

**PENOBSCOT ESTUARY BENEFICIAL ENVIRONMENTAL PROJECTS TRUST  
AGREEMENT**

**BY AND AMONG**

**MALLINCKRODT US LLC  
As Settlor and Beneficiary,**

**Greenfield Penobscot Estuary Project Trust LLC,  
not individually but solely in its representative capacity as Trustee**

**AND**

**MAINE PEOPLE'S ALLIANCE, NATURAL RESOURCES DEFENSE COUNCIL, and  
PENOBSCOT ESTUARY MERCURY REMEDIATION TRUST  
As Beneficiaries**

**As of October 11, 2022**

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**PENOBSCOT ESTUARY BENEFICIAL ENVIRONMENTAL PROJECTS TRUST  
AGREEMENT (as modified by the Parties and approved by the Court on October 11, 2022)**

This Penobscot Estuary Beneficial Environmental Projects Trust Agreement (the “Agreement”), was made on the 30th day of March, 2021 (the “Effective Date”), by and among Mallinckrodt US LLC (“Mallinckrodt”), Greenfield Penobscot Estuary Project Trust LLC, not individually but solely in its representative capacity as trustee (“Trustee”) of the Penobscot Estuary Beneficial Environmental Projects Trust established hereby (the “Project Trust”), Maine People’s Alliance (“MPA”), Natural Resources Defense Council (“NRDC”), and the Penobscot Estuary Mercury Remediation Trust (the “Remediation Trust”).

**RECITALS**

WHEREAS, in 2000, Plaintiffs MPA and NRDC, on behalf of their affected members, filed a complaint pursuant to the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6972(a)(1)(B), commencing the action designated *Maine People’s Alliance, et al. v. HoltraChem Manufacturing, et al.*, Case No. 1:00-cv-00069-JAW (D. Me.) (the “Action”). Plaintiffs’ complaint alleged that Defendants Mallinckrodt and HoltraChem Manufacturing Company, LLC (“HoltraChem”) caused mercury discharges into the Penobscot River Estuary from a chlor-alkali plant in Orrington, Maine, that present or may present an imminent and substantial endangerment to health and the environment; and

WHEREAS, a proposed Consent Decree in the Action was lodged with the Court on March 19, 2021, (the “Consent Decree”) among Mallinckrodt, MPA, and NRDC; and

WHEREAS, the Consent Decree provides for (1) the establishment of the Project Trust and the transfer of funds to the Project Trust to be administered by the Trustee pursuant to this Agreement and the Consent Decree and (2) concurrent therewith, the establishment of the Remediation Trust and the transfer of funds to the Remediation Trust to be administered pursuant to the Remediation Trust’s trust agreement and the Consent Decree; and

WHEREAS, the Beneficiaries (defined below) and Trustee acknowledge and agree that the purpose of the Project Trust and the Remediation Trust is to fulfill Mallinckrodt’s environmental remediation and restoration obligations under the Consent Decree; and

WHEREAS, in accordance with Section VII (Formation and Purpose of Penobscot Estuary Mercury Remediation Trust and Penobscot Estuary Beneficial Environmental Projects Trust) of the Consent Decree, Mallinckrodt hereby establishes the Project Trust as an environmental remediation trust that will hold the remediation funds provided for in the Consent Decree for the purpose managing and/or funding Beneficial Environmental Projects and resolving, satisfying, mitigating or addressing potential natural resource liability with respect to the Site imposed by federal, state, or local environmental law as set forth in the Consent Decree and this Agreement; and

WHEREAS, the Project Trust is to be funded in the amounts and manner set forth in the Consent Decree and this Agreement in order to provide funds for the Work and the administrative costs of the Project Trust; and

WHEREAS, this Agreement and the Consent Decree govern the Project Trust, which is created as an environmental remediation trust as described in U.S. Treasury Regulation Section 301.7701-4(e) with Mallinckrodt treated as its owner for federal tax purposes; and

WHEREAS, Greenfield Penobscot Estuary Project Trust LLC has been selected to be the Trustee of the Project Trust and is willing to act as the Trustee in accordance with the requirements of the Consent Decree and this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein and in the Consent Decree, the Parties hereby agree as follows:

ARTICLE I  
DEFINITIONS

1.1 Definitions

All capitalized terms shall have the meaning set forth in the Consent Decree unless otherwise defined in this Section or elsewhere in this Agreement:

1.1.1 “Agreement” has the meaning given in the preamble.

1.1.2 “Action” has the meaning given in the preamble.

1.1.3 “Beneficial Environmental Projects” has the meaning given in the Consent Decree.

1.1.4 “Beneficiary” or “Beneficiaries,” for purposes of the Project Trust, means Mallinckrodt, MPA, NRDC, and the Remediation Trust.

1.1.5 “Code” means the Internal Revenue Code of 1986, as amended.

1.1.6 “Consent Decree” has the meaning as given in the Recitals and includes all appendices attached thereto, including but not limited to the Statement of Work.

1.1.7 “Court” means the United States District Court for the District of Maine.

1.1.8 “Day” or “Days” means calendar days including weekends and holidays. In the event that the date for a required action falls on a day that is a weekend or federal holiday, the date for the required action shall be automatically extended to the next day that is not a weekend or federal holiday.

1.1.9 “Effective Date” has the meaning given in the preamble.

1.1.10 “Funding” has the meaning given in Section 2.1.2 (Transfer of Funds to the Project Trust) hereof.

1.1.11 “IRS” means the Internal Revenue Service.

1.1.12 “Initial Funding” has the meaning given in Section 2.1.2 (Transfer of Funds to the Project Trust) hereof.

