such director's earlier death, resignation, disqualification or removal. Any director may resign at any time upon notice to the corporation. Unless otherwise provided by law or the certificate of incorporation, any newly created directorship or any vacancy occurring in the Board of Directors for any cause may be filled by a majority of the remaining members of the Board of Directors, although such majority is less than a quorum, or by a plurality of the votes cast at a meeting of stockholders, and each director so elected shall hold office until the expiration of the term of office of the director whom he or she has replaced or until his or her successor is elected and qualified.

Section 2.3. Regular Meetings. Regular meetings of the Board of Directors may be held at such places within or without the State of Delaware and at such times as the Board of Directors may from time to time determine.

Section 2.4. Special Meetings. Special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by the President, any Vice President, the Secretary, or by any member of the Board of Directors. Notice of a special meeting of the Board of Directors shall be given by the person or persons calling the meeting at least twenty-four hours before the special meeting.

Section 2.5. Telephonic Meetings Permitted. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this by-law shall constitute presence in person at such meeting.

Section 2.6. Quorum; Vote Required for Action. At all meetings of the Board of Directors the directors entitled to cast a majority of the votes of the whole Board of Directors shall constitute a quorum for the transaction of business. Except in cases in which the certificate of incorporation, these bylaws or applicable law otherwise provides, a majority of the votes entitled to be cast by the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 2.7. Organization. Meetings of the Board of Directors shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in his or her absence by the President, or in their absence by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her

absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8. Action by Unanimous Consent of Directors. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the board or committee in accordance with applicable law.

### ARTICLE III

#### Committees

Section 3.1. Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it.

Section 3.2. Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these bylaws.



## ARTICLE IV

### Officers

Section 4.1. Officers; Election; Qualifications; Term of Office; Resignation; Removal; Vacancies. The Board of Directors shall elect a President and Secretary, and it may, if it so determines, choose a Chairperson of the Board and a Vice Chairperson of the Board from among its members. The Board of Directors may also choose one or more Vice Presidents, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers and such other officers as it shall from time to time deem necessary or desirable. Each such officer shall hold office until the first meeting of the Board of Directors after the annual meeting of stockholders next succeeding his or her election, and until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any officer may resign at any time upon written notice to the corporation. The Board of Directors may remove any officer with or without cause at any time, but such removal shall be without prejudice to the contractual rights of such officer, if any, with the corporation. Any number of offices may be held by the same person. Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise may be filled for the unexpired portion of the term by the Board of Directors at any regular or special meeting.

Section 4.2. Powers and Duties of Officers. The officers of the corporation shall have such powers and duties in the management of the corporation as may be prescribed in a resolution by the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors. The Board of Directors may require any officer, agent or employee to give security for the faithful performance of his or her duties.

Section 4.3. Appointing Attorneys and Agents; Voting Securities of Other Entities. Unless otherwise provided by resolution adopted by the Board of Directors, the Chairperson of the Board, the President or any Vice President may from time to time appoint an attorney or attorneys or agent or agents of the corporation, in the name and on behalf of the corporation, to cast the votes which the corporation may be entitled to cast as the holder of stock or other securities in any other corporation or other entity, any of whose stock or other securities may be held by the corporation, at meetings of the holders of the stock or other securities of such other corporation or other entity, or to consent in writing, in the name of the corporation as such holder, to any action by such other corporation or other entity, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consents, and may execute or cause to be executed in the name and on behalf of the corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he or she may deem necessary or proper. Any of the rights set forth in this Section 4.3 which may be delegated to an attorney or agent may also be exercised directly by the Chairperson of the Board, the President or the Vice President.

## ARTICLE V

### Stock

Section 5.1. Certificates. The shares of the corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the corporation by the Chairperson or Vice Chairperson of the Board of Directors, if any, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the corporation certifying the number of shares owned by such holder in the corporation. Any of or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

Section 5.2. Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

## ARTICLE VI

### Indemnification and Advancement of Expenses

Section 6.1. Right to Indemnification. The corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a “Covered Person”) who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a “proceeding”), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the corporation or, while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys’ fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 6.3, the corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized in the specific case by the Board of Directors of the corporation.

