

**HOSPITAL TRUST AGREEMENT**

**DATED AS OF JUNE 16, 2022**

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## **HOSPITAL TRUST AGREEMENT**

This Hospital Trust Agreement (this “**Trust Agreement**”), dated as of June 16, 2022 and effective as of the Effective Date,<sup>1</sup> is entered into pursuant to the *Fourth Amended Joint Plan Of Reorganization (With Technical Modifications) Of Mallinckrodt Plc And Its Debtor Affiliates Under Chapter 11 Of The Bankruptcy Code*, dated as of February 18, 2022 and confirmed by the Bankruptcy Court on March 2, 2022 [D.I. 6660] (as such may be amended, modified, or supplemented, the “**Plan**”), by Mallinckrodt PLC and its Debtor affiliates<sup>2</sup> (collectively referred to as the “**Debtors**” or “**Settlors**”),<sup>3</sup> Wilmington Trust, National Association, as Delaware trustee (the “**Delaware Trustee**”); Thomas L. Hogan (the “**Trustee**”); and the sole member of the Hospital Trust Advisory Committee identified on the signature pages hereof (the “**TAC**” and, together with the Debtors, the Delaware Trustee and the Trustee, the “**Parties**”); and

**WHEREAS**, the Debtors have reorganized under the provisions of Chapter 11 of the Bankruptcy Code;

**WHEREAS**, the Confirmation Order has been entered by the Bankruptcy Court;

**WHEREAS**, the Plan provides, *inter alia*, for the creation of the Hospital Trust (the “**Hospital Trust**”);

**WHEREAS**, pursuant to the Plan, the Hospital Trust shall be established to (i) assume all liability for the Hospital Opioid Claims, (ii) hold and collect the Hospital Opioid Claims Share and additional payments (if any) due from the Opioid MDT II with respect to any Hospital Opioid

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan and the Hospital TDP.

<sup>2</sup> A complete list of the Debtors may be obtained at: <http://restructuring.primeclerk.com/Mallinckrodt>. The Debtors’ mailing address is 675 McDonnell Blvd., Hazelwood, Missouri 63042

<sup>3</sup> The Chapter 11 Cases of the Debtors and Debtors in Possession are jointly administered under Case No. 20-12522 (JTD) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

Claims in accordance with the Plan and the Hospital Trust Documents, (iii) administer Hospital Opioid Claims, (iv) make Hospital Abatement Distributions to Hospital Authorized Recipients for Hospital Authorized Abatement Purposes, in each case in accordance with the Hospital trust distribution procedures (the “**Hospital TDP**”), attached hereto as Exhibit 2 and (v) carry out such other matters as are set forth in the Hospital Trust Documents;

**WHEREAS**, the Plan provides that on the Effective Date, any and all liability of the Debtors and the other Protected Parties for any and all Hospital Opioid Claims shall automatically, and without further act, deed or court order, be channeled to and assumed by the Hospital Trust;

**WHEREAS**, pursuant to the Plan and the Confirmation Order, the Hospital Trust shall, among other things, (i) hold, manage and invest the Hospital Opioid Claims Share, including without limitation all funds and Hospital Trust Assets (as defined herein) received by the Hospital Trust from the Opioid MDT II for the benefit of the beneficiaries of the Hospital Trust; (ii) hold and maintain the Hospital Trust Operating Reserve, as defined herein and (iii) administer, process, resolve and liquidate all Hospital Opioid Claims in accordance with the Hospital TDP;

**WHEREAS**, it is the intent of the Debtors, the Trustee and the TAC that the Hospital Trust will evaluate the Hospital Opioid Claims and be in a financial position to make Hospital Abatement Distributions to Hospital Authorized Recipients in accordance with the terms of this Trust Agreement and the Hospital TDP;

**WHEREAS**, all rights of the Holders of Hospital Opioid Claims arising under this Trust Agreement and the Hospital TDP shall vest upon the Effective Date;

**WHEREAS**, pursuant to the Plan, the Hospital Trust is intended to qualify as a “qualified settlement fund” (a “**Qualified Settlement Fund**”) within the meaning of section 1.468B-1, et seq. of the Treasury Regulations promulgated under section 468B of the Internal Revenue Code

(the “**QSF Regulations**”) and be treated consistently for state and local tax purposes to the extent applicable;

**WHEREAS**, pursuant to the Plan, the Hospital Trust and the Plan satisfy all the prerequisites for issuance of an injunction pursuant to section 105(a) of the Bankruptcy Code with respect to any and all Hospital Opioid Claims, and such injunction has been entered in connection with the Confirmation Order;

**WHEREAS**, the following capitalized terms used in this Trust Agreement and the Hospital TDP shall have the meanings ascribed to them as follows:

“**Ad Hoc Group of Hospitals**” means the Ad Hoc Group of Hospitals identified in the *Hospitals’ Joinder to the OCC’s Objection to Disclosure Statement and Hospitals’ Separate Statement* [D.I. 2402].

“**CARES Act**” means the Coronavirus Aid, Relief, and Economic Security Act passed by Congress and signed into law on March 27, 2020.

“**Hospital Abatement Distribution**” has the meaning ascribed to it in the Hospital TDP.

“**Hospital Abatement Distribution Form**” has the meaning ascribed to it in the Hospital TDP.

“**Hospital Authorized Recipient**” has the meaning ascribed to it in the Hospital TDP.

“**Legier**” means Legier & Company, apac.

“**Legier Model and Algorithm**” means the data driven algorithm used to ascertain operational impact of the opioid crisis on the Holder of a Hospital Opioid Claim and calculate the value of timely and valid Claims, developed and owned by Legier.

“**OD**” has the meaning ascribed to it in the Hospital TDP.

“**Requisite Claims Data**” has the meaning ascribed to it in the Hospital TDP.

**NOW, THEREFORE**, it is hereby agreed as follows:

## **SECTION I**

### **AGREEMENT OF TRUST**

**1.1 Creation and Name.** The Parties hereto hereby create a trust known as the “Mallinckrodt Opioid Hospital Trust,” which is the Hospital Trust provided for and referred to in Section IV.X of the Plan. The Trustee of the Hospital Trust may transact the business and affairs of the Hospital Trust in the name of the Hospital Trust, and references herein to the Hospital Trust shall include the Trustee acting on behalf of the Hospital Trust. It is the intention of the Parties that the Hospital Trust constitute a statutory trust under Chapter 38 of title 12 of the Delaware Code, 12 Del. C. § 3801 et seq. (the “**Act**”) and that this Trust Agreement shall constitute the governing instrument of the Hospital Trust. The Trustee and the Delaware Trustee are hereby authorized and directed to execute and file a Certificate of Trust with the Delaware Secretary of State in the form attached hereto as Exhibit 1.

**1.2 Purpose.**

(a) The purpose of the Hospital Trust is to expressly assume sole and exclusive responsibility and liability for the Hospital Opioid Claims channeled to the Hospital Trust in accordance with the Opioid MDT II and the Plan, as well as to, among other things:

- (i) hold and collect the Hospital Opioid Claims Share pursuant to the Hospital Trust Documents with respect to any Hospital Opioid Claims in accordance with the Plan;
- (ii) administer, process, resolve and liquidate the Hospital Opioid Claims as provided in the Hospital Trust Documents by making Hospital Abatement Distributions to Hospital Authorized Recipients;

- (iii) hold, manage and invest all funds and Hospital Trust Assets (as defined herein) received by the Hospital Trust from the Opioid MDT II, in each case, for the benefit of the beneficiaries of the Hospital Trust;
  - (iv) qualify at all times as a Qualified Settlement Fund within the meaning of the QSF Regulations and be treated consistently for state and local tax purposes to the extent applicable; and
  - (v) pay qualifying attorney's fees pursuant to Article IV.X.8 of the Plan;
  - (vi) pay assessments to the extent required by Article IV.X.8(A) of the Plan to fund the Common Benefit Escrow and then, upon its establishment, the Common Benefit Fund in accordance with the Plan; and
  - (vii) otherwise comply in all respects with the Hospital Trust Documents.
- (b) The Hospital Trust is to use the Hospital Trust's Assets and income to:
- (i) make Hospital Abatement Distributions to the Holders of Hospital Opioid Claims in accordance with this Trust Agreement and the Hospital TDP in such a way that such Holders of Hospital Opioid Claims are treated fairly, equitably and reasonably in light of the assets available to resolve such claims;
  - (ii) hold and maintain reserves to pay the fees and expenses incurred with respect to administering the Hospital Trust (including the Hospital TDP) and managing the Hospital Trust Assets (together, the **"Hospital Trust Operating Expenses"**) of the Hospital Trust (such reserves, the **"Hospital Trust Operating Reserve"**), which shall be
    - (a) funded with Cash and cash equivalents held by the Hospital Trust in



accordance with the Hospital Trust Documents and (b) held by the Hospital Trust in a segregated account and administered by the Trustee;

- (iii) pay the Hospital Trust Operating Expenses from the Hospital Trust Operating Reserve;
- (iv) replenish periodically, until the dissolution of the Hospital Trust, the Hospital Trust Operating Reserve from Cash held or received by the Hospital Trust to the extent deemed necessary by the Trustee to satisfy and pay estimated future Hospital Trust Operating Expenses in accordance with the Hospital Trust Documents; and
- (v) pay all fees and expenses incurred with respect to, among other things, making Hospital Abatement Distributions to Hospital Authorized Recipients, including attorneys' fees and costs (together with the Hospital Trust Operating Expenses, the "**Trust Expenses**"), pursuant to Article IV.X.8(B) of the Plan, as applicable.

**1.3 Transfer of Assets.** Pursuant to Article IV.X-Y of the Plan, the Hospital Trust has received the Hospital Opioid Claims Share (the "**Hospital Trust Assets**") to fund the Hospital Trust.<sup>4</sup> In all events, the Hospital Trust Assets or any other assets to be transferred to the Hospital Trust from the Opioid MDT II under the Plan will be transferred to the Hospital Trust free and clear of all

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<sup>4</sup> In the event that any payment date is on a date that is not a Business Day, then the making of such payment may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

Claims, Liens or other recourse or encumbrances, and shall not be subject to attachment, disgorgement or recoupment by any Person.

#### **1.4 Acceptance of Assets and Assumption of Liabilities.**

(a) In furtherance of the purposes of the Hospital Trust, the Hospital Trust hereby expressly accepts the transfer to the Hospital Trust of the Hospital Trust Assets or any other transfers contemplated by the Plan and the Opioid MDT II (if any) in the time and manner as, and subject to the terms, contemplated in the Plan and/or the Opioid MDT II.

(b) In furtherance of the purposes of the Hospital Trust, the Hospital Trust expressly assumes all liabilities and responsibility for all Hospital Opioid Claims subject to the Hospital Trust Documents, and none of the Debtors, the Protected Parties or the Opioid MDT II shall have any further financial or other responsibility or liability therefor. Except as otherwise provided in this Trust Agreement, the Hospital TDP, the Plan or the Opioid MDT II, the Hospital Trust shall have and retain any and all defenses, cross-claims, offsets and recoupments regarding the Hospital Opioid Claims, as well as any and all rights of indemnification, contribution, subrogation and similar rights that the Debtors and the Released Parties, as applicable, have or would have had under applicable law; provided that no such claims, defenses or rights may be used to seek any affirmative monetary recovery from any party, including without limitation, the Debtors and the Protected Parties.

(c) Notwithstanding anything to the contrary herein, no provision in this Trust Agreement or the Hospital TDP shall be construed or implemented in a manner that would cause the Hospital Trust to fail to qualify as a Qualified Settlement Fund within the meaning of the QSF Regulations.

(d) In this Trust Agreement and the Hospital TDP, the words “must,” “will,” and “shall” are intended to have the same mandatory force and effect, while the word “may” is intended to be permissive rather than mandatory.

(e) To the extent required by the Act, the beneficial owners (within the meaning of the Act) of the Hospital Trust (the “**Beneficial Owners**”) shall be deemed to be the Holders of Hospital Opioid Claims; provided that (i) the Holders of Hospital Opioid Claims, as such Beneficial Owners, shall have only such rights with respect to the Hospital Trust and its assets as are set forth in the Hospital TDP, and (ii) no greater or other rights, including upon dissolution, liquidation or winding up of the Hospital Trust, shall be deemed to apply to the Holders of Hospital Opioid Claims in their capacity as Beneficial Owners. The Beneficial Owners are enjoined from asserting against any Debtor or other Protected Party any Claim channeled to the Hospital Trust, and may not proceed in any manner against any Debtor or other Protected Party on account of any Claim channeled to the Hospital Trust in any forum whatsoever, including any state, federal or non-U.S. court or administrative or arbitral forum, and are required to pursue Hospital Opioid Claims exclusively against the Hospital Trust, solely as and to the extent provided in the Plan and Hospital TDP.

(f) The Beneficial Owners shall be subject to the terms of this Trust Agreement, including without limitation, the terms of the Hospital TDP.

**1.5 Channeling Injunction.** Nothing in this Trust Agreement shall be construed in any way to limit or expand the scope, enforceability or effectiveness of the Opioid Permanent Channeling

Injunction issued in connection with the Plan or the Hospital Trust's assumption of all liability for Hospital Opioid Claims.

## **SECTION II**

### **POWERS AND TRUST ADMINISTRATION**

#### **2.1 Powers.**

(a) The Trustee is, and shall act as, a fiduciary to the Hospital Trust in accordance with the provisions of this Trust Agreement, the Plan and the Confirmation Order. The Trustee shall, at all times, administer the Hospital Trust and the Hospital Trust Assets in accordance with the purposes set forth in Section 1.2 herein. Subject to the limitations set forth in this Trust Agreement, the Trustee shall have the power to take any and all actions that, in the judgment of the Trustee, are necessary or proper to fulfill the purposes of the Hospital Trust, including, without limitation, each power expressly granted in this Section 2.1, any power reasonably incidental thereto and not inconsistent with the requirements of Section 2.2 and any trust power now or hereafter permitted under the laws of the State of Delaware. The Trustee shall use commercially reasonable efforts to ensure that the costs of administering the Hospital Trust are reasonable in all respects, but the Trustee shall not be bound by any annual or cumulative "caps" on such expenditures.

(b) Except as required by applicable law or otherwise specified herein or in the Plan or the Confirmation Order, the Trustee need not obtain the order or approval of any court in the exercise of any power or discretion conferred hereunder.