1.1.13 “Maine Act” means the Maine Uniform Trust Code, 18-B M.R.S.A. §§101 *et. seq.*

1.1.14 “Mallinckrodt” means defendant Mallinckrodt US LLC, its successors and assigns, and any corporate parent(s) responsible for the liabilities of Mallinckrodt US LLC. As of the Effective Date, Mallinckrodt is a subsidiary of United States Surgical Corporation, and an affiliate of Medtronic plc, the ultimate parent company of both entities.

1.1.15 “Natural Resource Damage Trustees” has the meaning given in the Consent Decree.

1.1.16 “MPA” means plaintiff Maine People’s Alliance and its successors and assigns.

1.1.17 “NRDC” means plaintiff Natural Resources Defense Council and its successors and assigns.

1.1.18 “Parties” means the Plaintiffs, Mallinckrodt, and the Trustee.

1.1.19 “Person” means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, charitable foundation, unincorporated organization, government or any agency or political subdivision thereof, or any other entity.

1.1.20 “Plaintiffs” means MPA and NRDC.

1.1.21 “Project Trust” has the meaning given in the preamble.

1.1.22 “Property” means any and all real and personal property, tangible and intangible property, intellectual property and any rights or interest therein, including but not limited to all reports, deliverables, documents, calculations, plans, designs, specifications, drawings, reports, maps, photographs, computer printouts, data, notes, and other documents or information of whatsoever nature or kind (in whatever form, format, or media) arising from the performance of the Work under the Consent Decree and this Agreement.

1.1.23 “Remediation Trust” has the meaning given in the preamble.

1.1.24 “Restoration Projects” has the meaning given in the Consent Decree.

1.1.25 “Section” means a portion of this Agreement, the Consent Decree, or the Statement of Work, in each case as indicated, identified by an Arabic numeral or numerals. A reference to any Section denoted by an Arabic numeral or numerals includes any subsections thereof.

1.1.26 “Site” has the meaning given in the Consent Decree.

1.1.27 “Statement of Work” or “SOW” means the document attached as Appendix A to the Consent Decree and describing the activities that must be performed to implement the remediation activities at the Site required by the Consent Decree.

1.1.28 “Tax” or “Taxes” means all federal, state, and local taxes that may be imposed on the Project Trust from time to time by any taxing authority.

1.1.29 “Tidal Marsh Projects” has the meaning given in the Consent Decree.

1.1.30 “Trust Account” has the meaning given in Section 2.1.4 (Creation of the Trust Accounts) hereof.

1.1.31 “Trust Administrative Account” means the account as described in the Consent Decree and established pursuant to Paragraph 24 (Creation of Trust Accounts) of the Consent Decree and Section 2.1.4 (Creation of the Trust Accounts) of this Agreement, including any subaccounts, to hold funds to be used by the Trustee for administration of the Trust and to which Funding is specially allocated as described in Paragraph 15 (Trust Administrative Costs) of the Consent Decree.

1.1.32 “Trust Assets” means (a) the Funding to be transferred to the Project Trust pursuant to the Consent Decree and (b) such other assets acquired, earned, or held by the Project Trust from time to time pursuant to this Agreement, the Consent Decree, or an order of the Court.

1.1.33 “Trust Administrative Costs” refer to all costs, obligations, or liabilities associated with administration and management of the Project Trust, to be paid from the Trust Administrative Account, including taxes, investment and safekeeping costs, insurance, legal, accounting, bookkeeping, financial affairs, and other costs, fees, and expenses not directly related to the Work.

1.1.34 “Trust Parties” means, collectively, the Project Trust, the Trustee, and the Trustee’s member’s shareholders, officers, directors, employees, and managers of the Trustee; for the avoidance of doubt, “Trust Parties” shall not include environmental, engineering, or technical consultants and contractors, and other third-party professionals retained by the Trustee to assist it in carrying out its responsibilities under this Agreement and the Consent Decree.

1.1.35 “Trust Remediation Account” means the account established pursuant to Paragraph 24 (Creation of Trust Accounts) of the Consent Decree and Section 2.1.4 (Creation of

the Trust Accounts) of this Agreement, including any subaccounts, to hold funds to satisfy the Trustee's obligations for Work on specific Beneficial Environmental Projects at the Site.

1.1.36 "Trustee" means the Person appointed to be the trustee of the Project Trust consistent with the Consent Decree and this Agreement.

1.1.37 "Work" means all activities and obligations which the Trust, Trustee, or Mallinckrodt is required to perform under the Consent Decree.

## ARTICLE II THE PROJECT TRUST

### 2.1 Creation of and Transfer of Assets to the Project Trust.

2.1.1 Pursuant to the Consent Decree, Mallinckrodt hereby establishes the Project Trust under the Maine Act for the benefit of the Beneficiaries, and Mallinckrodt hereby transfers, assigns, and delivers to the Project Trust, or to the Trustee, not individually but solely in its representative capacity as Trustee of the Project Trust, if the law of Maine prohibits a trust entity from holding such title, for the benefit of the Beneficiaries, the Initial Funding as Trust Assets. The Trustee hereby accepts and agrees to hold the Trust Assets in the Project Trust for the benefit of Beneficiaries for the purposes described in Section 2.2 (Objective and Purpose) below, subject to the terms of the Consent Decree, this Agreement, and any applicable orders of the Court.