Section 6.2. Advancement of Expenses. The corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys’ fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article VI or otherwise.

Section 6.3. Claims. If a claim for indemnification under this Article VI (following the final disposition of such proceeding) is not paid in full within sixty days after the corporation has received a claim therefor by the Covered Person, or if a claim for any advancement of expenses under this Article VI is not paid in full within thirty days after the corporation has received a statement or statements requesting such amounts to be advanced, the Covered Person shall thereupon (but not before) be entitled to file suit to recover the unpaid amount of such claim. If successful in whole or in part, the Covered Person shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action, the corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

Section 6.4. Nonexclusivity of Rights. The rights conferred on any Covered Person by this Article VI shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of the certificate of incorporation, these bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 6.5. Other Sources. The corporation’s obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or

nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

Section 6.6. Amendment or Repeal. Any right to indemnification or to advancement of expenses of any Covered Person arising hereunder shall not be eliminated or impaired by an amendment to or repeal of these bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought.

Section 6.7. Other Indemnification and Advancement of Expenses. This Article VI shall not limit the right of the corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

## ARTICLE VII

### Miscellaneous

Section 7.1. Fiscal Year. The fiscal year of the corporation shall be determined by resolution of the Board of Directors.

Section 7.2. Seal. The corporate seal shall have the name of the corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors.

Section 7.3. Manner of Notice. Except as otherwise provided herein or permitted by applicable law, notices to directors and stockholders shall be in writing and delivered personally or mailed to the directors or stockholders at their addresses appearing on the books of the corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, and except as prohibited by applicable law, any notice to stockholders given by the corporation under any provision of applicable law, the certificate of incorporation, or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any stockholder who fails to object in writing to the corporation, within 60 days of having been given written notice by the corporation of its intention to send the single notice permitted under this Section 7.3, shall be deemed to have consented to receiving such single written notice. Notice to directors may be given by telecopier, telephone or other means of electronic transmission.

Section 7.4. Waiver of Notice of Meetings of Stockholders, Directors and Committees. Any waiver of notice, given by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person 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. Neither the business to be transacted at nor the purpose of any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in a waiver of notice.

Section 7.5. Form of Records. Any records maintained by the corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time.

Section 7.6. Amendment of Bylaws. These bylaws may be altered, amended or repealed, and new bylaws made, by the Board of Directors, but the stockholders may make additional bylaws and may alter and repeal any bylaws whether adopted by them or otherwise.

**Exhibit IV**

**CONTRACTS AND LEASES TO BE ASSUMED**

List of Executory Contracts and Unexpired Leases to Be Assumed Pursuant to Plan Section 6.3

1. Management Services Agreement dated October 23, 2014 between Phoenix Payment Systems, Inc. and EPX Acquisition Company, LLC.
2. Processor Agreement dated October 23, 2014 between Phoenix Payment Systems, Inc. and North American Bancard, LLC.
3. Sponsorship Agreement dated as of May 31, 2005, as amended, between Phoenix Payment Systems, Inc. and The Bancorp Bank.
4. Originating Depository Financial Institution Agreement dated June 15, 2007, as amended, between Phoenix Payment Systems, Inc. and The Bancorp Bank.
5. Processor Agreement dated May 31, 2005, as amended, between Phoenix Payment Systems, Inc. and The Bancorp Bank.
6. Any other contract listed in Schedule 3.4 of the MSA to the extent not already assigned.

**Exhibit V**

**LIQUIDATING TRUST AGREEMENT**



TRUST AGREEMENT, dated as of March \_\_, 2015 (this “**Trust Agreement**”), among Phoenix Payment Systems, Inc., as depositor (the “**Trust Depositor**”), PMCM 2, LLC, as liquidating trustee (the “**Liquidating Trustee**”), and Delaware Trust Company, acting hereunder not in its individual capacity but solely as Delaware trustee (the “**Delaware Trustee**,” and together with the Liquidating Trustee, the “**Trustees**”). The parties hereto hereby agree as follows:

1. Formation and Operation of Trust.

(a) The trust created hereby (the “**Trust**”) shall be known as “PPSI Liquidating Trust,” in which name the Liquidating Trustee may conduct the business of the Trust and make and execute contracts as set forth herein.