(c) Without limiting the generality of Section (a) above, and except as limited herein or by the Plan, the Trustee shall have the power to:

- (i) receive and hold the Hospital Trust Assets and exercise all rights with respect thereto, including the right to vote, hold and sell any securities that

are included in the Hospital Trust Assets or that may come into possession or ownership of the Trust;

- (ii) invest the monies held from time to time by the Hospital Trust, and/or contract with any other qualified institution, to hold and invest the Hospital Trust's funds;
- (iii) enter into leasing and financing agreements with third parties, to the extent such agreements are reasonably necessary, to permit the Hospital Trust to operate;
- (iv) pay liabilities and expenses of the Hospital Trust, including any indemnification obligations set forth in the Plan;
- (v) establish such funds, reserves and accounts within the Hospital Trust estate as required by the Plan or this Trust Agreement or as the Trustee deems useful in carrying out the purposes of the Hospital Trust, subject to the limitations set forth in Section 3.1(a) below;
- (vi) initiate, prosecute, defend and resolve all legal actions and other proceedings related to any Hospital Trust Assets, liability or responsibility of the Hospital Trust; provided that such legal actions and other proceedings shall be limited solely to those required for purposes of reconciling, administering or defending against the Hospital Opioid Claims channeled to the Hospital Trust and for enforcing the rights of the Hospital Trust provided for under the Plan and Hospital TDP;

- (vii) initiate, prosecute, defend and resolve all such actions in the name of the Debtors or their Estates, in each case if deemed necessary by the Trustee to fulfill the purpose of the Hospital Trust;
- (viii) establish, supervise and administer the Hospital Trust in accordance with this Trust Agreement and the Hospital TDP and the terms thereof;
- (ix) appoint such officers, hire such employees and engage such legal, financial, accounting, investment, auditing, forecasting and other consultants, advisors and agents as the business of the Hospital Trust requires and delegate to such persons such powers and authorities as the fiduciary duties of the Trustee permit and as the Trustee, in its discretion, deems advisable or necessary in order to carry out the terms of the Hospital Trust, including without limitation Legier and any third-party claims or noticing agent deemed necessary or convenient by the Trustee;
- (x) pay reasonable compensation to those employees, legal, financial, accounting, investment, auditing, forecasting and other consultants, advisors and agents employed by the Trustee after the Effective Date (including those engaged by the Hospital Trust in connection with its alternative dispute resolution activities);
- (xi) as provided herein, (a) compensate the Trustee, the Delaware Trustee, Legier and the TAC, and the employees, legal, financial, accounting, investment, auditing, forecasting and other consultants, advisors and agents of each of them, and (b) reimburse the Trustee, the Delaware Trustee, Legier and the TAC for all reasonable out-of-pocket costs and expenses

incurred by such persons in connection with the performance of their duties hereunder;

- (xii) execute and deliver such instruments as the Trustee deems proper in administering the Hospital Trust;
- (xiii) enter into such other arrangements with third parties as the Trustee deems useful in carrying out the purposes of the Hospital Trust; provided that such arrangements do not conflict with any other provision of this Trust Agreement;
- (xiv) in accordance with Section 4.6 herein, defend, indemnify and hold harmless (and purchase insurance indemnifying) (a) the Trustee, (b) the Delaware Trustee, (c) the TAC, (d) Legier and (e) the officers, employees, consultants (including Legier), advisors and agents of each of the Hospital Trust, the Trustee, the Delaware Trustee and the TAC, (each of those in (e) herein, the “**Additional Indemnitees**”), to the maximum extent that a statutory trust organized under the laws of the State of Delaware is from time to time entitled to defend, indemnify, hold harmless and/or insure its directors, trustees, officers, employees, consultants, advisors, agents and representatives. No party shall be indemnified in any way for any liability, expense, claim, damage or loss for which he or she is liable under Section 4.6 herein;
- (xv) consult with the TAC at such times and with respect to such issues relating to the purpose, conduct and affairs of the Hospital Trust as the Trustee considers desirable;

(xvi) make, pursue (by litigation or otherwise), collect, compromise, settle or otherwise resolve in the name of the Hospital Trust, any claim, right, action or cause of action included in the Hospital Trust Assets or which may otherwise hereafter accrue in favor of the Hospital Trust, including, but not limited to, insurance recoveries, before any court of competent jurisdiction; and

(xvii) exercise any and all other rights, and take any and all other actions as are permitted, of the Trustee in accordance with the terms of this Trust Agreement and the Plan.

(d) The Trustee shall not have the power to guarantee any debt of other persons.

(e) The Trustee agrees to take the actions of the Hospital Trust required hereunder.

(f) The Trustee shall give the TAC prompt notice of any act performed or taken pursuant to Sections (c)(i) or (c)(vi) herein, and any act proposed to be performed or taken pursuant to Section 2.2(f) herein.

## **2.2 General Administration.**

(a) The Trustee shall act in accordance with this Trust Agreement, the Plan, the Confirmation Order and the Hospital TDP. In the event of a conflict between the terms or provisions of (i) the Plan or the Confirmation Order, and (ii) this Trust Agreement or the Hospital TDP, the terms or provisions of the Plan or the Confirmation Order shall control. In the event of a conflict between the terms or provisions of this Trust Agreement and the Hospital TDP, the terms or provisions of the Hospital TDP shall control. For the avoidance of doubt, this Trust Agreement shall be construed and implemented in accordance with the Plan, regardless of whether any provision herein explicitly references the Plan.



(b) The Trustee shall be the “administrator” of the Hospital Trust within the meaning of section 1.468B-2(k)(3) of the Treasury Regulations and shall (i) timely file such income tax and other returns and statements required to be filed and shall timely pay, out of the Hospital Trust Operating Reserve, all taxes required to be paid by the Hospital Trust, (ii) comply with all applicable reporting and withholding obligations, (iii) satisfy all requirements necessary to qualify and maintain qualification of the Hospital Trust as a Qualified Settlement Fund within the meaning of the QSF Regulations and (iv) take no action that could cause the Hospital Trust to fail to qualify as a Qualified Settlement Fund within the meaning of the QSF Regulations. Even if permitted by the QSF Regulations, no election shall be filed by or on behalf of the Hospital Trust for the Hospital Trust to be treated as a grantor trust for federal income tax purposes.

(c) The Trustee shall be responsible for all of the Hospital Trust’s tax matters, including, without limitation, tax audits, claims, defenses and proceedings. The Trustee may request an expedited determination under section 505(b) of the Bankruptcy Code for all tax returns filed by or on behalf of the Hospital Trust for all taxable periods through the dissolution of the Hospital Trust. The Trustee shall also file (or cause to be filed) any other statement, return or disclosure relating to the Hospital Trust that is required by any governmental unit and be responsible for payment, out of the Hospital Trust Assets, of any taxes imposed on the Hospital Trust or its assets.

(d) The Trustee may withhold and pay to the appropriate tax authority all amounts required to be withheld pursuant to the Internal Revenue Code or any provision of any foreign, state or local tax law with respect to any payment or Hospital Abatement Distribution to the Holders of Hospital Opioid Claims. All such amounts withheld and paid to the appropriate tax authority shall be treated as amounts distributed to such Holders of Hospital Opioid Claims for all purposes of this Trust Agreement. The Trustee shall be authorized to collect such tax information from the Holders

of Hospital Opioid Claims (including tax identification numbers) as in its sole discretion the Trustee deems necessary to effectuate the Plan, the Confirmation Order and this Trust Agreement. In order to receive Hospital Abatement Distributions, all Holders of Hospital Opioid Claims shall be required to provide tax information to the Trustee to the extent the Trustee deems appropriate in the manner and in accordance with the procedures from time to time established by the Trustee for these purposes. The Trustee may refuse to make a Hospital Abatement Distribution to a Holder of Hospital Opioid Claim that fails to furnish such information in a timely fashion, and until such information is delivered may treat such Holder's Hospital Opioid Claims as disputed; provided, however, that, upon the delivery of such information by a Holder of Hospital Opioid Claim, the Trustee shall make such Hospital Abatement Distribution to which such holder is entitled, without additional interest occasioned by such Holder's delay in providing tax information. Notwithstanding the foregoing, if a Holder of a Hospital Opioid Claim fails to furnish any tax information reasonably requested by the Trustee before the date that is three hundred sixty-five (365) calendar days after the request is made, the amount of such Hospital Abatement Distribution shall irrevocably revert to the Hospital Trust, and any Hospital Opioid Claim with respect to such Hospital Abatement Distribution shall be discharged and forever barred from assertion against the Hospital Trust or its property.

(e) Pursuant to Section 5.7(g) of the Plan, the Hospital Trust shall (i) monitor the use of funds received by Hospital Authorized Recipients of Hospital Abatement Distributions in accordance with the Hospital Authorized Abatement Purposes, and (ii) prepare and deliver to the Opioid MDT II for publication annual reports (each, an “**Annual Report**”) on the disbursement and use of Hospital Abatement Distributions from the Hospital Trust and the compliance by

Hospital Authorized Recipients with the Hospital Authorized Abatement Purposes set forth in the applicable Hospital Trust Documents.

(f) The Trustee shall cause to be prepared as soon as practicable prior to the commencement of each fiscal year a budget and cash flow projections covering such fiscal year. The Trustee shall provide a copy of the budget and cash flow projections to the TAC.

(g) The Trustee shall consult with the TAC on (i) the general implementation and administration of the Hospital Trust; (ii) the general implementation and administration of the Hospital TDP; and (iii) such other matters as may be required under this Trust Agreement or the Hospital TDP.

(h) The Trustee shall be required to obtain the consent of the TAC pursuant to the consent process set forth in Section 6.1(b) herein, in addition to any other instances elsewhere enumerated, in order:

- (i) to determine, establish or change any aspect of the Hospital TDP;
- (ii) to establish and/or to change the Hospital Abatement Distribution Form to be provided to Holders of Hospital Opioid Claims under the Hospital TDP;
- (iii) to terminate the Hospital Trust pursuant to Section 6.3 herein;
- (iv) to change the compensation of the members of the TAC, the Delaware Trustee or the Trustee, other than to reflect cost-of-living increases or to reflect changes approved by the Bankruptcy Court as otherwise provided herein; provided that any change to the compensation of the Delaware Trustee shall also require the consent of the Delaware Trustee;
- (v) to take actions to minimize any tax on the Hospital Trust Assets; provided that no such action may be taken if it prevents the Hospital Trust from

qualifying as a Qualified Settlement Fund within the meaning of the QSF Regulations; and provided further that even if permitted by the Treasury Regulations governing Qualified Settlement Funds, no election shall be filed by or on behalf of the Hospital Trust for the Hospital Trust to be treated as a grantor trust for federal income tax purposes;

- (vi) to amend any provision of this Trust Agreement or the Hospital TDP in accordance with the terms thereof; provided that no such amendment shall be in contravention of the Plan, including, but not limited to, causing the Hospital Trust to fail to qualify as a Qualified Settlement Fund within the meaning of the QSF Regulations;
- (vii) to acquire an interest in, or to merge any claims resolution organization formed by the Hospital Trust with, another claims resolution organization that is not specifically created by the Plan, this Trust Agreement or the Hospital TDP, or to contract with another claims resolution organization or other entity that is not specifically identified by the Plan, this Trust Agreement or the Hospital TDP, or permit any other party to join in any claims resolution organization that is formed by the Hospital Trust pursuant to this Trust Agreement or the Hospital TDP; provided that such acquisition, merger, contract or joinder shall not (a) subject the Debtors, any successors in interest thereto, or the Protected Parties to any risk of having any Hospital Opioid Claim asserted against it or them, (b) otherwise jeopardize the validity or enforceability of any injunction or release issued or granted in connection with the Plan and/or the Confirmation Order, (c) permit the

surviving organization to make decisions about the allowability and value of claims that are not in accordance with the Hospital TDP or (d) cause the Hospital Trust to fail to qualify as a Qualified Settlement Fund within the meaning of the QSF Regulations; provided further that the terms of such merger will require the surviving organization to make decisions about the evaluation of Hospital Opioid Claims in accordance with the Hospital TDP;

- (viii) sell, transfer or exchange any or all of the Hospital Trust Assets at such prices and upon such terms as the Trustee may consider proper, consistent with the other terms of this Trust Agreement; or
- (ix) delegate any or all of the authority herein conferred with respect to the investment of all or any portion of the Hospital Trust Assets to any one or more reputable individuals or recognized institutional investment advisors or investment managers without liability for any action taken or omission made because of any such delegation, except as provided in Section 4.4 herein.

(i) The Trustee shall meet with the TAC no less often than quarterly. The Trustee shall meet in the interim with the TAC when so requested by either. Meetings may be held in person, by telephone conference call or by a combination of the two.

(j) The Trustee, upon notice from the TAC, if practicable in view of pending business, shall at its next meeting with the TAC consider issues submitted by the TAC for consideration by the Hospital Trust. The Trustee shall keep the TAC reasonably informed regarding all aspects of the administration of the Hospital Trust.

**2.3 Claims Administration.** The Trustee shall implement the Hospital TDP promptly.

### **SECTION III**

#### **ACCOUNTS, INVESTMENTS AND PAYMENTS**

##### **3.1 Accounts.**

(a) The Trustee may, from time to time, create such accounts and reserves within the Hospital Trust estate as he or she deems necessary, prudent or useful in order to provide for the payment of expenses and making Hospital Abatement Distributions to Hospital Authorized Recipients and may, with respect to any such account or reserve, restrict the use of monies therein, and the earnings or accretions thereto (the “**Trust Subaccounts**”). Any such Trust Subaccounts established by the Trustee shall be held as Trust Assets and are not intended to be subject to separate entity tax treatment as a “disputed claims reserve” within the meaning of the Internal Revenue Code and the Treasury Regulations promulgated thereunder, a “disputed ownership fund” within the meaning of the Treasury Regulations promulgated under the Internal Revenue Code, or otherwise.

(b) The Trustee shall include a reasonably detailed description of the creation of any account or reserve in accordance with this Section 3.1 and, with respect to any such account, the transfers made to such account, the proceeds of or earnings on the assets held in each such account and the payments from each such account in the reports to be provided to the Opioid MDT II pursuant to Section 2.2 above.

**3.2 Investments.** Though not anticipated, any investment of monies held in the Hospital Trust shall be administered by the Trustee in a manner consistent with the standards set forth in the Uniform Prudent Investor Act.

**3.3 Source of Payments.**

(a) All Hospital Trust expenses, payments, distributions and all liabilities with respect to Hospital Opioid Claims shall be payable and made solely by the Hospital Trustee out of the Hospital Trust Assets. The Delaware Trustee shall not be liable for the payment of any Hospital Trust Expense or any other liability of the Hospital Trust. Neither the Trustee, the TAC, nor any of their officers, employees, consultants, advisors and agents, nor the Debtors, nor any other Protected Party, shall be liable for the payment of any Hospital Trust Expense or any other liability of the Hospital Trust, except to the extent explicitly provided for in (i) the Plan or (ii) solely with respect to the Trustee, the TAC and any of their officers, employees, consultants, advisors and agents, the Definitive Documents.

(b) The Trustee shall include in the Annual Report a reasonably detailed description of any payments made in accordance with this Section 3.3.