2.1.2 Transfer of Funding to the Project Trust. Within twenty (20) days after the Effective Date, Mallinckrodt shall cause to be transferred to the Project Trust cash in the amount of \$500,000 (the "Initial Funding"). Thereafter, in accordance with Paragraphs 19 and 35 (Initial Funding of the Trusts; Financial Forecasts and Invoices to Mallinckrodt) of the Consent Decree, Mallinckrodt shall transfer additional funds to the Project Trust based on the invoices and five-year budget forecasts prepared by the Trustee at such times and in such amounts as determined in accordance with Paragraphs 19 (Initial Funding of the Trusts) and 35 (Financial Forecasts and Invoices to Mallinckrodt) of the Consent Decree, subject to the overall Capped Funding for the Project Trust set forth in Paragraphs 13 and 15 (Beneficial Environmental Projects; Trust Administrative Costs) of the Consent Decree. The Trustee may seek Funding from one or more Financial Assurances at such times, in such amounts, and subject to the requirements set forth in Paragraph 20(e) (Financial Assurance: Drawdown) of the Consent Decree. The Initial Funding and subsequent payments provided for in this Section together constitute the "Funding."

2.1.3 Trust Invoices. The Trustee shall deliver invoices, with the necessary documentation, to Mallinckrodt for Funding as required and subject to the limits set forth in this Agreement and Paragraphs 19 (Initial Funding of the Trusts) and 35 (Financial Forecasts and Invoices to Mallinckrodt) of the Consent Decree.

2.1.4 Creation of the Trust Accounts. Upon receipt of the Initial Funding, the Trustee shall create two segregated trust accounts within the Project Trust: the Trust Remediation Account and the Trust Administrative Account. The purpose of the Trust Remediation Account shall be to hold and invest funds and proceeds to fund Beneficial Environmental Projects as



selected, approved, and authorized pursuant to the terms of the Consent Decree and this Agreement. In its discretion, the Trustee may create subaccounts within the Trust Remediation Account, dedicated for specific projects or uses as may be deemed necessary in the sole discretion of the Trustee to comply with the terms of and implement the Consent Decree and this Agreement pursuant to Paragraph 24 (Creation of Trust Accounts) in the Consent Decree. The Trust Administrative Account shall be used by the Trustee for Trust Administrative Costs. Funding from the Trust Remediation Account, or its subaccounts, may not be used for any purpose of the Trust Administrative Account, and funding from the Trust Administrative Account, or any subaccounts, may not be used for any purpose of the Trust Remediation Account, except as otherwise provided in this Agreement or in the Consent Decree. The Initial Funding of each of the Trust Accounts shall be as set forth in the Consent Decree. The separate accounts are referred to in this Agreement individually as a "Trust Account" and collectively as the "Trust Accounts." Subject to Section 2.5 (Investment and Safekeeping of Trust Assets), the income, gains, and losses from any investment of the Trust Assets of a Trust Account shall be allocated, paid, and credited to, and/or deducted from, such Trust Account.

## 2.2 Objective and Purpose.

2.2.1 The purposes and functions of the Project Trust are to hold the Trust Assets, carry out administrative functions related to the Trust Assets, and oversee, implement, and fund Work at the Site through Beneficial Environmental Projects. Beneficial Environmental Projects may include, but are not limited to, Restoration Projects and/or Tidal Marsh Projects, subject to the requirements of the Consent Decree. The Project Trust may contract with and retain such environmental, engineering, and technical consultants and contractors and other third-party professionals, as the Trustee may deem necessary, to advise and assist the Trustee in carrying out the activities necessary to achieve the purposes of the Consent Decree. The Project Trust shall be responsible for ensuring that all regulatory permits and other approvals are secured for Work on Beneficial Environmental Projects required by the Consent Decree. The performance by the Trustee of its duties under this Agreement shall not be considered to be the Trustee's engaging in a trade or business. Upon a determination by the Trustee that the Site and Beneficiaries are not likely to benefit from funding or implementing a future Restoration Project and all Work on Restoration Projects previously funded and implemented by the Project Trust are complete, the Trustee shall seek to terminate the Project Trust and distribute all remaining Trust Assets to the Remediation Trust, all as in accordance with and pursuant to the provisions of Section 2.8 (Termination) of this Agreement and Paragraph 33 (Termination of the Project Trust) in the Consent Decree.

2.2.2 The Project Trust is established pursuant to this Agreement and the Consent Decree and approved by the Court for the purpose of resolving Plaintiffs' claims asserting environmental liabilities of Mallinckrodt and in order to resolve, satisfy, mitigate, address, or prevent the potential liability of a Trust or Beneficiary imposed by federal, state, or local environmental laws. As provided in the Consent Decree, the Court will retain continuing jurisdiction over the Project Trust and the underlying legal action.

2.3 Holder of Trust Assets. The Project Trust shall be the exclusive holder of the Trust Assets and Trust Accounts described herein for purposes of 31 U.S.C. § 3713(b).

## 2.4 Management of Trust Assets.

2.4.1 Consistent with this Agreement and the Consent Decree, the Trustee shall use the Trust Assets for Work set forth in Paragraph 13 (Beneficial Environmental Projects) of the Consent Decree in accordance with the provisions of this Agreement and Paragraphs 23 (Creation and Purpose of the Project Trust), 29 (Project Trust's Restoration Project Duties), and 32 (Limit on Decisions Regarding Work by the Project Trust) and Appendix A (Statement of Work) of the Consent Decree as selected, approved, and authorized pursuant to the terms of the Consent Decree and the Statement of Work. Except as otherwise specifically provided herein, to the extent the Trustee creates separate Trust Accounts or subaccounts for specific projects, the Trustee shall solely fund Work for specific projects with the Trust Assets held in such Trust Account or subaccount. The Trustee shall use the Trust Administrative Account funds solely to pay Trust Administrative Costs. To the extent the Person then serving as Trustee provides services to the Project Trust outside of its capacity as Trustee, costs incurred by the Project Trust with respect to such services shall be paid from the Trust Account from which such costs would be paid if the services were performed by a third-party.