(b) It is the intention of the parties hereto that the Trust created hereby constitutes a statutory trust under Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. § 3801 *et seq.* (the “**Act**”), and this Trust Agreement constitutes the governing instrument of the Trust. The Trustees are hereby authorized and directed to execute and file a certificate of trust with the Delaware Secretary of State in the form attached hereto. Capitalized terms used herein and not otherwise defined shall have the respective meanings as set forth in the *Joint Plan of Reorganization of Phoenix Payment Systems, Inc. Proposed by the Debtor and the Official Committee of Unsecured Creditors* (the “**Plan**”), filed with the United States Bankruptcy Court for the District of Delaware on December 23, 2014 and as may be amended from time to time thereafter.

(c) The Trust is established for the purpose of, inter alia, (i) administering the Liquidating Trust Assets, (ii) resolving and/or litigating Disputed Claims, (iii) pursuing or determining not to pursue actions preserved pursuant to the Litigation Rights, and (iv) making all distributions to the Beneficiaries provided for under the Plan. The Trust, and the Liquidating Trustee on its behalf, shall have the power and authority, and are hereby authorized, to engage in the foregoing activities and any other activities contemplated by the Plan.

(d) The Liquidating Trustee shall have all the rights and powers set forth herein, including, without limitation, the powers of a trustee under Sections 704 and 1106 of the Bankruptcy Code and Rule 2004 of the Bankruptcy Rules, to act on behalf of the Trust, including, without limitation, the right to (i) effect all actions and execute all agreements, instruments and other documents necessary to implement the provisions of the Plan and this Trust Agreement; (ii) prosecute, settle, abandon or compromise any actions relating to the Litigation Rights; (iii) make distributions as contemplated hereby; (iv) establish and administer any necessary reserves for Disputed Claims that may be required; (v) object to the Disputed Claims and prosecute, settle, compromise, withdraw or resolve in any manner approved by the Bankruptcy Court such Disputed Claims; (vi) employ and compensate professionals and other agents, provided, however, that any such compensation shall be made only out of the Liquidating Trust Assets, to the extent not inconsistent with the status of the Trust as a liquidating trust within the meaning of Treas. Reg. § 301.7701-4(d) for federal income tax purposes; and (vii) control attorney/client privilege relating to or arising from the Liquidating Trust Assets. Notwithstanding the foregoing, the Liquidating Trustee shall at all times act in a manner not

inconsistent with the classification of the Trust as a Liquidating Trust within the meaning of Treas. Reg. § 301.7701-4(d).

(e) On the Effective Date, the Liquidating Trust Assets shall vest in the Trust. The transfer of the Liquidating Trust Assets to the Trust is made for the benefit and on behalf of the Beneficiaries.

(f) The Trust shall file annual reports with the Bankruptcy Court regarding the liquidation or other administration of property comprising the Liquidating Trust Assets and the distributions made by it, unless it has made final distributions less than one year after its formation.

(g) The Trust is intended to qualify as a liquidating trust pursuant to Treas. Reg. § 301.7701-4(d). The assets comprising the Liquidating Trust Assets will be treated for tax purposes as being transferred by the Debtor to the Beneficiaries pursuant to the Plan in exchange for their Allowed Claims and then by the Beneficiaries to the Trust in exchange for the beneficial ownership interests in the Trust. For tax purposes the Beneficiaries shall be treated as the grantors and owners of the Trust. The Trust shall file tax returns as a grantor trust pursuant to Treas. Reg. 1.671-4(a).

(h) The Liquidating Trustee shall distribute to the Beneficiaries, as hereafter defined, the amounts it is permitted to distribute under the Plan, taking into account various reserves referenced in or established pursuant to the Plan; provided, however, that (i) the Liquidating Trustee may also reserve, and not distribute to Beneficiaries, its expected expenses and fees, and (ii) consistent with Section 7.2(e) of the Plan, the Liquidating Trustee is not required to make any distributions which would be disproportionately expensive with the amount to be distributed.

## 2. Trust Beneficial Owners.

The beneficial owners of the Trust (the “**Beneficiaries**”) shall be the holders of Allowed Claims and Interests entitled to receive distributions from the Liquidating Trust Assets under the Plan.