(c) The Trustee, with the consent of the TAC, shall establish and implement billing guidelines applicable to the Trustee and the TAC, as well as their respective professionals who seek compensation from the Hospital Trust.

## **SECTION IV**

### **TRUSTEE; DELAWARE TRUSTEE**

**4.1 Number.** In addition to the Delaware Trustee appointed pursuant to Section 4.11, there shall be one (1) Trustee, the Honorable Thomas L. Hogan (ret.).

**4.2 Term of Service.**

(a) The Trustee shall serve an initial term of service of five (5) years. Thereafter each term of service shall be one (1) year. The Trustee shall serve from the Effective Date until the earliest of (i) the end of his or her term, (ii) his or her death, (iii) his or her resignation pursuant to Section (b) herein, (iv) his or her removal pursuant to Section (c) herein or (v) the termination of the Hospital Trust pursuant to Section 6.3 herein.

(b) The Trustee may resign at any time by written notice to the TAC and the trustees of the Opioid MDT II. Such notice shall specify a date on which such resignation shall take effect, which shall not be less than ninety (90) days after the date such notice is given, where practicable.

(c) The Trustee may be removed by the Bankruptcy Court on the motion of the TAC, in the event that the Trustee becomes unable to discharge his or her duties hereunder due to accident, physical deterioration, mental incompetence or for other good cause. Good cause shall be deemed to include, without limitation, any substantial failure to comply with the general administration provisions of Section 2.2 herein, a consistent pattern of neglect and failure to perform or participate in performing the duties of a Trustee hereunder or repeated nonattendance at scheduled meetings. Such removal shall take effect at such time as the Bankruptcy Court shall determine.

**4.3 Appointment of Successor Trustee.**

(a) In the event of a vacancy in the Trustee position, whether by term expiration, death, retirement, resignation, removal or because the Trustee is otherwise unable to perform his or her functions as Trustee, the vacancy shall be filled by the unanimous vote of the TAC. In the event



that the TAC cannot appoint a successor Trustee, for any reason, the Bankruptcy Court shall select the successor Trustee.

(b) Immediately upon the appointment of any successor Trustee, all rights, titles, duties, powers and authority of the predecessor Trustee hereunder shall be vested in, and undertaken by, the Successor Trustee without any further act. No successor Trustee shall be liable personally for any act or omission of his or her predecessor Trustee. No successor Trustee shall have any duty to investigate the acts or omissions of his or her predecessor Trustee.

(c) Each successor Trustee shall serve until the earliest of (i) the expiration of his or her term, (ii) his or her death, (iii) his or her resignation pursuant to Section 4.2(b) herein, (iv) his or her removal pursuant to Section 4.2(c) herein or (v) the termination of the Hospital Trust pursuant to Section 6.3 herein.

(d) Nothing in this Trust Agreement shall prevent the reappointment of an individual serving as Trustee for one or more additional terms.

**4.4 Liability of Trustee and Others.** To the maximum extent permitted by applicable law, the Trustee, the Delaware Trustee, the members of the TAC, Legier and each of their officers, employees, consultants, advisors and agents shall not have or incur any liability for actions taken or omitted in such capacities, or on behalf of the Hospital Trust, except those acts found by Final Order to be arising out of their willful misconduct, bad faith, gross negligence or fraud, and shall be entitled to indemnification and reimbursement for reasonable fees and expenses in defending any and all of their actions or inactions in such capacities, or on behalf of the Hospital Trust, and for any other liabilities, losses, damages, claims, costs and expenses arising out of or due to the implementation or administration of the Plan or the Hospital Trust Agreement (other than taxes in the nature of income taxes imposed on compensation paid to such persons), in each case, except

for any actions or inactions found by Final Order to be arising out of their willful misconduct, bad faith, gross negligence or fraud. Any valid indemnification claim of the Trustee, the Delaware Trustee, the members of the TAC, Legier and each of their officers, consultants, advisors and agents shall be satisfied from the Hospital Trust.

#### **4.5 Compensation and Expenses of Trustee.**

(a) The Trustee shall receive a retainer from the Hospital Trust for his or her service as a Trustee in the amount of \$25,000 per annum, paid annually. The initial retainer shall be paid to the Trustee immediately after the Trust receives the Hospital Opioid Claims Share, and then every year following on the anniversary of such initial payment. Hourly time, as described herein, shall first be billed and applied to the annual retainer. Hourly time in excess of the annual retainer shall be paid by the Hospital Trust. For all time expended as a Trustee, including attending meetings, preparing for such meetings and working on authorized special projects, the Trustee shall receive the sum of \$525 per hour. For all non-working travel time in connection with Hospital Trust business, the Trustee shall receive the sum of \$275 per hour. All time shall be computed on a decimal (1/10<sup>th</sup>) hour basis. The Trustee shall record all hourly time to be charged to the Hospital Trust on a daily basis. The hourly compensation payable to the Trustee hereunder shall be reviewed every year and, after consultation with the members of the TAC, appropriately adjusted for changes in the cost of living.

(b) The Hospital Trust will promptly reimburse the Trustee for all reasonable out-of-pocket costs and expenses incurred by the Trustee in connection with the performance of their duties hereunder, which costs and expenses shall be paid as Trust Expenses.

(c) The Hospital Trust shall include in the Annual Report a description of the amounts paid under this Section 4.5.

#### **4.6 Indemnification of Trustee and Others.**

(a) To the maximum extent permitted by applicable law, the Hospital Trust shall indemnify and reimburse the Trustee, members of the TAC, Legier, the Delaware Trustee and the Additional Indemnitees for reasonable fees and expenses in defending any and all of their actions or inactions in such capacities, or on behalf of the Hospital Trust, and for any other liabilities, losses, damages, claims, costs and expenses arising out of or due to the implementation or administration of the Plan or the Hospital Trust Agreement (other than taxes in the nature of income taxes imposed on compensation paid to such persons), in each case, except for any actions or inactions found by Final Order to be arising out of their willful misconduct, bad faith, gross negligence or fraud. Any valid indemnification claim of the Trustee, the members of the TAC, Legier, the Delaware Trustee and each of their officers, consultants, advisors and agents shall be satisfied from the Hospital Trust.

(b) Reasonable expenses, costs and fees (including attorneys' fees and costs) incurred by or on behalf of the Trustee, members of the TAC, the Delaware Trustee or an Additional Indemnitee in connection with any action, suit or proceeding, whether civil, administrative or arbitral, from which they are indemnified by the Hospital Trust pursuant to Section (a) herein, shall be paid by the Hospital Trust in advance of the final disposition thereof upon receipt of an undertaking, by or on behalf of the Trustee, the member of the TAC, the Delaware Trustee or the Additional Indemnitee (as applicable), to repay such amount in the event that it shall be determined ultimately by Final Order that the Trustee, the member of the TAC, the Delaware Trustee or the Additional Indemnitee (as applicable) is not entitled to be indemnified by the Hospital Trust.

(c) The Hospital Trust must purchase and maintain reasonable amounts and types of insurance on behalf of each individual who is or was a Trustee, a member of the TAC, the Delaware

Trustee or an Additional Indemnatee, including against liability asserted against or incurred by such individual in that capacity or arising from his or her status as a Trustee, TAC member, Delaware Trustee or Additional Indemnatee *and name each as additional insureds under all insurance policies designed for the purpose of this Section 4.6 indemnity and defense, in amounts that are mutually agreeable.*

**4.7 Lien.** The Trustee, the Delaware Trustee, the members of the TAC and the Additional Indemnatees shall have a first priority lien upon the Hospital Trust Assets to secure the payment of any amounts payable to them pursuant to Section 4.6 herein or any undisputed compensation.

**4.8 Trustee's Employment of Experts.** The Trustee shall retain and/or consult counsel, accountants, appraisers, auditors, forecasters, experts, financial and investment advisors and such other parties deemed by the Trustee to be qualified as experts on the matters submitted to them, including without limitation Legier and the Delaware Trustee (the "**Trust Professionals**"), regardless of whether any such party is affiliated with the Hospital Trust or the Trustee in any manner (except as otherwise expressly provided in this Trust Agreement), the cost of which shall be paid as a Trust Expense. In the absence of a bad faith violation of the implied contractual covenant of good faith and fair dealing within the meaning of 12 Del. C. § 3806(e), the written opinion of or information provided by any such party deemed by the Trustee to be an expert on the particular matter submitted to such party shall be full and complete authorization and protection in respect of any action taken or not taken by the Trustee hereunder in good faith and in accordance with the written opinion of or information provided by any such party.

**4.9 Trustee Independence.** The Trustee shall not, during the term of its service, hold a financial interest in, act as attorney or agent for or serve as an officer or as any other professional for the Debtors. The Trustee shall not act as an attorney, agent or other professional for any Holder

of a Hospital Opioid Claim. For the avoidance of doubt, this Section shall not be applicable to the Delaware Trustee.

**4.10 No Bond.** Neither the Trustee nor the Delaware Trustee shall be required to post any bond or other form of surety or security unless otherwise ordered by the Bankruptcy Court.

**4.11 Delaware Trustee.**

(a) There shall at all times be a Delaware Trustee to serve in accordance with the requirements of the Act. The Delaware Trustee shall either be (i) a natural person who is at least 21 years of age and a resident of the State of Delaware or (ii) a legal entity that has its principal place of business in the State of Delaware in accordance with section 3807 of the Act, otherwise meets the requirements of applicable Delaware law and shall act through one or more persons authorized to bind such entity. The initial Delaware Trustee shall be Wilmington Trust, National Association. If at any time the Delaware Trustee shall cease to be eligible in accordance with the provisions of this Section 4.11, it shall resign immediately in the manner and with the effect hereinafter specified in Section (c) herein. For the avoidance of doubt, the Delaware Trustee will only have such rights, duties and obligations as expressly provided by reference to the Delaware Trustee hereunder.

(b) The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Trustee set forth herein. The Delaware Trustee shall be one of the trustees of the Hospital Trust for the sole and limited purpose of fulfilling the requirements of section 3807 of the Act and for taking such actions as are required to be taken by a Delaware Trustee under the Act. The duties (including fiduciary duties), liabilities and obligations of the Delaware Trustee shall be limited to (i) accepting legal process served on the Hospital Trust in the State of Delaware, and (ii) the execution of any certificates required to be

filed with the Secretary of State of the State of Delaware that the Delaware Trustee is required to execute under section 3811 of the Act (acting solely at the written direction of the Trustee) and there shall be no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity, of the Delaware Trustee. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Hospital Trust, the other Parties hereto or any beneficiary of the Hospital Trust, it is hereby understood and agreed by the other Parties hereto that such duties and liabilities are replaced by the duties and liabilities of the Delaware Trustee expressly set forth in this Trust Agreement. The Delaware Trustee shall have no liability for the acts or omissions of any Trustee. Any permissive rights of the Delaware Trustee to do things enumerated in this Trust Agreement shall not be construed as a duty and, with respect to any such permissive rights, the Delaware Trustee shall not be answerable for other than its willful misconduct, bad faith or fraud. The Delaware Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement at the request or direction of the Trustee or any other person pursuant to the provisions of this Trust Agreement unless the Trustee or such other person shall have offered to the Delaware Trustee security or indemnity (satisfactory to the Delaware Trustee in its discretion) against the costs, expenses and liabilities that may be incurred by it in compliance with such request or direction. The Delaware Trustee shall be entitled to request and receive written instructions from the Trustee and shall have no responsibility or liability for any losses or damages of any nature that may arise from any action taken or not taken by the Delaware Trustee in accordance with the written direction of the Trustee. The Delaware Trustee may, at the expense of the Hospital Trust, request, rely on and act in accordance with officer's certificates and/or opinions of counsel, and shall incur no liability and

shall be fully protected in acting or refraining from acting in accordance with such officer's certificates and opinions of counsel.

(c) The Delaware Trustee shall serve until such time as the Trustee removes the Delaware Trustee or the Delaware Trustee resigns, and a successor Delaware Trustee is appointed by the Trustee in accordance with the terms of Section (d) herein. The Delaware Trustee may resign at any time upon the giving of at least sixty (60) days' advance written notice to the Trustee; provided that such resignation shall not become effective unless and until a successor Delaware Trustee shall have been appointed by the Trustee in accordance with Section (d) herein; provided further, that if any amounts due and owing to the Delaware Trustee hereunder remain unpaid for more than ninety (90) days, the Delaware Trustee shall be entitled to resign immediately by giving written notice to the Trustee. If the Trustee does not act within such 60-day period, the Delaware Trustee, at the expense of the Hospital Trust, may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction for the appointment of a successor Delaware Trustee.

(d) Upon the resignation or removal of the Delaware Trustee, the Trustee shall appoint a successor Delaware Trustee by delivering a written instrument to the outgoing Delaware Trustee. Any successor Delaware Trustee must satisfy the requirements of section 3807 of the Act. Any resignation or removal of the Delaware Trustee and appointment of a successor Delaware Trustee shall not become effective until a written acceptance of appointment is delivered by the successor Delaware Trustee to the outgoing Delaware Trustee and the Trustee and any fees and expenses due to the outgoing Delaware Trustee are paid. Following compliance with the preceding sentence, the successor Delaware Trustee shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Delaware Trustee under this Trust Agreement, with like effect as if

originally named as Delaware Trustee, and the outgoing Delaware Trustee shall be discharged of its duties and obligations under this Trust Agreement. The successor Delaware Trustee shall make any related filings required under the Act, including filing a Certificate of Amendment to the Certificate of Trust of the Hospital Trust in accordance with section 3810 of the Act.

(e) The Delaware Trustee shall neither be required nor permitted to attend meetings relating to the Hospital Trust.

(f) The Delaware Trustee shall be paid such compensation as agreed to pursuant to a separate fee agreement.

(g) The Hospital Trust will promptly reimburse the Delaware Trustee for all reasonable out-of-pocket costs and expenses incurred by the Delaware Trustee in connection with the performance of its duties hereunder.

(h) The Delaware Trustee shall be permitted to retain counsel as required in the exercise of its obligations hereunder, and compliance with the advice of such counsel shall be full and complete authorization and protection for actions taken or not taken by the Delaware Trustee in good faith in compliance with such advice.

(i) Notwithstanding anything herein to the contrary, any business entity into which the Delaware Trustee may be merged or converted or with which it may be consolidated or any entity resulting from any merger, conversion or consolidation to which the Delaware Trustee shall be a party, or any entity succeeding to all or substantially all of the corporate trust business of the Delaware Trustee, shall be the successor of the Delaware Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

(j) The Delaware Trustee shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument or document, other



than this Trust Agreement, whether or not, an original or a copy of such agreement has been provided to the Delaware Trustee. The Delaware Trustee shall have no duty to know or inquire as to the performance or nonperformance of any provision of any other agreement, instrument or document, other than this Trust Agreement. Neither the Delaware Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Hospital Trust, the Trustee or any other person, or any of their directors, members, officers, agents, affiliates or employee, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. The Delaware Trustee may assume performance by all such persons of their respective obligations. The Delaware Trustee shall have no enforcement or notification obligations relating to breaches of representations or warranties of any other person. The Delaware Trustee shall have no responsibilities as to the validity, sufficiency, value, genuineness, ownership or transferability of any Trust Asset, written instructions, or any other documents in connection therewith, and will not, be regarded as making nor be required to make, any representations thereto.