2.4.2 As set forth in Paragraph 34 (Decisions Regarding Annual Budgets, Work Plans, and Cash Flow Projections) of the Consent Decree, by October 1 of each year, beginning with the first such date after the Effective Date, the Trustee shall prepare a draft annual budget, work plan, and cash flow projections by quarter for the next calendar year for the Project Trust and each Trust Account. Decisions regarding annual budget, work plan, and cash flow projections will be made in accordance with Paragraph 34 (Decisions Regarding Annual Budgets, Work Plans, and Cash Flow Projections) of the Consent Decree.

2.4.3 Except as otherwise set forth in this Section 2.4.3 and Section 2.5 (Investment and Safekeeping of Trust Assets), the Trust Assets held in a Trust Account or subaccount shall not be commingled with, distributed to, or used to fund Work or Trust Administrative Costs under another Trust Account or subaccount. At such time that it is determined by the Trustee, in accordance with Paragraphs 31 and 32 (Decisions Regarding Work and Deliverables; Limit on Decisions Regarding Work by the Project Trust) of the Consent Decree, and after consultation with the Beneficiaries, that Work to be performed through a particular project's subaccount in the Trust Remediation Account is complete (in accordance with the Statement of Work), or after a sufficient amount of Trust Assets has been set aside for the completion of such Work, the remaining Trust Assets in such subaccount may, in the Trustee's discretion, be transferred to another Trust subaccount, after which such funds shall be deemed a part of the Trust Assets of such transferee subaccount and shall be used for its designated purposes.

## 2.5 Investment and Safekeeping of Trust Assets.

2.5.1 The Trust Assets shall be held in trust, segregating Trust Administrative Account and Trust Remediation Account funds. All interest investment income, and other amounts earned ("Investment Income") in a Trust Account shall be retained in the respective Trust Account and used only for the same purposes as the principal in that account as provided in this Agreement and the Consent Decree, provided, however, that the Trustee shall first deduct from any Investment

Income realized an amount equal to the estimated Taxes owed on such Investment Income and costs associated with investment of the Trust Assets to which such Investment Income relates, all as reasonably determined by the Trustee based on applicable income tax withholding and reporting requirements, and deposit that sum into the Trust Administrative Account. The Trustee shall have no liability for interest or producing income on any moneys received by the Project Trust hereunder and held for distribution or payment as provided in this Agreement, except as such interest or amounts shall actually be received by the Project Trust. The Trustee shall have the right to administer, or engage an investment manager to administer, investments of any Trust Assets with the purpose of deriving a reasonable income from the Trust Assets pending periodic distributions in accordance with Article III hereof, taking into account the need for the safety and liquidity of principal required by the purposes of the Project Trust, and not of speculating or carrying on of any business for profit or derivation of gains therefrom. However, the right and power of the Project Trust to invest and reinvest the Trust Assets or any income earned by the Project Trust shall be limited to the right and power to invest and reinvest any part of all of such Trust Assets (pending periodic distributions in accordance with Article III hereof) in the following investment vehicles, provided that at least 50% (and, at the Trustee's discretion, up to 100%) of the Trust Assets in each Trust Account shall, at any given time, be invested in categories (1), (2), and/or (3):

- (1) Marketable obligations issued, guaranteed, or secured by the United States of America or an agency thereof (including, without limitation, government-sponsored enterprises such as Federal National Mortgage Association [Fannie Mae] and Federal Home Loan Mortgage Corporation [Freddie Mac]);
- (2) Certificates of deposit with a domestic office of any national or state bank or trust company organized under the laws of the United States of America or any state therein and having capital, surplus, and undivided profits of at least \$750,000,000 or in such institutions not meeting this specified capital requirement to the extent that such deposits are federally insured;
- (3) Deposit accounts and/or money market funds;
- (4) No-load mutual funds or exchange traded funds;
- (5) A diversified portfolio of equities traded on a recognized national exchange that meet the standards for publicly listed companies;
- (6) A diversified portfolio of bonds. The overall average rating of the portfolio shall have a rating of Double A or better, with no individual bond rated below A, exclusive of any bond insurance; and
- (7) Any other investment vehicle approved in writing by the Beneficiaries.

The Trustee shall consult initially and from time to time with the Beneficiaries regarding the nature and allocation of investments in the Trust Accounts. The Beneficiaries

expressly agree that the Trustee shall have satisfied applicable standards and requirements and any duty to diversify by investing the Trust Assets in categories (1), (2), (3), and/or (6) above.

2.5.2 Except as set forth in Section 2.4.3 and this Section 2.5, the Trustee is expressly prohibited from commingling Trust Accounts, provided that funds in separate Trust Accounts may be commonly managed, may be invested in common instruments, and may be aggregated with other funds for investment purposes so long as they remain accounted for separately.

2.5.3 Nothing in this Section 2.5 shall be construed as authorizing the Trustee to cause the Project Trust to carry on any business or to divide the gains therefrom, including without limitation, the business of an investment company or a company “controlled” by an “investment company,” required to register as such under the Investment Company Act of 1940, as amended. The sole purpose of this Section 2.5 is to authorize the investment of the Trust Assets in the Trust Accounts or any portions thereof as may be reasonably prudent pending use of the proceeds for the purposes of the Project Trust.

2.5.4 All costs and risk related to the investment of the Trust Assets in accordance with the guidelines set forth in this Section 2.5 shall be borne solely by the Project Trust. Mallinckrodt shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions or the actions of the Trustee, or any transactions executed by the Trustee, which shall in no event increase Mallinckrodt’s financial obligations as set forth in Paragraphs 13 (Beneficial Environmental Projects) and 18 (Capped Funding) of the Consent Decree.