## 3. The Delaware Trustee.

(a) The Delaware Trustee is appointed hereunder to serve as the trustee of the Trust in the State of Delaware for the sole purpose of satisfying the requirement of Section 3807(a) of the Act that the Trust have at least one trustee with a principal place of business in the State of Delaware. It is understood and agreed by the parties hereto that the Delaware Trustee shall have none of the duties or liabilities of the Liquidating Trustee, and the duties of the Delaware Trustee shall be limited solely to (i) accepting legal process served on the Trust in the State of Delaware, (ii) the execution of any certificates required to be filed with the Delaware Secretary of State that the Delaware Trustee is required to execute under Section 3811 of the Act, and (iii) any other duties specifically allocated to the Delaware Trustee in this Trust Agreement.

(b) Except as otherwise expressly required by Section 1 and this Section 3, the Delaware Trustee shall not have any duty or liability with respect to the administration of the Trust, the investment of the Trust's property, or the payment of dividends or other distributions of income or principal to the Trust's beneficiaries, and no implied obligations shall be inferred from this Trust Agreement on the part of the Delaware Trustee. The Delaware Trustee shall not be liable for the acts or omissions of the Trust Depositor or Liquidating Trustee, nor shall the Delaware Trustee be liable for any act or omission by it in good faith in accordance with the directions of the Liquidating Trustee.

(c) The Delaware Trustee may resign upon thirty days' prior notice to the Liquidating Trustee, at which time the Liquidating Trustee is authorized to appoint a new entity to serve as the Delaware trustee under this Trust Agreement. If no successor has been appointed within such thirty-day period, the Delaware Trustee may, at the expense of the Trust, petition a court to appoint a successor trustee. Any Person into which the Delaware Trustee may be merged or with which it may be consolidated, or any Person resulting from any merger or consolidation to which the Delaware Trustee shall be a party, or any Person that succeeds to all or substantially all of the corporate trust business of the Delaware Trustee, shall be the successor Delaware Trustee under this Trust Agreement without the execution, delivery or filing of any paper or instrument or further act to be done on the part of the parties hereto, except as may be required by applicable law.

#### 4. Liquidating Trustee.

(a) The Liquidating Trustee is hereby authorized and directed to enter into such documents and take such other action as contemplated herein.

(b) The Liquidating Trustee may resign upon thirty days' prior notice to the Court and the Post-Confirmation Committee. Thereafter, a successor Liquidating Trustee shall be appointed by the Court. To the extent the Post-Confirmation Committee has not been dissolved pursuant to the terms of the Plan at the time of such resignation, the Post-Confirmation Committee has the power to name the successor liquidating trustee without court approval. Any such successor Liquidating Trustee shall promptly notify the Delaware Trustee of its appointment and agrees to deliver any identification documentation reasonably requested by the Delaware Trustee in accordance with its policies and procedures.

#### 5. Officers of the Trust.

(a) The Liquidating Trustee shall appoint Michael E. Jacoby as one of the officers of the Trust ("**Trust Officers**") to have such power and authority as provided in such appointment and as allowed by the Act. The Liquidating Trustee is authorized to appoint additional Trust Officers or to replace Mr. Jacoby as a Trust Officer.

(b) In addition, each Trust Officer is hereby authorized and directed to enter into such documents and take such other action as the Liquidating Trustee instructs from time to time in written direction.

(c) Each Trust Officer may resign upon thirty days' prior notice to the Liquidating Trustee or may be removed upon written notice from the Liquidating Trustee.

6. Concerning the Trustees and Trust Officers.

No Trustee or Trust Officer shall be personally liable under any circumstances, except for its own willful misconduct or gross negligence. In particular, but not by way of limitation:

(a) The Trustees and Trust Officers shall not be personally liable for any error of judgment made in good faith by an officer or employee of the Trustees and Trust Officers;

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

(c) Under no circumstance shall the Trustees and Trust Officers be personally liable for any representation, warranty, covenant or indebtedness of the Trust;

(d) The Trustees and Trust Officers shall not be personally responsible for or in respect of the genuineness, form or value of the Trust property, the validity or sufficiency of this Trust Agreement or for the due execution hereof by the Trust Depositor;