(k) The Delaware Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Trust Agreement arising out of, or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

## SECTION V

### **TRUST ADVISORY COMMITTEE**

**5.1 Members.** The initial TAC shall consist of one (1) member. The sole member of the TAC shall be Jeffrey James, CPA. The TAC shall consist of not less than one (1) member, and shall never consist of more than three (3) individuals.

**5.2 Duties.** A member of the TAC shall serve in a fiduciary capacity, representing the interests of all Holders of Hospital Opioid Claims. The TAC shall have no fiduciary obligations or duties to any party other than the Holders of Hospital Opioid Claims. The Trustee must consult with the TAC on matters identified in Section 2.2(f) herein and in other provisions herein and must obtain the consent of the TAC on matters identified in Section 2.2(g) herein. Where provided in the Hospital TDP, certain other actions by the Trustee may also be subject to the consent of the TAC. Except for the duties and obligations expressed in this Trust Agreement and the documents referenced herein (including the Hospital TDP), there shall be no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity, of the TAC. To the extent that, at law or in equity, the TAC has duties (including fiduciary duties) and liabilities relating thereto to the Hospital Trust, the other Parties hereto or any beneficiary of the Hospital Trust, it is hereby understood and agreed by the other Parties hereto that such duties and liabilities are replaced by the duties and liabilities of the TAC expressly set forth in this Trust Agreement and the documents referenced herein (including the Hospital TDP, the Plan and the Confirmation Order).

**5.3 Term of Office.**

(a) The initial member of the TAC appointed in accordance with Section 5.1 herein shall serve a five-year term. Any other persons appointed to the TAC shall serve an initial term of three (3) years. Thereafter, each term of office for each member shall be one (1) year. Each member of the TAC shall serve until the earlier of (i) his or her death, (ii) his or her resignation pursuant to

Section (b) herein, (iii) his or her removal pursuant to Section (c) herein, (iv) the end of his or her term as provided herein or (v) the termination of the Hospital Trust pursuant to Section 6.3 herein.

(b) A member of the TAC may resign at any time by written notice to the other members of the TAC, if any, and to the Trustee. Such notice shall specify a date when such resignation shall take effect, which shall not be less than ninety (90) days after the date such notice is given, where practicable.

(c) A member of the TAC may be removed in the event that he or she becomes unable to discharge his or her duties hereunder due to accident, physical deterioration, mental incompetence or a consistent pattern of neglect and failure to perform or to participate in performing the duties of such member hereunder, such as repeated nonattendance at scheduled meetings, or for other good cause. Such removal may be made by the Bankruptcy Court on the motion of the remaining members of the TAC, or the Hospital Trustee.

#### **5.4 Appointment of Successors.**

(a) If, prior to the termination of service of a member of the TAC other than as a result of removal, he or she has designated in writing an individual to succeed him or her as a member of the TAC, such individual shall be his or her successor. If such member of the TAC did not designate an individual to succeed him or her prior to the termination of his or her service as contemplated above, such member's employer or firm may designate his or her successor. If (i) a member of the TAC did not designate an individual to succeed him or her prior to the termination of his or her service and such member's employer or firm does not designate his or her successor as contemplated herein or (ii) he or she is removed pursuant to Section 5.3(c) herein, his or her successor shall be appointed by the Trustee with the agreement of any TAC members at the time of appointment, or, if such members cannot agree on a successor, the Trustee with approval of the

Bankruptcy Court. Nothing in this Trust Agreement shall prevent the reappointment of an individual serving as a member of the TAC for an additional term, and there shall be no limit on the number of terms that a TAC member may serve.

(b) Each successor TAC member shall serve until the earlier of (i) the end of the full term for which he or she was appointed, (ii) the end of the term of the member of the TAC whom he or she replaced if his or her predecessor member did not complete such term, (iii) his or her death, (iv) his or her resignation pursuant to Section 5.3(b) herein, (v) his or her removal pursuant to Section 5.3(c) herein or (vi) the termination of the Hospital Trust pursuant to Section 6.3 herein. No successor TAC member shall be liable personally for any act or omission of his or her predecessor TAC member. No successor TAC member shall have any duty to investigate the acts or omissions of his or her predecessor TAC member. No TAC member shall be required to post any bond or other form of surety or security unless otherwise ordered by the Bankruptcy Court.

## **5.5 TAC's Employment of Professionals.**

(a) The TAC may, but is not required to, retain and/or consult counsel, accountants, appraisers, auditors, forecasters, experts, financial and investment advisors and such other parties deemed by the TAC to be qualified as experts on the matters submitted to them (the "**TAC Professionals**"). The TAC and the TAC Professionals shall at all times have complete access to the Hospital Trust's officers, employees and agents, as well as to the Trust Professionals, and shall also have complete access to all non-privileged information generated by them or otherwise available to the Hospital Trust or the Trustee. In the absence of a bad faith violation of the implied contractual covenant of good faith and fair dealing within the meaning of 12 Del. C. § 3806(e), the written opinion of or information provided by any TAC Professional or Trust Professional deemed by the TAC to be an expert on the particular matter submitted to such party

shall be full and complete authorization and protection in respect of any action taken or not taken by the TAC in good faith and in accordance with the written opinion of or information provided by the TAC Professional or Trust Professional.

(b) The Hospital Trust shall promptly reimburse, or pay directly if so instructed, the TAC for all reasonable fees and costs associated with the TAC's employment of legal counsel and forecasters (including estimation consultants and experts) pursuant to this provision in connection with the TAC's performance of its duties hereunder. The Hospital Trust shall also promptly reimburse, or pay directly if so instructed, the TAC for all reasonable fees and costs associated with the TAC's employment of any other TAC Professional pursuant to this provision in connection with the TAC's performance of its duties hereunder; provided, however, that (i) the TAC has first submitted to the Hospital Trust a written request for such reimbursement setting forth (a) the reasons why the TAC desires to employ such TAC Professional, and (b) the basis upon which the TAC seeks advice independent of the Trust Professionals to meet the need of the TAC for such expertise or advice, and (ii) the Hospital Trust has approved the TAC's request for reimbursement in writing, which approval must not be unreasonably withheld, delayed or denied. If the Hospital Trust agrees to pay for the TAC Professional, such reimbursement shall be treated as a Hospital Trust expense. If the Hospital Trust declines to pay for the TAC Professional, it must set forth its reasons in writing. If the TAC still desires to employ the TAC Professional at the Hospital Trust's expense, the TAC and/or the Trustee shall resolve their dispute pursuant to Section 6.13 herein.

(c) In the event that the TAC retains counsel in connection with any matter whether or not related to any claim that has been or might be asserted against the TAC and irrespective of whether the Hospital Trust pays such counsel's fees and related expenses, any communications

between the TAC and such counsel shall be deemed to be within the attorney-client privilege and protected by section 3333 of Title 12 of the Delaware Code, regardless of whether such communications are related to any claim that has been or might be asserted by or against the TAC and regardless of whether the Hospital Trust pays such counsel's fees and related expenses.

**5.6 Compensation and Expenses of the TAC.** The member(s) of the TAC shall receive compensation from the Hospital Trust for services on the TAC at the same hourly rate as the Trustee (but with no annual retainer), set forth in Section 4.5 herein. Additionally, the Hospital Trust will promptly reimburse the member(s) of the TAC for all reasonable out-of-pocket costs and expenses incurred in connection with the performance of their duties hereunder. Such reimbursement or direct payment shall be deemed a Hospital Trust expense. The Hospital Trust shall include a description of the amounts paid under this Section 5.6 in the Annual Report to be provided to the Opioid MDT II pursuant to Section 2.2.

## **SECTION VI**

### **GENERAL PROVISIONS**

#### **6.1 Procedures for Consulting with or Obtaining Consent of the TAC.**

(a) Consultation Process.

- (i) In the event the Trustee is required to consult with the TAC pursuant to Section 2.2(f) herein regarding the Hospital TDP, the Plan or otherwise, the Trustee shall provide the TAC with written advance notice of the matter under consideration, and with all relevant information concerning the matter as is reasonably practicable under the circumstances. The Trustee shall also provide the TAC with such reasonable access to the Trust Professionals and other experts retained by the Hospital Trust and its staff (if any) as the TAC may reasonably request during the time that the Trustee is considering such

matter, and shall also provide the TAC the opportunity, at reasonable times and for reasonable periods of time, to discuss and comment on such matter with the Trustee.

- (ii) In determining when to take definitive action on any matter subject to the consultation process set forth in this Section 6.1(a), the Trustee shall take into consideration the time required for the TAC, if they so wish, to engage and consult with their own independent financial or investment advisors as to such matter. In any event, the Trustee shall not take definitive action on any such matter until at least thirty (30) days after providing the TAC with the initial written notice that such matter is under consideration by the Trustee, unless such time period is waived by the TAC.

(b) Consent Process.

- (i) In the event the Trustee is required to obtain the consent of the TAC pursuant to Section 2.2(g) herein, the Hospital TDP, the Plan, or otherwise, the Trustee shall provide the TAC with a written notice stating that its consent is being sought pursuant to that provision, describing in detail the nature and scope of the action the Trustee proposes to take, and explaining in detail the reasons why the Trustee desires to take such action. The Trustee shall provide the TAC as much relevant additional information concerning the proposed action as is reasonably practicable under the circumstances. The Trustee shall also provide the TAC with such reasonable access to the Trust Professionals and other experts retained by the Hospital Trust and its staff (if any) as the TAC may reasonably request during the time that the

Trustee is considering such action, and shall also provide the TAC the opportunity, at reasonable times and for reasonable periods of time, to discuss and comment on such action with the Trustee.

- (ii) The TAC must consider in good faith and in a timely fashion any request for their consent by the Trustee and must in any event advise the Trustee in writing of its consent or objection to the proposed action within thirty (30) days of receiving the original request for consent from the Trustee, or within such additional time as the Trustee and TAC may agree. The TAC may not withhold its consent unreasonably. If the TAC decides to withhold its consent, it must explain in detail its objections to the proposed action. If the TAC does not advise the Trustee in writing of its consent or objections to the proposed action within thirty (30) days of receiving notice regarding such request (or any additional time period agreed to by the Trustee), then consent of the TAC to the proposed action shall be deemed to have been affirmatively granted.
- (iii) If, after following the procedures specified in this Section 6.1(b), the TAC continues to object to the proposed action and to withhold its consent to the proposed action, the Trustee and the TAC shall resolve their dispute pursuant to Section 6.13. The TAC shall bear the burden of proving that it reasonably withheld its consent. If the TAC meets that burden, the Hospital Trust shall then bear the burden of showing why it should be permitted to take the proposed action notwithstanding the TAC or Trustee's reasonable objection.



**6.2 Irrevocability.** To the fullest extent permitted by applicable law, the Hospital Trust is irrevocable.

**6.3 Term; Termination.**

(a) The term for which the Hospital Trust is to exist shall commence on the date of the filing of the Certificate of Trust and shall terminate pursuant to the provisions of Section 6.3(b) - (d) herein.

(b) The Hospital Trust shall automatically dissolve on the date (the “**Dissolution Date**”) ninety (90) days after the first to occur of the date on which the Trustee decides, with the consent of the TAC, to dissolve the Hospital Trust upon completion of its duties and the satisfaction of the purposes of the Hospital Trust, wherein (i) the Trustee deems it unlikely that new Authorized Hospital Opioid Claims will be filed against the Hospital Trust, (ii) all Hospital Opioid Claims duly filed with the Hospital Trust have been liquidated and paid or otherwise resolved to the extent provided in this Trust Agreement and the Hospital TDP and (iii) twelve (12) consecutive months have elapsed from the last payment to the Hospital Trust from the Opioid MDT II.

(c) On the Dissolution Date (or as soon thereafter as is reasonably practicable), after the wind-up of the Hospital Trust’s affairs by the Trustee and payment of all the Hospital Trust’s liabilities have been provided for as required by applicable law including section 3808 of the Act, all monies remaining in the Hospital Trust shall be given to charitable organization(s) exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, which tax-exempt organization(s) shall be selected by the Trustee using its reasonable discretion; provided, however, that (i) if practicable, the activities of the selected tax-exempt organization(s) shall be related to the treatment of, research on the cure of or other relief for individuals suffering from OUD, and (ii) the tax-exempt organization(s) shall not bear any relationship to the Debtors within the

meaning of section 468B(d)(3) of the Internal Revenue Code. Notwithstanding any contrary provision of the Plan and related documents, this Section 6.3(c) cannot be modified or amended.

(d) Following the dissolution and distribution of the assets of the Hospital Trust, the Hospital Trust shall terminate and the Trustee and the Delaware Trustee (acting solely at the written direction of the Trustee) shall execute and cause a Certificate of Cancellation of the Certificate of Trust of the Hospital Trust to be filed in accordance with the Act. Notwithstanding anything to the contrary contained in this Trust Agreement, the existence of the Hospital Trust as a separate legal entity shall continue until the filing of such Certificate of Cancellation.

**6.4 Amendments.** The Trustee, after consultation with the TAC, and subject to the unanimous consent of the TAC, may modify or amend this Trust Agreement (except with respect to Section 6.3(c), which by its own terms is expressly not subject to modification or amendment). The Trustee, after consultation with the TAC, and subject to the consent of the TAC, may modify or amend the Hospital TDP; provided, however, that no amendment to the Hospital TDP shall (i) be inconsistent with the Plan or this Trust Agreement, (ii) have a material and adverse effect on Hospital Authorized Recipients' entitlements to Hospital Abatement Distributions or (iii) be inconsistent with the provisions limiting amendments to that document provided therein. Any modification or amendment made pursuant to this Section must be done in writing. Notwithstanding anything contained in this Trust Agreement or the Hospital TDP to the contrary, neither this Trust Agreement, the Hospital TDP, nor any document annexed to the foregoing shall be modified or amended in any way that could jeopardize, impair or modify (i) the applicability of section 105 of the Bankruptcy Code to the Plan, the Confirmation Order or the Hospital Trust, (ii) the efficacy or enforceability of the Channeling Injunction or any other injunctions or releases issued or granted in connection with the Plan, (iii) the treatment of the Hospital Trust as a Qualified

Settlement Fund within the meaning of the QSF Regulations, or (iv) the Plan or the Confirmation Order. Any amendment affecting the rights, duties, immunities or liabilities of the Delaware Trustee shall require the Delaware Trustee's written consent.