2.6 Accounting. The Trustee shall maintain proper books, records, and accounts relating to all transactions pertaining to the Project Trust, and the assets and liabilities of, and claims against or assumed by, the Project Trust in such detail and for such period of time as may be necessary to enable the Trustee to make a full and proper accounting thereof and to comply with applicable provisions of law and good accounting practices and the obligations set forth in Paragraphs 32 (Limit on Decisions Regarding Work by the Project Trust), 33 (Termination of the Project Trust), 34 (Decisions Regarding Annual Budgets, Work Plans, and Cash Flow Projections), and 35 (Financial Forecasts and Invoices to Mallinckrodt) of the Consent Decree. The books and records of the Project Trust shall be audited annually by an independent public accounting firm as provided in Paragraph 37 (Annual Audit) of the Consent Decree. Except as otherwise provided herein or by the Consent Decree, the Trustee shall not be required to file any accounting or seek approval of the Court with respect to the administration of the Project Trust, or as a condition for making any payment or distribution out of the Trust Assets. Beneficiaries shall have the right upon 14 days’ prior written notice delivered to the Trustee to inspect such books and records.

2.7 Project Trust Limitations. The Project Trust is established as an environmental remediation trust as described in Treasury Regulation Section 301.7701-4(e) with Mallinckrodt treated as the owner of the Trust Assets for federal tax purposes. No other Party or Beneficiary, nor any of their respective components, agencies, officers, directors, agents, employees, affiliates, successors, or assigns, shall be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Project Trust.

## 2.8 Termination.

2.8.1 The Trustee shall not unduly prolong the duration of the Project Trust and shall at all times endeavor to perform the Work and accordingly effect the distribution of Trust Assets in accordance with the terms hereof, and to terminate the Project Trust as soon as practicable consistent with this Agreement and the Consent Decree.

2.8.2 The Trustee shall take actions necessary to terminate the Project Trust, in accordance with the terms of and procedures in Paragraph 33 (Termination of the Project Trust) of the Consent Decree, in any year that it is determined that the Site and Beneficiaries are not reasonably likely to benefit from funding or implementing a future Restoration Project and all Work on Restoration Projects previously funded and implemented under the Project Trust are complete. If the Consent Decree is not entered by the Court, the Project Trust will terminate and all remaining funds will be returned to Mallinckrodt US LLC.

## ARTICLE III WORK AND DISTRIBUTIONS

3.1 Trust Accounts. The Trustee shall establish, maintain, and hold Trust Accounts consistent with the Consent Decree and Section 2.1 (Creation of and Transfer of Assets to the Project Trust) of this Agreement to administer the Trust Assets and distributions therefrom.

## 3.2 Payments by the Project Trust.

3.2.1 On or before October 1 of each calendar year, the Trustee shall provide the Beneficiaries, to the extent required in the Consent Decree, with balance statements, proposed budgets, work plans, and forecasts as described in Section 2.4.2 of this Agreement and Paragraphs 19 (Initial Funding of the Trusts), 32 (Limit on Decisions Regarding Work by the Project Trust), 33 (Termination of Project Trust), 34 (Decisions Regarding Annual Budgets, Work Plans, and Cash Flow Projections), and 35 (Financial Forecasts and Invoices to Mallinckrodt), of the Consent Decree. Except as set forth in Section 3.2.2 (Emergency Funding) below, the Trustee shall not pay any expense that has not been provided for in a budget, revised budget, or revised line item of a budget that the Beneficiaries have not objected to pursuant to the terms of this Agreement and the Consent Decree. Nevertheless, the Trustee may incur or pay ongoing or recurring expenses included in the prior year's budget that occur between the time a proposed annual budget is submitted and the time allowed for the Beneficiaries to object and initiate the dispute resolution process.

3.2.2 Emergency Funding. In the event of an emergency at the Site arising from the Work performed or funded by the Project Trust that, as may be deemed in the Trustee's sole discretion, requires immediate remedial action to occur within a timeframe that does not permit sufficient time to amend the annual budget, the Trustee may utilize funding, of not more than \$250,000, from the Trust Remediation Account to undertake and fund actions necessary to respond to the emergency. Nothing in this paragraph shall preclude the payment or reimbursement of such emergency funding through the annual budget or budget revision process; provided, however, that use of emergency funding under this paragraph shall in no event increase Mallinckrodt's financial

obligations as set forth in Paragraphs 13 and 18 (Beneficial Environmental Projects; Capped Funding) of the Consent Decree.

3.2.3 Expenses of the Project Trust. The expenses of the Project Trust relating to Work for Beneficial Environmental Projects shall be paid solely from the Trust Assets held in the Trust subaccount for such project. The Project Trust's Trust Administrative Costs shall be paid solely from the Trust Assets held in the Trust Administrative Account.

3.2.4 Pre-Court Endorsement Date Funding. Mallinckrodt will transfer the Funding to the Project Trust to fund the Trustee's Work and its other obligations pending approval of the Consent Decree by the Court. Where the Trustee and the Beneficiaries agree that the Trustee accrued fees and expenses after the Effective Date and prior to the Court's endorsement of the Consent Decree in furtherance of activities that would constitute Work on Beneficial Environmental Projects under the Consent Decree, those fees and expenses shall be paid from the Trust Assets held in the Trust Remediation Account and Administrative Costs from the Trust Administrative Account. After the effective date of the Consent Decree (or earlier if requested by the Beneficiaries), the Trustee will submit detailed invoices reflecting its fees and expenses for comment and objection by the Beneficiaries.