(e) In the event that the Delaware Trustee or any Trust Officer is unsure of the course of action to be taken by it hereunder, the Delaware Trustee or Trust Officer may request instructions from the Liquidating Trustee, and to the extent the Delaware Trustee or Trust Officer follows such instructions in good faith it shall be fully protected and shall not be liable to any person, and in the event that no instructions are provided within the time requested by the Delaware Trustee or Trust Officer, it shall have no duty or liability for its failure to take any action or for any action it takes in good faith;

(f) Any funds deposited with the Trustees or Trust Officers hereunder may be held in a non-interest bearing trust account, and the Trustees and Trust Officers shall not be liable for any interest thereon;

(g) To the extent that, at law or in equity, the Trustees and Trust Officers have duties and liabilities relating thereto to the Trust Depositor, Beneficiaries or the Trust, such duties and liabilities are replaced by the express terms of this Trust Agreement;

(h) In the exercise or administration of the trusts hereunder, the Trustees and Trust Officers (i) may act directly or, at the expense of the Trust, through agents or attorneys, and the Trustees and Trust Officers shall not be liable for the default or misconduct of such agents or attorneys if such agents or attorneys shall have been selected by the Trustees and Trust Officers in good faith, and (ii) may, at the expense of the Trust, consult with counsel, accountants and other experts, and it shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other experts; and

(i) In accepting and performing the trusts hereby created, the Trustees act solely as trustees hereunder and not in their individual capacity, and all persons having any claim against the Trustees and Trust Officers by reason of the transactions contemplated by this Trust Agreement shall look only to the Trust's property for payment or satisfaction thereof.

7. Compensation and Indemnification.

(a) The Trust shall compensate the Trustees in accordance with separate fee agreements with each Trustee.

(b) The Trust shall reimburse the Trustees and Trust Officers for all reasonable expenses (including reasonable fees and expenses of counsel and other experts) and indemnify, defend and hold harmless the Trustees and Trust Officers and any of the officers, directors, employees and agents of the Trustees and Trust Officers (the "**Indemnified Persons**") from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including the reasonable fees and expenses of counsel), taxes and penalties of any kind and nature whatsoever (collectively, "**Expenses**"), to the extent that such Expenses arise out of or are imposed upon or asserted at any time against such Indemnified Persons with respect to the performance of this Trust Agreement, the creation, operation or termination of the Trust or the transactions contemplated hereby; provided, however, that the Trust shall not be required to indemnify any Indemnified Person for any Expenses that are a result of the willful misconduct, bad faith or gross negligence of such Indemnified Person.

(c) The Trust shall reimburse the Post-Confirmation Committee (as defined in the Plan) for all reasonable fees and expenses of its counsel incurred in connection with the Post-Confirmation Committee's assistance with the implementation of the Plan.

(d) To the fullest extent permitted by law, Expenses to be incurred by an Indemnified Person shall, from time to time, be advanced by, or on behalf of, the Trust prior to the final disposition of any matter upon receipt by the Trust of an undertaking by, or on behalf of, such Indemnified Person to repay such amount if it shall be determined that the Indemnified Person is not entitled to be indemnified under this Agreement.

(e) As security for any amounts owing to the Trustees, the Trust Officers and the Post-Confirmation Committee hereunder, the Trustees, the Trust Officers and the Post-Confirmation Committee shall have a lien against the Trust property, which lien shall be prior to the rights of the Beneficiaries or any other beneficial owner of the Trust. The obligations of the Trust under this Section 7 shall survive the termination of this Trust Agreement.

(f) The Trust may maintain director and officer insurance coverage, and for a tail period of 3 years, for those Persons covered by any such policies in effect during the pendency of the Chapter 11 Case, continuing after the Effective Date, insuring such Persons in respect of any claims, demands, suits, causes of action, or proceedings against such Persons based upon any act or omission related to such Person's service with, for, or on behalf of the Debtor (whether occurring before or after the Petition Date). Such policies shall be fully paid and noncancellable. If not purchased by the Debtor before the Effective Date, on or after the

Effective Date, the Trust shall purchase director and officer insurance covering the period on or after the Effective Date.

8. Miscellaneous.

(a) This Trust Agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings between the parties, whether written or oral.