**6.5 Severability.** Should any provision in this Trust Agreement be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this Trust Agreement.

**6.6 Notices.**

(a) Notices to persons asserting claims shall be given by first class mail, postage prepaid, at the address of such person, or, where applicable, such person's legal representative, in each case as provided on such person's claim form submitted to the Hospital Trust in accordance with the Hospital TDP with respect to his or her Hospital Opioid Claim, or by such other means, including electronic notice, as may be agreed between the Hospital Trust and the TAC.

(b) Any notices or other communications required or permitted hereunder to the following Parties shall be in writing and delivered to the addresses or e-mail addresses designated herein, or to such other addresses or e-mail addresses as may hereafter be furnished in writing to each of the other Parties listed herein in compliance with the terms hereof.

(c) To the Hospital Trust through the Trustee:

c/o Thomas L. Hogan  
TLH Consulting  
321 N. Clark Street  
Chicago, IL 60654

With a copy to:

Don Barrett  
Barrett Law Group  
404 Court Square  
P.O. Box 927  
Lexington, MS 39095-0927

And

Michael P. O'Neil  
Taft Stettinius & Hollister LLP  
211 N. Pennsylvania Street  
Suite 3500  
Indianapolis, IN 46204

To the Delaware Trustee:

Wilmington Trust, N.A.  
Rodney Square North  
1100 N. Market Street  
Wilmington, DE 19890  
Attn: David Young  
Email: DYoung@wilmingtontrust.com

To the TAC:

Jeffrey James  
c/o Wilmington Health  
3147 S 17<sup>th</sup> Street  
Wilmington, NC 28412

To the Debtors:

Mallinckrodt Pharmaceuticals  
5300 Frontage Road, Suite 300  
Hampton, NJ 08827  
Attn: General Counsel

with a copy to

Latham & Watkins LLP  
330 North Wabash Avenue, Suite 2800  
Chicago, IL 60611  
Attn: Jason Gott  
E-mail: [jason.gott@lw.com](mailto:jason.gott@lw.com)

and

1271 Avenue of the Americas  
New York, NY 10020  
Attn: Anu Yerramalli  
Email: [Anu.Yerramalli@lw.com](mailto:Anu.Yerramalli@lw.com)

(d) All such notices and communications if mailed shall be effective when physically delivered at the designated addresses or, if electronically transmitted, when the communication is received at the designated addresses and confirmed by the recipient by return transmission.

**6.7 Successors and Assigns.** The provisions of this Trust Agreement shall be binding upon and inure to the benefit of the Hospital Trust, the TAC, the Trustee and the Debtors, and their respective successors and assigns, except that neither the Trustee nor the TAC members may assign or otherwise transfer any of their rights or obligations, if any, under this Trust Agreement except in the case of the Trustee in accordance with Section 4.3 herein, the TAC members in accordance with Section 5.4 herein.

**6.8 Limitation on Claim Interests for Securities Laws Purposes.** Hospital Opioid Claims, and any interests therein, (a) shall not be assigned, conveyed, hypothecated, pledged or otherwise transferred, voluntarily or involuntarily, directly or indirectly, except by will or under the laws of descent and distribution, or by operation of law; (b) shall not be evidenced by a certificate or other

instrument; (c) shall not possess any voting rights; and (d) shall not be entitled to receive any dividends or interest.

**6.9 Entire Agreement; No Waiver.** The entire agreement of the Parties relating to the subject matter of this Trust Agreement is contained herein, and in the documents referred to herein (including the Plan and the Hospital TDP), and this Trust Agreement and such documents supersede any prior oral or written agreements concerning the subject matter hereof. No failure to exercise or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of rights under law or in equity.

**6.10 Headings.** The headings used in this Trust Agreement are inserted for convenience only and do not constitute a portion of this Trust Agreement, nor in any manner affect the construction of the provisions of this Trust Agreement.

**6.11 Governing Law.** The validity and construction of this Trust Agreement and all amendments hereto and thereto shall be governed by the laws of the State of Delaware, and the rights of all Parties hereto and the effect of every provision hereof shall be subject to and construed according to the laws of the State of Delaware without regard to the conflicts of law provisions thereof that would purport to apply the law of any other jurisdiction; provided, however, that the Parties hereto intend that the provisions hereof shall control and therefore shall not be applicable to the Hospital Trust, the Trustee, the Delaware Trustee, the TAC or this Trust Agreement, any provision of the laws (statutory or common) of the State of Delaware pertaining to trusts that relate to or regulate in a manner inconsistent with the terms hereof: (a) the filing with any court or governmental body or agency of Trustee accounts or schedules of Trustee fees and charges;

(b) affirmative requirements to post bonds for the Trustee, officers, agents or employees of a trust; (c) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property; (d) fees or other sums payable to the Trustee, officers, agents or employees of a trust; (e) the allocation of receipts and expenditures to income or principal; (f) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding of trust assets; (g) the existence of rights or interests (beneficial or otherwise) in trust assets; (h) the ability of beneficial owners or other persons to terminate or dissolve a trust; or (i) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of the Trustee or beneficial owners that are inconsistent with the limitations on liability or authorities and powers of the Trustee, the Delaware Trustee, the TAC or set forth or referenced in this Trust Agreement. Section 3540 of the Act shall not apply to the Hospital Trust.

**6.12 Settlers' Representative and Cooperation.** The Debtors are hereby irrevocably designated as the Settlers and are hereby authorized to take any action required of the Settlers in connection with the creation of this Trust.

**6.13 Dispute Resolution.** Any disputes that arise under this Trust Agreement or under the Hospital TDP among the Parties hereto shall be resolved by submission of the matter to an alternative dispute resolution (“**ADR**”) process with a single mutually agreeable neutral selected amongst Law Offices of Kenneth R. Feinberg, PC (1455 Pennsylvania Avenue, NW, Suite 390, Washington, DC 20004); or ADR Systems (20 North Clark Street, Floor 29, Chicago, IL 60602); or JAMS Chicago (71 S. Wacker Drive, Suite 2400, Chicago, IL 60606). Should any Party to the ADR process be dissatisfied with the decision of the neutral arbitrator, that Party may apply to the Bankruptcy Court for a judicial determination of the matter. Any review conducted by the

Bankruptcy Court shall be *de novo*. In either case, if the dispute implicates any consent or approval by the TAC as provided in this Trust Agreement, the burden of proof shall be on the TAC or the members thereof to show that the TAC's consent or approval, or withholding of the same, was valid and consistent with the terms and purposes of this Trust Agreement. Should the dispute not be resolved by the ADR process within sixty (60) days after submission, the Parties are relieved of the requirement to pursue ADR prior to application to the Bankruptcy Court. If the Trustee determines that the matter in dispute is exigent and cannot await the completion of the ADR process, the Trustee shall have the discretion to elect out of the ADR process altogether or at any stage of the process and seek resolution of the dispute in the Bankruptcy Court.

**6.14 Enforcement and Administration.** The provisions of this Trust Agreement and the Hospital TDP shall be enforced by the Bankruptcy Court pursuant to Article X of the Plan and the Confirmation Order. The Parties hereby acknowledge and agree that the Bankruptcy Court shall have continuing exclusive jurisdiction over the settlement of the accounts of the Trustee and over any disputes that arise under this Trust Agreement or the Hospital TDP and are not resolved by alternative dispute resolution in accordance with Section 6.13 herein.

**6.15 Effectiveness.** This Trust Agreement shall not become effective until the Effective Date of the Plan and it has been executed and delivered by all the Parties hereto.

**6.16 Counterpart Signatures.** This Trust Agreement may be executed in any number of counterparts and by different Parties on separate counterparts (including by PDF transmitted by e-mail), and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.



IN WITNESS WHEREOF, the Parties have executed this Trust Agreement as of the date first set forth above to be effective as of the Effective Date.

### **SETTLORS**

Mallinckrodt plc, Acthar IP Unlimited Company, IMC Exploration Company, INO Therapeutics LLC, Infacare Pharmaceutical Corporation, Ludlow LLC, MAK LLC, MCCH LLC, MEH, Inc., MHP Finance LLC, MKG Medical UK Ltd, MNK 2011 LLC, MUSHI UK Holdings Limited, Mallinckrodt ARD Holdings Inc., Mallinckrodt ARD Holdings Limited, Mallinckrodt ARD IP Unlimited Company, Mallinckrodt ARD LLC, Mallinckrodt Brand Pharmaceuticals LLC, Mallinckrodt Buckingham Unlimited Company, Mallinckrodt CB LLC, Mallinckrodt Critical Care Finance LLC, Mallinckrodt Enterprises UK Limited, Mallinckrodt Holdings GmbH, Mallinckrodt Hospital Products IP Unlimited Company, Mallinckrodt Hospital Products Inc., Mallinckrodt IP Unlimited Company, Mallinckrodt International Finance SA, Mallinckrodt International Holdings S.a.r.l., Mallinckrodt Lux IP S.a.r.l., Mallinckrodt Manufacturing LLC, Mallinckrodt Pharma IP Trading Unlimited Company, Mallinckrodt Pharmaceuticals Ireland Limited, Mallinckrodt Pharmaceuticals Limited, Mallinckrodt Quincy S.a.r.l., Mallinckrodt UK Finance LLP, Mallinckrodt UK Ltd, Mallinckrodt US Holdings LLC, Mallinckrodt US Pool LLC, Mallinckrodt Veterinary, Inc., Mallinckrodt Windor S.a.r.l., Mallinckrodt Windsor Ireland Finance Unlimited Company, Ocera Therapeutics, Inc., Petten Holdings Inc., ST Operations LLC, ST Shared Services LLC, ST US Holdings LLC, ST US Pool LLC, Stratatech Corporation, Sucampo Holdings Inc., Sucampo Pharma Americas LLC, Sucampo Pharmaceuticals, Inc., Therakos, Inc., Vtesse LLC

By:

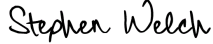
A handwritten signature in blue ink that reads "Bryan Reasons".

Name: Bryan Reasons

Title: President

Mallinckrodt APAP LLC, Mallinckrodt ARD  
Finance LLC, Mallinckrodt Enterprises  
Holdings, Inc., Mallinckrodt Enterprises LLC,  
Mallinckrodt Equinox Finance LLC,  
Mallinckrodt LLC, SpecGx Holdings LLC,  
SpecGx LLC, WebsterGx Holdco LLC

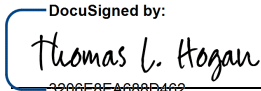
By:

 Stephen Welch

Name: Stephen Welch

Title: President

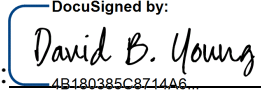
**TRUSTEE**

By:  DocuSigned by:  
Name: Thomas L. Hogan

**DELAWARE TRUSTEE**

**WILMINGTON TRUST, NATIONAL  
ASSOCIATION**

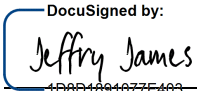
DocuSigned by:

By:   
4B180385C8714A6...

Name: David B. Young

Title: Vice President

**TAC MEMBER**

By:  DocuSigned by:  
Name: Jeffrey James

**Exhibit 1**

**CERTIFICATE OF TRUST**

**Attached**

# Delaware

The First State

Page 1

*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 STATUTORY TRUST REGISTRATION OF  
"HOSPITAL TRUST", FILED IN THIS OFFICE ON THE SIXTEENTH DAY OF  
JUNE, A.D. 2022, AT 4:16 O`CLOCK P.M.*

  
Jeffrey W. Bullock, Secretary of State

6863037 8100  
SR# 20222750038

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 203700926  
Date: 06-16-22

**CERTIFICATE OF TRUST**  
**OF**  
**HOSPITAL TRUST**

THIS CERTIFICATE OF TRUST OF Hospital Trust, a Delaware statutory trust (the “Trust”) is being duly executed and filed by the undersigned on behalf of the Trust to form a statutory trust under the Delaware Statutory Trust Act (12 Del. C. §§3801 et seq.) (as amended, the “Statutory Trust Act”).

1.     Name. The name of the statutory trust being formed is Hospital Trust.
2.     Delaware Trustee. The name and business address of the Delaware resident trustee of the Trust with a principal place of business in the State of Delaware is as follows: Wilmington Trust, National Association, 1100 North Market Street, Wilmington, Delaware 19890, Attn: Corporate Trust Administration.
3.     Effective Date. This Certificate of Trust shall be effective upon filing.

*/signatures appear on the following page/*



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

\_\_\_\_\_  
Thomas L Hogan, not in his individual capacity but  
solely as Trustee

WILMINGTON TRUST, NATIONAL  
ASSOCIATION, not in its individual capacity  
but solely as Delaware Trustee

By \_\_\_\_\_

Name: David A. Vanaskey Jr.

Title: Senior Vice President

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

Thomas L Hogan

Thomas L. Hogan, not in his individual capacity but  
solely as Trustee

WILMINGTON TRUST, NATIONAL  
ASSOCIATION, not in its individual capacity  
but solely as Delaware Trustee

By \_\_\_\_\_

Name:

Title:

**Exhibit 2**  
**Hospital TDP**  
**Attached**

## **HOSPITAL TRUST DISTRIBUTION PROCEDURES<sup>1</sup>**

### **§ 1. APPLICABILITY.**

Pursuant to the plan of reorganization of Mallinckrodt PLC and its Debtor affiliates (the “Plan”)<sup>2</sup>, the following claims (“Hospital Channeled Claims”) shall be channeled to and liability therefor shall be assumed by the Hospital Trust as of the Effective Date: all Hospital Claims,<sup>3</sup> which are all Claims against the Debtors held by providers of healthcare treatment services or any social services, in their capacity as such, that are not Governmental Units.<sup>4</sup> Hospital Channeled Claims shall be administered, liquidated and discharged pursuant to the Hospital Trust Documents, and satisfied solely from funds held by the Hospital Trust as and to the extent provided in these distribution procedures (this “Hospital TDP”). This Hospital TDP sets forth the manner in which the Hospital Trust shall make Abatement Distributions to Holders of Hospital Channeled Claims (such Abatement Distributions, “Hospital Abatement Distributions”) that satisfy the eligibility criteria for Authorized Recipients set forth herein. Hospital Channeled Claims shall be fully discharged pursuant to this Hospital TDP.

Hospital Authorized Recipients (as defined below) are required to use all funds distributed to them from the Hospital Trust solely and exclusively for (i) the Authorized Abatement Purposes set forth in § 7 or (ii) the payment of attorneys’ fees and costs of Holders of Hospital Channeled Claims (including counsel to the Ad Hoc Group of Hospitals) (such Authorized Abatement Purposes, collectively, “Hospital Authorized Abatement Purposes”).