3.3 Advisory Committee. The Trustee shall create an informal Advisory Committee composed of representatives of the Beneficiaries, including at least one representative for Plaintiffs and one representative for Mallinckrodt. The role of any such Advisory Committee shall be to (i) facilitate dialogue between the Trustee and Beneficiaries, (ii) seek to build consensus among the Beneficiaries, (iii) coordinate Work by the Project Trust and Remediation Trust, and (iv) provide informal consultation to the Trustee regarding management of the Project Trust and execution of the Work required by the Consent Decree. The Advisory Committee shall not have any formal approval or decision-making authority. The Advisory Committee shall meet at the request of the Trustee, on a schedule and by means that are mutually agreeable to the Beneficiaries and Trustee. Each Beneficiary shall designate one or more representatives to the Advisory Committee, each of whom may be an employee, attorney, or consultant for the Beneficiary.

3.4 Manner of Payment. Cash payments made by the Project Trust pursuant to the Consent Decree and this Agreement shall be in United States dollars by checks drawn on a domestic bank whose deposits are federally insured selected by the Trustee, or by wire transfer from such a domestic bank, at the option of the Trustee. When selecting or changing the domestic bank to be used for these purposes, the Trustee shall give the Beneficiaries notice and an opportunity to comment or object.

3.5 Unclaimed Distributions. In the event that any Trust Assets remain in the Project Trust at its termination, all such Trust Assets shall be transferred to the Remediation Trust within 30 days of termination of the Project Trust, as directed by the trustee of the Remediation Trust and in accordance with Paragraphs 13 (Beneficial Environmental Projects), 15 (Trust Administrative Costs), and 33 (Termination of Project Trust) of the Consent Decree. Remaining Trust Assets in the Trust Remediation Account shall be transferred to the Remediation Trust's Trust Remediation Account to be used for Beneficial Environmental Projects, and remaining Trust Assets in the Trust

Administrative Account shall be transferred to the Remediation Trust's Trust Administrative Account.

ARTICLE IV  
THE TRUSTEE

4.1 Appointment.

4.1.1 Greenfield Penobscot Estuary Project Trust LLC is hereby appointed, subject to approval by the Court, to serve as the Trustee to administer the Project Trust and the Trust Accounts and perform the Work set forth in the Consent Decree and this Agreement, and the Trustee hereby accepts such appointment and agrees to serve in such representative capacity, effective upon the Effective Date. Subject to the provisions in Section 4.10 (Removal, Resignation, and Replacement of the Trustee) herein, the term of the Trustee shall be for ten (10) years at which time the Trustee may resign, be reappointed by the Beneficiaries, or be terminated. Any successor Trustee shall be jointly proposed by the Beneficiaries and appointed by the Court in accordance with Section 4.11 (Appointment of Successor Trustees) of this Agreement.

4.1.2 Consultants, Contractors, and Third-Party Professionals. The Project Trust is authorized to contract with any environmental, engineering, or technical consultants and contractors, and other third-party professionals to carry out the Work at the Site and otherwise fulfill the purposes of the Project Trust and its obligations under the Consent Decree. Such consultants, contractors, and third-party professionals shall be recommended by the Trustee and shall contract with the Project Trust, and the Beneficiaries shall have reasonable opportunity to comment on or object to these recommendations in accordance with Paragraphs 31 (Decisions Regarding Work and Deliverables), 32 (Limit on Decisions Regarding Work by the Project Trust), and 39 (Selection and Hiring of Contractors) of the Consent Decree, prior to finalizing any such contracts. The legal relationship of each consultant, contractor, or third-party professional to the Project Trust and Trustee is that of an independent contractor professional, not that of an entity employed by the Project Trust or the Trustee (and in no event shall be deemed a Trust Party).

4.1.3 Third-Party Insurance. Each consultant, contractor, and third-party professional engaged by the Project Trust in accordance with this Section to carry out the Work shall be required to obtain, at its own expense (except with respect to any project-specific insurance procured in accordance with this Section), as appropriate (based on, among other things, the contemplated scope of services to be provided by such professional), general, environmental, professional, and/or other liability insurance in the range of \$1,000,000 to \$25,000,000 as agreed to by the Project Trust after consultation with the Beneficiaries and an opportunity for the Beneficiaries to comment on or object to any proposed insurance coverage(s). Upon the recommendation of the Trustee, the Project Trust may reimburse or pay for project-specific insurance for a consultant, contractor, or third-party professional, subject to an opportunity for the Beneficiaries to comment on or object. To the fullest extent permitted by applicable law: (i) insurance policies obtained in accordance with this Section shall (A) be maintained for a period of two years following completion of the applicable Work, (B) name the Trust Parties, and the Beneficiaries of the Project Trust as additional insureds, (C) be issued by an insurer rated A-VII or higher in Best's Insurance Manual or equivalent and that is qualified to do business in the

jurisdiction where the Site is located, and (D) provide that the Project Trust be given prior written notice of the termination or expiration of such policy or any material changes in coverage or terms under the policy; (ii) all such policies shall be primary to any insurance maintained by the Project Trust and shall state the same with respect to liabilities that the Trust Parties and the Beneficiaries may incur that are attributable to the Site; and (iii) professionals insured in accordance with this Section shall waive, and require their insurers to waive, all rights of subrogation against the Project Trust, Trustee, Trust Parties, and the Beneficiaries. The insurance policies shall cover, among other things, negligence committed by the consultant, contractor, or third-party professional in carrying out the Work at the Site. In addition, unless waived by the Project Trust in its sole discretion, each subcontractor retained by a professional engaged by the Project Trust in accordance with this Section to carry out a portion of the Work shall obtain and maintain insurance of similar types in amounts that accord with the professional's usual practice for such Work when performed by subcontractors, naming the Project Trust, Trustee, and the Beneficiaries of the Project Trust as additional insureds to the fullest extent permitted by applicable law.