(b) This Trust Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to its conflict of law provisions, and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws. Sections 3540 and 3561 of Title 12 of the Delaware Code shall not apply to the Trust.

(c) This Trust Agreement may be executed in two or more counterparts, each of which shall be an original, but all such counterparts shall together constitute one and the same agreement.

(d) This Trust Agreement may be amended and restated by the parties hereto as necessary to provide for the operation of the Trust; provided, however, that the Delaware Trustee shall not be required to enter into any amendment hereto that adversely affects the rights, duties or immunities of the Delaware Trustee.

(e) The Trust may dissolve at the written direction of the Liquidating Trustee. Upon dissolution, the Liquidating Trustee shall wind up the affairs of the Trust pursuant to the Act. Upon written direction of the Liquidating Trustee, the Delaware Trustee, at the expense of the Trust, shall file a certificate of cancellation in accordance with the Act. Notwithstanding the foregoing, the Trust will terminate five (5) years from the date first above written, provided that if warranted by the facts and circumstances and subject to the approval of the United States Bankruptcy Court for the District of Delaware and upon a finding that the extension is necessary to the liquidating purpose of the Trust, the term of the Trust may be extended for a finite term based on the particular facts and circumstances. Any such extension must be approved within six (6) months of the beginning of the extended term.

(f) This Trust is intended to qualify as a liquidating trust within the meaning of Treas. Reg. § 301.7701-4(d) and maintained in accordance with Internal Revenue Procedure 94-45, 1994-2 CB 684, as applicable. The provisions of this Trust Agreement should be interpreted in a manner consistent with this intention.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be duly executed by their respective officers hereunto duly authorized, as of the day and year first above written.

PHOENIX PAYMENT SYSTEMS, Inc.,  
as Trust Depositor

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

Name:

Title:

DELAWARE TRUST COMPANY,  
as Delaware Trustee

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

Name:

Title:

PMCM 2, LLC,  
as Liquidating Trustee

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

Name:

Title:

**FORM OF**  
**CERTIFICATE OF TRUST**  
**OF**  
**PPSI LIQUIDATING TRUST**

THIS Certificate of Trust of PPSI Liquidating Trust (the “**Trust**”) is being duly executed and filed on behalf of the Trust by the undersigned, as trustees, to form a statutory trust under the Delaware Statutory Trust Act (12 Del. C. § 3801 et seq.) (the “**Act**”).

1. Name. The name of the statutory trust formed by this Certificate of Trust is PPSI Liquidating Trust.

2. Delaware Trustee. The name and business address of the trustee of the Trust in the State of Delaware are Delaware Trust Company, 2711 Centerville Road, Suite 210, Wilmington, Delaware 19808.

3. Effective Date. This Certificate of Trust shall be effective upon filing.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Trust in accordance with Section 3811(a)(1) of the Act.

DELAWARE TRUST COMPANY,  
as Delaware Trustee

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

Name:

Title:

PMCM 2, LLC,  
as Liquidating Trustee

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

Name:

Title:



**Exhibit VI**

**ACTIONS IN WHICH THE PPSI LIQUIDATING TRUST RETAINS  
LITIGATION RIGHTS**

Actions in which the PPSI Liquidating Trust retains Litigation Rights

1. All Avoidance Actions.<sup>1</sup>
2. All rights, claims or causes of action of the Debtor against third parties for breach of contract, torts or fraud, other than rights, claims or causes of action for the collection of accounts receivable that are not Excluded Accounts Receivable.
3. All rights, claims or causes of action of the Debtor arising out of and/or to enforce the APA.
4. All rights, claims or causes of action related to the Excluded Accounts Receivable and the Moyer Receivable.
5. All rights, claims or causes of action against Raymond Moyer, unless otherwise expressly released pursuant to Court order.
6. All rights, claims or causes of action, including but not limited to counterclaims, against any party that filed a proof of claim against the Debtor that has not become an Allowed Claim, as that term is defined in the Plan.
7. Any other rights, claims or causes of action arising from any Excluded Asset within the meaning of Section 2.2 of the APA.

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<sup>1</sup> Capitalized terms not defined herein have the meaning set forth in the Asset Purchase Agreement (“APA”), unless stated otherwise.