### **§ 2. CLAIMS ADMINISTRATION.**

The Plan contemplates that the Hospital Trust will receive 3.57% of the Opioid MDT II Distributable Value (i) after deducting from the Opioid MDT II Distributable Value (a) reserved expenses for items (a) and (b) of the definition of Opioid MDT II Operating Expenses, and (b) the U.S. Government Opioid Claims Share, and (ii) gross of applicable Private Opioid Creditor Trust Deductions and Holdbacks.

So long as he is able to serve as of the Effective Date, the presumptive trustee of the Hospital Trust is Hon. Thomas Hogan (Ret.) (the “Trustee”). If Judge Hogan is not able to serve, then a new

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<sup>1</sup> These procedures are qualified by the terms of the Plan. Holders of Hospital Channeled Claims are strongly advised to review the Plan as well as all of the Hospital Trust Documents and the Debtors’ Disclosure Statement for additional information on the terms of the Plan and the treatment of Hospital Channeled Claims.

<sup>2</sup> Terms used but not defined herein shall have the meaning ascribed to them in the Plan.

<sup>3</sup> For the avoidance of doubt, “Hospital Claim,” as defined in the Plan, means “Opioid Claims (including Opioid Demands) held by a provider of healthcare treatment services or any social services, in its capacity as such, and that is not held by a Governmental Unit. For the avoidance of doubt, Hospital Opioid Claims exclude Emergency Room Physicians Opioid Claims.” (See Plan, Article I, A (Defined Terms) at ¶ 190 (definition of “Hospital Opioid Claims.”)).

<sup>4</sup> For the avoidance of doubt, “Governmental Unit,” as defined in the Plan, means “a governmental unit as defined in section 101(27) of the Bankruptcy Code and shall for the avoidance of doubt, include Tribes. For the avoidance of doubt, this term does not include any non-federal acute care hospitals.”

Trustee will be selected in accordance with the Plan in advance of the Effective Date by the Ad Hoc Group of Hospitals in consultation with the Debtors.<sup>5</sup>

The Trustee shall have the power and authority to perform all functions on behalf of the Hospital Trust, and shall undertake all administrative responsibilities as are provided in the Plan and the Hospital Trust Documents.<sup>6</sup> The Trustee shall be responsible for all decisions and duties with respect to the Hospital Trust.<sup>7</sup>

The Trustee shall have the authority to determine the eligibility of Hospital Authorized Recipients and the amount of Hospital Abatement Distributions made by the Hospital Trust. In order to qualify as a Hospital Authorized Recipient and be eligible to receive a Hospital Abatement Distribution, Holders of Hospital Channeled Claims must comply with the terms, provisions and procedures set forth herein, including the Hospital Abatement Distribution Form Deadline and the timely submission of all forms required pursuant hereto. The Trustee may investigate any Hospital Channeled Claim, and may request information from any Holder of a Hospital Channeled Claim to ensure compliance with the terms set forth in this Hospital TDP, the other Hospital Trust Documents and the Plan.

Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state corporate law, the Trustee shall be and is appointed as the successor-in-interest to, and the representative of, the Debtors and their Estates for the retention, enforcement, settlement or adjustment of the Hospital Channeled Claims.

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<sup>5</sup> The Hospital Trust Agreement shall provide that, in the event of a vacancy in the Trustee position, whether by term expiration, death, retirement, resignation, or removal, the vacancy shall be filled by the unanimous vote of the Hospital Trust Advisory Committee (the “TAC”); in the event that the TAC cannot appoint a successor Trustee, for any reason, the Bankruptcy Court shall select the successor Trustee.

<sup>6</sup> The Hospital Trust Agreement shall provide that the Trustee shall have the power to appoint such officers, hire such employees, engage such legal, financial, accounting, investment, auditing, forecasting, and other consultants, advisors, and agents as the business of the Hospital Trust requires, and delegate to such persons such powers and authorities as the fiduciary duties of the Trustee permit and as the Trustee, in its discretion, deem advisable or necessary in order to carry out the terms of the Hospital Trust, including without limitation the Delaware Trustee, and any third-party claims or noticing agent deemed necessary or convenient by the Trustee, and pay reasonable compensation to those employees, legal, financial, accounting, investment, auditing, forecasting, and other consultants, advisors, and agents employed by the Trustee after the Effective Date (including those engaged by the Hospital Trust in connection with its alternative dispute resolution activities).

<sup>7</sup> The Hospital Trust Agreement shall provide that: (i) the Trustee shall receive a retainer from the Hospital Trust for his or her service as a Trustee in the amount of \$25,000 per annum, paid annually; (ii) hourly time shall first be billed and applied to the annual retainer; (iii) hourly time in excess of the annual retainer shall be paid by the Hospital Trust; (iv) for all time expended as a Trustee, including attending meetings, preparing for such meetings, and working on authorized special projects, the Trustee shall receive the sum of \$525 per hour; (v) for all non-working travel time in connection with Hospital Trust business, the Trustee shall receive the sum of \$275 per hour; (vi) all time shall be computed on a decimal (1/10th) hour basis; and (vii) the Trustee shall not be required to post any bond or other form of surety or security unless otherwise ordered by the Bankruptcy Court.

### **§ 3. QUALIFYING CERTIFICATION.**

To qualify as a Hospital Authorized Recipient, a Holder of a Hospital Channeled Claim must certify in its Hospital Abatement Distribution Form (as defined below) that:

- (a) It adheres to the standard of care for the emergency department, hospital wards and outpatient clinics at the time of any prospective evaluation, diagnosis, and treatment of OUD, including with respect to the applicable standard of care for the treatment of addiction, acute withdrawal and treatment for OUD with medication assisted treatment; and
- (b) It provides discharge planning and post-discharge care coordination for patients with OUD, including information for appropriate OUD treatment services.

### **§ 4. ELIGIBILITY FOR HOSPITAL ABATEMENT DISTRIBUTIONS; NOTICES.**

- (a) Eligibility for Hospital Abatement Distributions

To qualify as a Hospital Authorized Recipient eligible to receive Hospital Abatement Distributions from the Hospital Trust, each applicable Holder of a Hospital Channeled Claim must:

- (i) Timely submit the form attached hereto as Exhibit A (the “Hospital Abatement Distribution Form”) containing:
  - A. the certification set forth in § 3;
  - B. a certification signed by the Holder of a Hospital Channeled Claim or its attorney attesting to the accuracy and truthfulness of the Holder of a Hospital Channeled Claim’s submission. Such certification must include an attestation that no data required for claims processing and distribution valuation, and no records or information that would reasonably be relevant to the valuation of the distribution, have been misrepresented or withheld; and
  - C. the certification that the Holder of a Hospital Channeled Claim will comply with § 7 in its use of any funds distributed to it; and
- (ii) Provided all of the requisite claims data (as described in § 5, the “Requisite Claims Data”) in connection with submitting a Hospital Abatement Distribution Form.

Provided, however, that a Holder of a Hospital Channeled Claim that previously timely filed a Proof of Claim in the Chapter 11 Cases of *Purdue Pharma, L.P.* et al, No. 19-23649 in the United States Bankruptcy Court for the Southern District of New York (“Purdue”) that contained all of the Requisite Claims Data (as defined in section § 5) for such Hospital Claims have satisfied the requirements of § 4(a)(i) and § 4(a)(ii).

Any Holder of a Hospital Channeled Claim who meets all of the above criteria (i)0-(ii) (each, a “Hospital Authorized Recipient”) shall qualify for Hospital Abatement Distributions, subject to the limitations otherwise set forth herein; however, if such Holder does not meet such criteria, then it will not qualify as a Hospital Authorized Recipient and will not receive any Hospital Abatement Distributions. Any discrepancy as to whether a Holder of a Hospital Channeled Claim qualifies as a Hospital Authorized Recipient pursuant to the criteria as set forth in this § 4(a) will be resolved by the Trustee.

FOR AVOIDANCE OF DOUBT, FOR A HOLDER OF A HOSPITAL CHanneled CLAIM TO QUALIFY AS A HOSPITAL AUTHORIZED RECIPIENT AND BE ELIGIBLE TO RECEIVE A HOSPITAL ABATEMENT DISTRIBUTION, SUCH HOLDER OF A HOSPITAL CHanneled CLAIM MUST TIMELY SUBMIT A FULLY COMPLETED HOSPITAL ABATEMENT DISTRIBUTION FORM BY OR BEFORE THE HOSPITAL ABATEMENT DISTRIBUTION FORM DEADLINE (THAT IS, FORTY-FIVE (45) DAYS AFTER THE DATE OF THE APPLICABLE HOSPITAL ABATEMENT DISTRIBUTION DEADLINE NOTICE, AS SET FORTH HEREIN).

(b) Notices

- (i) As soon as reasonably practicable after the Effective Date of the Plan, the Trustee or the Claims Administrator, as applicable, shall cause a notice to be served on each Holder of a Hospital Channeled Claim that (i) is listed on the national registry of hospitals maintained by the American Hospital Directory ®, as in effect on the Effective Date *and* (ii) is (x) a non-federal acute care hospital as defined by CMS or (y) a non-federal hospital or hospital district that is required by law to provide inpatient acute care and/or fund the provision of inpatient acute care. Such notice shall contain, among other things that the Trustee deems reasonable and appropriate under the circumstances, (i) this Hospital TDP, including the Hospital Abatement Distribution Form attached hereto, (ii) the URL for the Debtors’ claims and noticing website where such Hospitals can locate the Plan (<https://restructuring.primeclerk.com/mallinckrodt>), and (iii) clear instructions for submitting a Hospital Abatement Distribution Form to the Trustee, the deadline set forth in each such Hospital Abatement Distribution Form for submitting the Hospital Abatement Distribution Form being 45 days after the date of such notice.
- (ii) For any Holder of a Hospital Channeled Claim that receives a Hospital Abatement Distribution Deadline Notice pursuant to § § 4(b)(i)) hereof and submits a Hospital Abatement Distribution Form, and all of its parts, by the applicable deadline (with respect to each such notice, the “Hospital Abatement Distribution Form Deadline”) and whose Hospital Abatement Distribution Form is substantially complete but otherwise defective in such a manner as to render such Holder of a Hospital Channeled Claim ineligible to receive Hospital Abatement Distributions, and to the extent such defect is determined by the Trustee to be curable, the Trustee, as applicable, shall provide such Holder of a Hospital Channeled Claim with notice of the

defect and a reasonable period of time following delivery of such notice for such Holder of a Hospital Channeled Claim to cure such defective Hospital Abatement Distribution Form. The Trustee shall exercise discretion in determining defect, curability and the period of time in which a defect may be cured. Under no circumstance is the Trustee obligated to send a notice of defect for Hospital Abatement Distribution Forms that do not provide responses to the requirements set forth under §§ § 40 and § 4(a)(ii).

- (iii) Other than pursuant to the cure procedures set forth herein, any Holder of a Hospital Channeled Claim that does not submit a Hospital Abatement Distribution Form shall not qualify as a Hospital Authorized Recipient, and any Holder of a Hospital Channeled Claim that submits a Hospital Abatement Distribution Form after the Hospital Abatement Distribution Form Deadline shall not qualify as a Hospital Authorized Recipient. No Hospital Abatement Distribution Form shall be accepted after the Hospital Abatement Distribution Form Deadline.

## **§ 5. EVIDENCE FOR DETERMINATION OF HOSPITAL ABATEMENT DISTRIBUTIONS.**

- (a) To permit the Trustee to evaluate the amount each Hospital Authorized Recipient is to receive as a Hospital Abatement Distribution, and to the extent not already submitted in connection with its Proof of Claim, a Holder of a Hospital Channeled Claim must submit all of the following, non-exhaustive, data and types of documents, unless otherwise determined in the discretion of the Trustee in consultation with the TAC and consistent with § 4(b)(iii), collectively the “Requisite Claims Data”.
  - (i) A properly and fully completed Hospital Abatement Distribution Form, with all its parts and requisite submissions, as established by the Trustee, consistent with the requirements set forth in § 4(a)(i); and
  - (ii) copies of all claims, complaints, proofs of claim, notices, settlement documents, releases, recoveries, compensation received, or similar documents that a Holder of a Hospital Channeled Claim submits or entered into in respect of claims asserted against or to be asserted against any other entity or person arising from or related to such Holder of a Hospital Channeled Claim’s OUD program or related to any of the injuries that underlie that claim presented to the Trustee.

The Trustee may request additional information as reasonably necessary in the opinion of the Trustee to determine the amount to be distributed to a Hospital Authorized Recipient. The Trustee shall establish a reasonable timeframe in which a Hospital Authorized Recipient must provide any requested information.



**§ 6. DETERMINATION OF HOSPITAL ABATEMENT DISTRIBUTION AMOUNTS.**

- (a) The Trustee (or its agents or representatives) shall review the timely submitted Hospital Abatement Distribution Forms.
- (b) The Trustee shall utilize (but shall have no rights in or to the intellectual property contained in) the proprietary Legier Model and Algorithm (the “Model”), prepared and operated by Legier & Company, apac, for determining the amount of each Hospital Abatement Distribution. The amount of the Hospital Abatement Distribution to be paid to each Hospital Authorized Recipient shall be determined within 120 days after the applicable Hospital Abatement Distribution Form Deadline or in a period of time determined by the Trustee to be most practicable.
- (c) The Model shall determine the amount distributable to each Hospital Authorized Recipient based on (1) the diagnostic codes associated with operational charges incurred by the Hospital Authorized Recipient in connection with the treatment of Opioid Use Disorder, (2) the portion of such charges that were not reimbursed, and (3) the following distribution determination factors and weights:<sup>8</sup>
  - (i) Units of morphine milligram equivalents (MME) dispensed in the Hospital Authorized Recipient’s service area (“Service Area”) during the period January 1, 2006-December 31, 2014 (the “Measurement Period”) (to be weighted at 10%);
  - (ii) Opioid use disorder rates at the State level, pro-rated for each Hospital Authorized Recipient (to be weighted at 10%);
  - (iii) Opioid overdose deaths in the Hospital Authorized Recipient’s Service Area (to be weighted at 8.75%)
  - (iv) Operational impact calculated using the Model, to include opioid diagnoses, and charge and reimbursement data (to be weighted at 35%);
  - (v) Hospital Authorized Recipient’s opioid related patients as a percentage of its total patients (to be weighted at 18.75%);
  - (vi) 17.5% for either
    - A. such Hospital Authorized Recipient having filed a timely Proof of Claim in the Purdue Pharma bankruptcy claim filing process, or

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<sup>8</sup> The Model calculates a Hospital Authorized Recipient’s loss resulting from its treatment of patients with OUD and other opioid diagnoses, considering the total charges and collections for each, among other things, including a causation algorithm applied to each patient encounter.