4.2 Generally. The Trustee's powers are exercisable solely in a fiduciary capacity and solely for the benefit of the Beneficiaries consistent with, and in furtherance of, the purposes of the Project Trust and the Consent Decree. As provided in Section 27 (Powers and Duties of Trustees) of the Consent Decree, in exercising its powers, the Trustee must consider as paramount the interests of the Penobscot River Estuary, including the River itself, its flora and fauna, and its nearby inhabitants. And the Trustee must inform and involve community stakeholders in its decision-making as set forth in Paragraph 41 (Community Involvement) of the Consent Decree and Section IV (Community Involvement) of the Statement of Work appended to the Consent Decree. The Trustee shall have the authority to bind the Project Trust and any successor Trustee, or successor or assign to the Project Trust, but shall for all purposes hereunder be acting in its representative capacity as Trustee and not individually. Notwithstanding anything to the contrary contained herein, the Trustee shall not be required to take action or omit to take action if, after the advice of counsel, the Trustee believes in good faith such action or omission is not consistent with the Trustee's fiduciary duties. The Trustee shall not be deemed to have breached its fiduciary duties in connection with any act or omission that is consistent with written direction from the Court. The Trustee shall have no obligation to perform any activities for which the relevant Trust Account lacks sufficient funds.

4.3 Powers. In connection with the administration of the Project Trust, except as otherwise set forth in this Agreement or the Consent Decree, the Trustee is authorized to perform any and all acts necessary to accomplish the purposes of the Project Trust. Except as provided in the Consent Decree and Section 4.5 (Limitations on the Trustee's Authority) below, the powers of the Trustee shall, without any further Court approval or order, include, without limitation, each of the following: (i) to receive, manage, invest, reinvest, supervise, vote, and protect the Trust Assets, withdraw, make distributions, and pay Taxes, if applicable or required, and other obligations owed by the Project Trust or the Trust Accounts from funds held by the Trustee, the Project Trust, and/or the Trust Accounts in accordance with the Consent Decree, and withhold and pay to the appropriate taxing authority any withholding taxes on distributions from the Project Trust, if applicable; (ii) to engage employees and professional Persons to assist the Project Trust and/or the Trustee with respect to the responsibilities described herein; (iii) to make distributions of the Trust Assets from the Trust Accounts for the purposes contemplated in this Agreement and the Consent Decree; (iv)



to hold Property in the name of the Trustee in its capacity as such; (v) to establish and maintain a public-facing website and to engage in other Community Involvement activities in accordance with Paragraph 41 (Community Involvement) of the Consent Decree and section IV (Community Involvement) of the Statement of Work appended to the Consent Decree; (vi) to purchase any insurance policies required, or as the Trustee may determine prudent, to protect the Project Trust, the Trust Assets, or the Trustee from any and all claims that might be asserted against each relating to the Project Trust; (vii) to file quarterly documents in Court on behalf of the Trustee and the Project Trust in accordance with the Consent Decree; (viii) to file all necessary state and federal filings and to provide information as required by law, this Agreement, or the Consent Decree; (ix) to determine the projects to be funded and implemented by the Project Trust as Beneficial Environmental Projects pursuant to Paragraph 13 (Beneficial Environmental Projects) of the Consent Decree, all as in accordance with the requirements set forth in the Consent Decree and subject to the limitations set forth in Sections 4.5.2 (Duties with Respect to Restoration Projects), 4.5.3 (Decisions to Fund or Implement Beneficial Environmental Projects), and 4.5.4 (Coordination with Remediation Trust) below; (x) to engage in all communications, take all actions, and execute all agreements, instruments, and other documents necessary to draw down a Financial Assurance to the extent authorized in Paragraph 20(e) (Financial Assurance: Drawdown) of the Consent Decree; and (xi) to effect all actions, including defending or resolving claims asserted against the Project Trust and/or Trustee, in its capacity as such and subject to Section 4.9 (Exculpation), and execute all agreements, instruments, and other documents necessary to implement this Agreement, including to exercise such other powers as may be vested in or assumed by the Project Trust and/or the Trustee pursuant to this Agreement and any order of the Court or as may be necessary and proper to carry out the provisions of this Agreement and the Consent Decree. No Person dealing with the Project Trust shall be obligated to inquire into the authority of the Trustee in connection with the protection, conservation, or disposition of Trust Assets; provided, however, that the foregoing does not limit Trustee's obligations to provide information under Paragraph 4 of the Consent Decree. The Trustee is authorized to execute and deliver all documents on behalf of the Project Trust to accomplish the purposes of this Agreement and the Consent Decree.

4.4 Other Professionals. The Trustee is authorized to retain on behalf of the Project Trust and pay such other professionals as the Trustee (in accordance with a budget approved pursuant to Section 3.2 above) may deem necessary or appropriate to assist the Trustee in carrying out its power and duties under this Agreement and the Consent Decree, including, without limitation: (i) legal counsel to the Project Trust and/or the Trustee, in its capacity as such and subject to Section 4.9 (Exculpation); (ii) one or more public accounting firms to perform such bookkeeping functions and/or reviews of the financial books and records of the Project Trust as may be appropriate in the Trustee's reasonable discretion and to prepare and file any tax returns or informational returns for the Project Trust or the Trust Accounts as may be required; and (iii) investment advisors, custodians, security personnel, surveyors, contractors, clerks, and other third parties. The Trustee may pay all such Persons compensation for services rendered and expenses incurred in accordance with budgets approved as provided in Section 3.2 and from the appropriate Trust Account consistent with Sections 2.1.4 and 2.4.1 herein (Creation of the Trust Accounts; Management of Trust Assets). Fees due to an investment advisor that are expressed as a percentage of assets under management or return on investment need not be included in a budget, provided that the

Beneficiaries are given notice of, and an opportunity to comment on and object to, the investment advisor and the stated percentage.