- B. such Hospital Authorized Recipient having been designated as a “Safety Net Hospital” as defined by the CARES Act as in effect on the Effective Date.<sup>9</sup>

## **§ 7. HOSPITAL AUTHORIZED ABATEMENT PURPOSES.**

- (a) All net funds (after the deduction of all legal fees and litigation expenses, as described herein, and in the Hospital Trust Agreement) distributed to Hospital Authorized Recipients shall be used solely and exclusively for Opioid Use Disorder (“OD”) abatement programs, whether currently existing or newly initiated. As a condition of receiving a Hospital Abatement Distribution, each Hospital Authorized Recipient must submit to the Trustee on its Hospital Abatement Distribution Form a written statement that all funds will be spent only in the Authorized Recipient’s Service Area for one or more of the following Hospital Authorized Abatement Purposes:
- (i) Providing transportation to treatment facilities for patients with OD.
  - (ii) Providing continuing professional education in addiction medicine, including addressing programs addressing stigma.
  - (iii) Counteracting diversion of prescribed medication in ED or practice, consistent with the following goal: reducing opioid misuse, OD, overdose deaths, and related health consequences throughout the hospital Service Area (county or region).
  - (iv) Participating in community efforts to provide OD treatment to others in the community, such as those in jails, prisons, or other detention facilities.
  - (v) Providing community education events on opioids and OD.
  - (vi) Providing Naloxone kits and instruction to patients upon discharge.
  - (vii) Implementing needle exchange in hospital or adjacent clinic and providing on-site MAT services if possible.
  - (viii) Prospectively providing otherwise unreimbursed or under-reimbursed future medical services for patients with OD or other opioid related diagnoses.
  - (ix) Building or leasing space to add half-way house beds.
  - (x) Participating in research regarding development of innovative OD treatment practices.

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<sup>9</sup> A “Safety Net Hospital” has (a) A Medicare Disproportionate Patient Percentage (DPP) of 20.2% or greater; (b) annual uncompensated care (UCC) of at least \$25,000 per bed; and (c) profit margin of 3.0% or less.

- (xi) Directing moneys to any other public or private Authorized Recipient of funds concerning the treatment of persons with OUD or other opioid-related diagnoses; provided that such recipient's use of such funds would otherwise constitute an Authorized Abatement Purpose.
  - (xii) Medication-Assisted Treatment ("MAT") Programs: an aggregate of \$50 million may be earmarked for Holders of Hospital Channeled Claims to establish and implement a MAT program or to continue, complete and/or implement an existing MAT program already under development.<sup>10</sup>
  - (xiii) Engaging in any other abatement activity with the express permission of the Court, at the request of the Trustee.
- (b) In addition, the Hospital Trust shall, in accordance with the Plan, the Confirmation Order and the Hospital Trust Documents, make Hospital Abatement Distributions to Hospital Authorized Recipients exclusively for Hospital Authorized Abatement Purposes within each Hospital Authorized Recipients' respective Service Area identified in the claim. Decisions concerning Hospital Abatement Distributions made by the Hospital Trust will consider the need to ensure that underserved urban and rural areas, as well as minority communities, receive equitable access to the funds.
  - (c) To the extent any Holder of a Hospital Channeled Claim that is otherwise a Hospital Authorized Recipient does not comply with this § 7, such Holder of a Hospital Channeled Claim shall not be a Hospital Authorized Recipient and shall be disqualified from receiving Hospital Abatement Distributions, notwithstanding any other eligibility determination pursuant to other sections or procedures set forth herein or in the other Hospital Trust Documents.

## **§ 8. HOSPITAL ABATEMENT DISTRIBUTIONS BY HOSPITAL TRUST.**

- (a) Once the Trustee has calculated the amount of the Hospital Abatement Distribution to be paid to each Hospital Authorized Recipient, and also calculated each Hospital Authorized Recipient's *pro rata* share of the total sum of all Hospital Abatement Distributions to be paid to all Hospital Authorized Recipients, then the Trustee shall make interim Hospital Abatement Distributions, from time to time in its judgment, to those Hospital Authorized Recipients that have complied with all of the criteria and procedures described herein. Unless otherwise determined by the Trustee, such Hospital Authorized Recipients may receive one interim, and one final, distribution.
- (b) All payments made for one or more of said Hospital Authorized Abatement Purposes shall be subject to audit by the Trustee of the Hospital Trust and shall be repaid with a ten percent (10%) penalty added for any funds found by audit to have

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<sup>10</sup> The Hospital Abatement Distribution Form will provide an opportunity to indicate the proportion and amount of Hospital Abatement Distributions that the Hospital Authorized Recipient intends to apply to MAT programs.

been spent for an unauthorized purpose. Such audit may occur any time prior to the wind-down of the Trust.

- (c) Hospital Abatement Distributions will be subject to a common benefit assessment and may be subject to certain additional assessments for payment of attorneys' fees and costs of the Ad Hoc Group of Hospitals in accordance with Article IV.X.8 of the Plan.

## **§ 9. REPORTING BY HOSPITAL AUTHORIZED RECIPIENTS.**

- (a) Within ninety (90) days after the end of a distribution period (that being the twelve (12) month period following each annual distribution date), each Hospital Authorized Recipient that received a distribution must submit to the Hospital Trust a certification regarding its satisfaction of the minimum spending requirements on Hospital Authorized Abatement Purposes or that it was unable to meet the minimum spending requirements and must carryover a portion of its distribution.
- (b) If the Hospital Authorized Recipient has not met the requirements during that period, those allocated but unused funds can carry over to the subsequent periods and will continue to carry forward each year until the Hospital Authorized Recipient meets the relevant spending requirements for Hospital Authorized Abatement Purposes. Additional annual certification(s) must be submitted until the Hospital Authorized Recipient meets the relevant spending requirements. A Hospital Authorized Recipient shall not be subject to a penalty for failing to meet the minimum spending requirements with respect to its Hospital Abatement Distribution during a given distribution period.
- (c) The Hospital Trust shall have the right to audit a claimant to determine whether the Hospital Authorized Recipient's expenditures for Hospital Authorized Abatement Purposes have met the requirements set forth in the Hospital Trust Documents.
- (d) Each Hospital Authorized Recipient, if and when requested by the Hospital Trustee (or its agents or representatives), shall provide supporting documentation, in a mutually agreed upon format, demonstrating that the Hospital Authorized Recipient's expenditures for Hospital Authorized Abatement Purposes have met the requirements of the Hospital Trust Documents. All Hospital Abatement Distribution Forms and certifications filed or submitted by Holders of Hospital Channeled Claims are subject to audit by the Hospital Trustee (or its agents or representatives). If the Hospital Trustee finds a material misstatement in a Holder of a Hospital Channeled Claim's Hospital Abatement Distribution Form or certification, the Hospital Trustee may allow that Holder of a Hospital Channeled Claim up to 30 days to resubmit its Hospital Abatement Distribution Form or certification with supporting documentation or revisions. Failure of the Holder of a Hospital Channeled Claim to timely correct its misstatement in a manner acceptable to the Hospital Trustee may result in forfeiture of all or part of the Holder of a Hospital Channeled Claim's qualification as a Hospital Authorized Recipient or right to receive Hospital Abatement Distributions.

- (e) The Trustee shall have the power to take any and all actions that in the judgment of the Trustee are necessary or proper to fulfill the purposes of Hospital Trust. The Hospital Trust retains the right to seek return by legal means of any expenditures which fail to comply with the requirements of this Hospital TDP.

#### **§ 10. REPORTING BY THE HOSPITAL TRUST.**

The Hospital Trust shall file an annual report with the Bankruptcy Court after each year that the Hospital Trust is in existence, summarizing the distributions made from the Hospital Trust and detailing the status of any Hospital Authorized Recipient audits, and any recommendations made by the Trustee relating to such audits.

**EXHIBIT A**  
**HOSPITAL ABATEMENT DISTRIBUTION FORM**

*See Attached*

# HOSPITAL ABATEMENT DISTRIBUTION FORM

**HOSPITAL ABATEMENT DISTRIBUTION FORM DEADLINE:** [\_\_\_\_\_]

Please read the instructions carefully before filling out this Hospital Abatement Distribution Form (this “Form”). Capitalized terms used herein and not otherwise defined, shall have the meanings ascribed to them in the *Fourth Amended Joint Plan of Reorganization (With Technical Modifications) of Mallinckrodt and Its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code [D.I. 6510]* (as modified, amended or supplemented from time to time, the “Plan”) or the Hospital Trust Distribution Procedures (as modified, amended or supplemented from time to time, the “Hospital TDP”),” dated, July 20, 2021 [Docket No. 3232-2].

Each Holder of a Hospital Channeled Claim, which includes (i) Non-federal acute care hospitals, as defined by CMS, or (ii) a non-federal hospital or hospital district that is required by law to provide inpatient acute care and/or fund the provision of inpatient acute care, is required to complete and submit this Form in order to be eligible to receive Hospital Abatement Distributions from the Hospital Trust.

The submission of the completed Form by the Hospital Abatement Distribution Form Deadline set forth above is a prerequisite to eligibility for a Hospital Abatement Distribution, but does not guarantee that a Holder of a Hospital Channeled Claim will be deemed eligible for a Hospital Abatement Distribution. If a Holder of a Hospital Channeled Claim is deemed eligible by the Hospital Trustee pursuant to the Hospital TDP to receive Hospital Abatement Distributions, the information provided in this Form will be used to determine each such Hospital Authorized Recipient’s Hospital Abatement Distribution from the Hospital Trust (as defined in the Plan, the “Hospital Trust”). Holders of Hospital Channeled Claims may redact information on this Form or any attached documents, as they deem necessary. A Holder of a Hospital Channeled Claim shall only attach *copies* of any documents that support a claim, and shall not submit original documents; **documents submitted may be destroyed after scanning and will not be returned to the Holder of a Hospital Channeled Claim.** A person who files a fraudulent claim on behalf of a Holder of a Hospital Channeled Claim may, at a minimum, be fined up to \$500,000.00, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152,157. Holders of Hospital Channeled Claims shall provide the information requested that is, to the best of their knowledge, current and valid as of the date this Form is completed and delivered to the Hospital Trustee by such a Holder of a Hospital Channeled Claim:

Please provide the following information to the Hospital Trustee by delivering this completed Hospital Abatement Distribution Form by secure file transfer protocol (“SFTP”) as provided at [www.mlnkhospitalsettlement.com](http://www.mlnkhospitalsettlement.com) prior to the Hospital Abatement Distribution Form Deadline set forth on page 1 of this Form.

**Failure to submit a completed copy of this Form and requisite claims data (as described in Exhibit A #18 herein) by the Hospital Abatement Distribution Form Deadline set forth on page 1 of this Form may disqualify you from receiving a Hospital Abatement Distribution. Additionally, failure to complete any portion of the Form may result in a reduced Hospital Abatement Distribution or disqualification from receiving a Hospital Abatement Distribution.**

### A. Claimant Information

Please provide the information in Section A for the Holder of a Hospital Channeled Claim.

1. Name of Operating Entity:			
2. Address:	Street Address Line 1		
	Street Address Line 2		
	City	State:	Zip:
3. Federal Employer Identification Number	_____ – _____		



## B. Contact Information

Please provide the information in Section B where notices and Hospital Abatement Distribution(s) should be sent.

1. Contact Name:			
2. Contact Title:			
3. Address:	Street Address Line 1		
	Street Address Line 2		
	City	State:	Zip:
4. Phone:	(        ) –        –		
5. Email:			
5. By filling out this Form, you are deemed to consent to receipt of notice by email. If you do not consent to receipt of notice by email, <b>please check this box:</b>			

Please provide the information for the Holder of a Hospital Channeled Claim.

1. Have you, as of the date of this Form, provided to the Ad Hoc Group of Hospitals or its agent substantially all of the requisite claims data relating thereto (as described in Exhibit A #18 herein) to the best of your knowledge    ☐ Yes    ☐ No
2. Are you listed on the national registry of hospitals maintained by the American Hospital Directory®, as in effect on the Effective Date and you are (a) a non-federal acute care hospital as defined by CMS or (b) a non-federal hospital or hospital district that is required by law to provide inpatient acute care and/or fund the provision of inpatient acute care?  
    ☐ Yes    ☐ No
3. Are you a named Plaintiff in any active cause of action against opioids manufacturers, distributors, or pharmacies?    ☐ Yes    ☐ No
  - a. If yes, please provide whether the active cause of action is filed (check one below):
    - i. in the MDL: \_\_\_\_\_
    - ii. in state court: \_\_\_\_\_
  - b. If yes, attach a copy of the most recently filed Complaint.

4. Unless a filed Complaint is attached to the Form, describe below, the opioid problem that has impacted each of the hospitals/facilities listed on Exhibit A, and include with particularity, data reflecting overdose and deaths from overdoses in your respective service area(s), for the period of time ranging from January 1, 2009 through October 20, 2020.

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5. To qualify for distributions from the Hospital Trust, a Holder of a Hospital Channeled Claim must certify that:
- a. You and/or it adhere to the standard of care for the emergency department, hospital wards and/or outpatient clinics at the time of any prospective evaluation, diagnosis, and treatment of OUD, including with respect to the applicable standard of care for the treatment of addiction, acute withdrawal and treatment for OUD with medication assisted treatment, AND
  - b. You and/or it provide discharge planning and post-discharge care coordination for patients with OUD, including information for appropriate OUD treatment services.

Do you and/or each of the hospitals/facilities listed on Exhibit A satisfy a above?

☐ Yes ☐ No;

Do you and/or each of the hospitals/facilities listed on Exhibit A satisfy b above?

☐ Yes ☐ No.

6. Unless you have executed and submitted a Business Associates Agreement (“BAA”) to Legier & Company, *apac* previously, please execute the BAA attached as Exhibit B and return with the Form for each hospitals/facilities listed on Exhibit A.

7. Funds received from the Hospital Trust may only be used for specific abatement purposes as set forth in Section 7 of the Hospital TDP. If the Holder of a Hospital Channeled Claim on whose behalf this claim has been prepared is allocated a Hospital Abatement Distribution from the Hospital Trust, as a condition of receiving the funds, then it will use the funds for one or more specific uses as listed below.

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8. Please complete Exhibit A for EACH hospital/facility owned and/or operated by the above Operating Entity for which this claim is filed.
9. Please complete the W-9 attached hereto for each entity claiming to be a Holder of a Hospital Channeled Claim and return the W-9 with this Form.

**I certify that I am authorized to sign this Hospital Abatement Distribution Form and I understand that an authorized signature on this Form serves as an acknowledgement that I have a reasonable belief that the information is true and correct.**

**I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.**

Signature: \_\_\_\_\_

Executed on date: (MM/DD/YYYY) \_\_\_\_\_

Print the name of the person who is completing and signing this claim.

Name (First, Middle, Last): \_\_\_\_\_

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

Hospital: \_\_\_\_\_

Address: \_\_\_\_\_

Contact phone: \_\_\_\_\_

Email: \_\_\_\_\_

# HOSPITAL ABATEMENT DISTRIBUTION FORM – EXHIBIT A

**HOSPITAL ABATEMENT DISTRIBUTION FORM DEADLINE:** [\_\_\_\_\_]

Please provide the following information for the hospital/facility owned and/or operated by the Operating Entity reported by you in A of the Form for which a claim is filed. If there is more than one such hospital/facility, please complete a separate Exhibit A for EACH hospital/facility for which a claim is being filed.

A. Name of Hospital/Facility:			
B. Address:	Street Address Line 1		
	Street Address Line 2		
	City	State:	Zip:
C. Duration of Ownership	Date Acquired/Opened	Date Sold/Closed	
D. Number of Staffed Beds <sup>1</sup> _____			

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<sup>1</sup> *The number of beds reported from a hospital's most recent Medicare cost report (W/S S-3, Part I, line 7 column 2). Cost report instructions define staffed beds as, "the number of beds available for use by patients at the end of the cost reporting period. A bed means an adult bed, pediatric bed, birthing room, or newborn bed maintained in a patient care area for lodging patients in acute, long term, or domiciliary areas of the hospital. Beds in labor room, birthing room, post anesthesia, postoperative recovery rooms, outpatient areas, emergency rooms, ancillary departments, nurses' and other staff residences, and other such areas which are regularly maintained and utilized for only a portion of the stay of patients (primarily for special procedures or not for inpatient lodging) are not termed a bed for these purposes."*

1. Service Area. Please list below the counties that the above-described hospital/facility serves that represents at least 75% of the total annual admissions of your hospital/facility in 2021, the population of those counties and the percentage of the total population of those counties served by the hospital/facility. Attach any supporting documents that you deem to be helpful.

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2. For the hospital/facility listed above, please provide the payor mix (% of payor payments to total of all payor payments) as follows:

- a. % Medicare \_\_\_\_\_;
- b. % Medicaid \_\_\_\_\_;
- c. % TRICARE \_\_\_\_\_;
- d. % Commercial, e.g., Blue Cross Blue Shield, other non-governmental payors \_\_\_\_\_;
- e. % Self-pay \_\_\_\_\_;
- f. % All Other Payors \_\_\_\_\_;
- g. Describe the name of each payor that comprises "All Other Payors"

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3. Please provide the amounts of funding, if any, received by you and/or for the hospital/facility listed above for the period of January 1, 2009 through October 20, 2020 in each of the following areas:

- a. Grants \_\_\_\_\_;
- b. Taxing authorities \_\_\_\_\_;
- c. Health-care authorities \_\_\_\_\_;
- d. State funded programs for indigent care \_\_\_\_\_;
- e. "Disproportionate Share"<sup>2</sup> \_\_\_\_\_;
- f. Foundations/charities \_\_\_\_\_;
- g. Others \_\_\_\_\_;

4. List and describe with particularity, all Hospital Authorized Abatement Purposes instituted by you at and/or in the hospital/facility listed on Exhibit A above that are intended to treat, reduce, abate and prevent opioid addiction. Include in your description the year(s) such program(s) began; whether they presently remain operational; and, the prospective end date for the program(s), if any. In addition, please provide the extent that any funding received, as described in No. 3 above, was used to pay for the abatement programs described herein.

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<sup>2</sup> *Disproportionate Share Hospitals serve a significantly disproportionate number of low-income patients and receive payments from the Centers for Medicaid and Medicare Services to cover the costs of providing care to uninsured patients.*

5. Prescribing practices:

- a. For the hospital/facility listed above, please provide the national ranking for prescribing the following opioids: (i) Brand Name Medications: OxyContin®, Hysingla ER®, Butrans®, Dilaudid®, Ryzolt, MS Contin®, MSIR®, Palladone®, DHC Plus®, OxyIR®, or OxyFast®; and (ii) the following Generic Medications: oxycodone extended-release tablets, buprenorphine transdermal system, hydromorphone immediate-release tablets, hydromorphone oral solution, tramadol extended release tablets, morphine extended-release tablets, oxycodone immediate-release tablets, oxycodone and acetaminophen tablets (generic to Percocet®), hydrocodone and acetaminophen tablets (generic to Vicodin® or Norco®);
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- b. Did you provide pain management care in a pain management clinic during the period of January 1, 2009 through October 20, 2020? \_\_\_ Yes \_\_\_ No.  
If yes, please provide the dates for which each of your pain management clinics were in operation.
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6. Is the hospital/facility listed above a “safety net” hospital as defined in the CARES ACT?<sup>3</sup>  
\_\_\_ Yes \_\_\_ No.

- a. If yes, please provide proof of each such designation.

7. Is the hospital/facility listed above a tertiary referral center? (A hospital provides tertiary healthcare if it provides “care of a highly technical and specialized nature, in a medical center, usually one affiliated with a university, for patients with unusually severe, complex, or uncommon health problems.” See Flegel, Ken, Tertiary Hospitals Must Provide General Care (March 3, 2015), Nat’l Ctr. for Biotechnology Information, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4347764>).  
\_\_\_ Yes \_\_\_ No.

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<sup>3</sup> A “safety net” hospital has (a) a Medicare Disproportionate Patient Percentage (DPP) of 20.2% or greater; (b) annual uncompensated care (UCC) of at least \$25,000 per bed; and (c) profit margin of 3.0% or less.



8. Does the hospital/facility listed above perform “Screening Brief Intervention Referral to Treatment” (“SBIRT”) in the emergency department? \_\_\_\_ Yes \_\_\_\_ No.
9. Does the hospital/facility listed above equip emergency departments to treat acute withdrawal and initiate treatment for Opioid Use Disorder (“OUD”) with medications, including buprenorphine, suboxone, and subutex, etc.? \_\_\_\_ Yes \_\_\_\_ No.
10. Does the hospital/facility listed above make discharge planning and post-discharge care coordination mandatory for patients with OUD? \_\_\_\_ Yes \_\_\_\_ No.
11. Does the hospital/facility listed above provide bridge programs to encourage access to treatment for patients with OUD? \_\_\_\_ Yes \_\_\_\_ No.
12. Does the hospital/facility listed above participate in community efforts to provide OUD treatment to others in the community, such as those in jails, or other detention facilities? \_\_\_\_ Yes \_\_\_\_ No.
13. Does the hospital/facility listed above provide transportation to OUD treatment facilities? \_\_\_\_ Yes \_\_\_\_ No.
14. Does the hospital/facility listed above implement needle exchange in the hospital or an adjacent clinic and/or provide on-site medication-assisted treatment (“MAT”) services? \_\_\_\_ Yes \_\_\_\_ No.
15. Does hospital/facility listed above use telemedicine, telehealth, and/or teleconsulting to support treatment and to support “spoke” entities? \_\_\_\_ Yes \_\_\_\_ No.
16. Does the hospital/facility listed above perform heart valve replacements?  
\_\_\_\_ Yes \_\_\_\_ No.
- a. If yes, please provide the percentage of all heart valve replacements performed that are secondary to opioid addiction. \_\_\_\_\_

17. Does the hospital/facility listed above have a Neonatal Intensive Care Unit (“NICU”) that treats babies with Neonatal Abstinence Syndrome (“NAS”)?  
\_\_\_ Yes \_\_\_ No.

a. If yes, does the hospital/facility have a dedicated NAS NICU? \_\_\_ Yes \_\_\_ No

b. If yes, does the hospital/facility provide obstetric and perinatal services to treat mothers with OUD? \_\_\_ Yes \_\_\_ No

18. For all inpatient and outpatient discharges during the period January 1, 2009 through October 20, 2020, from the qualifying hospital/facility listed above and operated by you, please provide the following data in CSV (Comma Delimited) Electronic File or Pipe Delimited Electronic Text File to be used in connection with the calculation of financial damages. **An example of the data formatting is set forth in Exhibit C. This data should be in a separate CSV (Comma Delimited) Electronic File or Pipe Delimited Electronic Text File for each Holder of a Hospital Channeled Claim.** Physician office visits and non-acute care visits should **NOT** be included in data provided.

For the CSV (Comma Delimited) Electronic File or Pipe Delimited Electronic Text File, please include in the file name the name of the Holder of a Hospital Channeled Claim, City and State where located and Date Range of Data Provided, for example, PhoenixGeneral-Phoenix-AZ-Jan09-Dec12.csv. If more than one file is provided due to size limitations, each file name will be the same with only the date range of the data provided changing e.g. PhoenixGeneral-Phoenix-AZ-Jan13-Dec20.csv

It is important to note, and as further described below, that the following data for each visit/discharge will need to be repeated on each row corresponding to each different ICD diagnosis code (except for ICD diagnosis code, ICD diagnosis code description and ICD diagnosis code priority). The data for the ICD diagnosis codes, ICD diagnosis code descriptions and ICD diagnosis code priority for each visit/discharge will therefore be unique to each row. For example, if a visit has 18 ICD diagnosis codes, there would be 18 rows/lines for that visit/discharge with each line containing a different ICD diagnosis code, ICD diagnosis code description and ICD diagnosis code priority. For all other data fields such as Patient Medical Record Number, Date of Discharge, etc. this data will be the same, and thus repeated, on all 18 rows/lines for that visit/discharge.

To the extent the qualifying hospital/facility utilizes a coding system for any columns/data fields, please provide an index to explain the contents of any column/data field to the secure portal provided by the Hospital Trustee. For example, the Patient Type data provided includes a 1, 2, or 3 and these respective contents are 1=Inpatient, 2=Outpatient, 3=Emergency.

Please also ensure that all columns/data fields that may contain commas are updated so that such columns/data fields are placed in quotations when populating the CSV or Pipe

Delimited Text File. The columns/data fields that often contain commas include, but are not limited to, Attending Physician Name, DRG and ICD Diagnosis Code Descriptions.

Once the CSV (Comma Delimited) or Pipe Delimited Text File is prepared, **please review the data VERY CAREFULLY** to confirm the data in each column contains the applicable data for that respective column's data field description. For example, payment amounts (Total Payments) should not be shown in the DRG Code column/data field, ICD Diagnosis Code column/data field should not be blank or designated null for a patient visit without an explanation, etc. This will require, that in conducting your review that you "reality test" your data before submission to ensure that it does not contain obvious errors and inconsistencies. **After submission of the Hospital Abatement Registration Form each claimant will be provided a secure portal by the Hospital Trustee to upload an executed Business Associate Agreement (as described in #6 of the Form), and then upload this requisite claims data to the secure portal.**

Column	Data Fields	Definitions and Clarifications
a.	<b>Name</b>	Name of hospital/facility for which data is provided.
b.	<b>Address</b>	Address of hospital/facility for which data is provided.
c.	<b>City</b>	City of hospital/facility for which data is provided.
d.	<b>State</b>	State of hospital/facility for which data is provided.
e.	<b>Zip</b>	Zip of hospital/facility for which data is provided.
f.	<b>CMS Certification Number</b>	Center for Medicare & Medicaid Services – Formerly known as the Medicare Provider Number. This should be a six-digit Medicare certification number for a hospital/facility.
g.	<b>Patient Medical Record #</b>	
h.	<b>Patient Account #</b>	
i.	<b>Payor Financial Class Description</b>	e.g., Blue Cross, Medicaid, Private Pay, etc.

j.	<b>Patient Type</b>	e.g., Inpatient or Outpatient. Hospital related clinics or physician office visits should NOT be included in data provided.
k.	<b>Custom Patient Type</b>	e.g., Inpatient Psych, Outpatient Single Visit, Surgery, Lab, etc. Hospital related clinics or physician office visits should NOT be included in data provided.
l.	<b>Date of Admission</b>	
m.	<b>Date of Discharge</b>	
n.	<b>Length of Stay (days)</b>	
o.	<b>Admission Type Description</b>	e.g., Emergency, Reservation, Reference Lab, etc.
p.	<b>Discharge Disposition Description</b>	e.g., Discharge Home, Nursing Home, Expired, etc.
q.	<b>Patient Date of Birth</b>	
r.	<b>Patient Age at Discharge</b>	
s.	<b>Patient Gender</b>	
t.	<b>Patient Race</b>	
u.	<b>Patient City</b>	
v.	<b>Patient State</b>	
w.	<b>Patient Zip Code</b>	
x.	<b>Attending Physician Name</b>	
y.	<b>Total Charges</b>	
z.	<b>Total Payments</b>	Total Payments should only contain actual payments received (e.g. insurance/self-pay). It should NOT include adjustments, bad debt, write-offs or contractual adjustments.

aa.	<b>DRG Code</b>	Provide Diagnosis Related Group (DRG) code for each inpatient visit/discharge.
ab.	<b>DRG Code Description</b>	Provide DRG description for the above DRG code.
ac.	<b>All ICD Diagnosis Code</b>	For each visit/discharge, provide all International Classification of Disease (ICD) diagnosis codes (ICD-9 or ICD-10, as applicable) associated with each patient visit/discharge. Note: In most instances you should have multiple ICD codes for a patient visit/discharge. Each of these ICD Diagnosis Codes related to each patient's visit should NOT be listed in multiple columns but rather each ICD Code should be listed in the same single column with each ICD Code shown on separate rows within the same single column. See Exhibit C.
ad.	<b>ICD Diagnosis Code Descriptions</b>	Provide ICD Diagnosis description for the above ICD Diagnosis Code.
ae.	<b>ICD Diagnosis Code Priority</b>	Provide whether each ICD Diagnosis Code is a Primary, Secondary, Tertiary, etc. diagnosis. These categories must be expressed in terms of a numerical code such as 1=Primary, 2=Secondary, 3=Tertiary, etc.
af.	<b>Mom's MRN - If applicable</b>	This field pertains only to Holders of Hospital Channeled Claims that deliver newborn babies or have a neonatal unit. If this visit/charge is for a birth mother, then this field should be blank as it would be the same MRN as the patient reported in #g above. However, if this visit/charge pertains to a baby, then this field should contain the mother's MRN so that there can be a mother/baby link associated therewith.
ag.	<b>Baby's MRN - If applicable</b>	This field pertains only to Holders of Hospital Channeled Claims that deliver newborn babies or have a neonatal unit. If this visit/charge is for a baby, then this field should be blank as it would be the same MRN as the patient reported in #g above. However, if this visit/charge pertains to a birth mother, then this field should contain the Baby's MRN so that there can be a mother/baby link associated therewith.

**I certify that I am authorized to sign this Hospital Abatement Distribution Form Exhibit A and I understand that an authorized signature on this Hospital Abatement Distribution Form Exhibit A serves as an acknowledgement that I have a reasonable belief that the information is true and correct.**

**I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.**

Signature: \_\_\_\_\_

Executed on date: (MM/DD/YYYY) \_\_\_\_\_

Print the name of the person who is completing and signing this claim.

Name (First, Middle, Last): \_\_\_\_\_

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

Hospital: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Contact phone: \_\_\_\_\_

Email: \_\_\_\_\_