#### 4.5 Limitation of the Trustee's Authority.

4.5.1 General Limit. The Project Trust and the Trustee shall not engage in any trade or business with respect to the Trust Assets or any proceeds therefrom except as and to the extent the same is deemed in good faith by the Trustee to be reasonably necessary or proper for the conservation or protection of the Trust Assets or the fulfillment of the purposes of the Project Trust.

4.5.2 Duties with Respect to Restoration Projects. In accordance with Paragraph 29 (Project Trust's Restoration Project Duties) of the Consent Decree, the Trustee shall at all times carry out Work on any Restoration Project in a manner consistent with the conditions and obligations set forth in any applicable separate agreement between Mallinckrodt and the Natural Resource Damage Trustees to which such Restoration Project relates provided that such Work is Feasible.

4.5.3 Decisions to Fund or Implement Beneficial Environmental Projects. The Trustee acknowledges and agrees to follow the project selection process and criteria set forth in the Consent Decree in Paragraphs 13 and 32 (Beneficial Environmental Projects; Limit on Decisions Regarding Work by the Project Trust). To the extent no Restoration Projects are foreseeable, the Trustee shall consider beginning the process outlined in Paragraph 33 (Termination of the Project Trust) as required by the Consent Decree and this Agreement.

4.5.4 Coordination with Remediation Trust. The Trustee shall coordinate with the trustee of the Remediation Trust with respect to Work, Invoice Amounts, and financial statements, all in accordance with Paragraphs 19 (Initial Funding of the Trusts), 20 (Financial Assurance), 25 (Trustees), 33 (Termination of the Project Trust), 34 (Decisions Regarding Annual Budgets, Work Plans, and Cash Flow Projections), and 35 (Financial Forecasts and Invoices to Mallinckrodt) of the Consent Decree. Upon beginning the Project Trust termination process as set forth in Section 2.8 (Termination) above and Paragraph 33 (Termination of the Project Trust) of the Consent Decree, the Trustee shall work in good faith with the trustee of the Remediation Trust to facilitate the transfer of the Trust's Assets and liabilities to the Remediation Trust in accordance with Paragraphs 13 (Beneficial Environmental Projects) and 33 (Termination of the Project Trust) of the Consent Decree. The Trustee shall take such actions with respect to the Trust Assets, and liabilities, as reasonably requested by the trustee of the Remediation Trust, unless the Trustee reasonably determines that such actions would violate the Trustee's fiduciary duties to the Project Trust or another obligation of the Trustee created in this Agreement or the Consent Decree, which determination shall be made and delivered to the proper Persons in accordance with Paragraphs 58 through 63 (Dispute Resolution) of the Consent Decree.

4.6 Reliance by the Trust Parties. Except as may otherwise be provided herein: (i) the Trust Parties may rely, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by them to be genuine and to have been signed or presented by the proper entity(ies) or

representative(s) pursuant to the Consent Decree; (ii) the Trust Parties may retain and reasonably rely upon legal counsel, financial or accounting advisors, technical consultants and contractors, and other professionals and experts as appropriate, within the approved budget allowances for such expenses, and shall not be personally liable for any action taken or not taken in accordance with the advice thereof unless the Court, by a final order, finds that they were grossly negligent or committed fraud or willful misconduct; and (iii) persons dealing with the Trust Parties shall look only to the applicable insurance policies maintained by one or more professionals retained hereunder in the first instance, then to the applicable insurance policies maintained by the Trustee, and, finally, in the event and to the extent insurance available under this Section is insufficient, to the funds in the Trust Administrative Account to satisfy any liability incurred by the Trust Parties to such person in carrying out the terms of this Agreement or any order of the Court, and the Trust Parties shall have no personal obligations to satisfy any such liability other than as provided in Section 4.9 (Exculpation).

#### 4.7 Compensation of the Trustee.

4.7.1 The Project Trust shall pay its own reasonable and necessary costs and expenses and shall reimburse the Trustee for the actual reasonable out-of-pocket fees, costs, and expenses to the extent incurred by the Trustee in connection with the Trustee's duties hereunder, including, without limitation, necessary travel, lodging, office rent (to be paid directly by the Project Trust), professional fees, postage, photocopying, telephone, and facsimile charges upon receipt of periodic billings, all in accordance with an annual budget or fee schedule approved by the Beneficiaries. Any Trust Parties who perform services for the Project Trust shall be entitled to receive reasonable compensation for services rendered on behalf of the Project Trust in accordance with an annual budget or fee schedule, subject to review and comment by the Beneficiaries and the dispute resolution terms of this Agreement and the Consent Decree. The Trustee's fee rates for its services as the Trustee shall be provided to the Beneficiaries for comment and objection prior to the Effective Date and prior to the Trustee applying any adjusted fee schedule.

4.7.2 The Trust Assets shall be subject to the claims of the Trustee, and the Trustee shall be entitled to reimburse itself out of any available cash in the Trust Administrative Account, or for services performed in furtherance of the Work on a Beneficial Environmental Project, in accordance with the provisions of Section 2.4.1, out of available funds in the Trust Remediation Account, and the Project Trust shall be obligated to pay for actual out-of-pocket expenses and for actual hours worked.

4.7.3 All compensation and other amounts payable to the Trustee shall be paid from the Trust Assets.

#### 4.8 Liability of the Trust Parties.

4.8.1 The Beneficiaries acknowledge that the Trust Parties did not create, cause, or contribute to the circumstances that give rise to the need to perform Work, including existing conditions or existing contamination at the Site. Therefore, nothing in the Consent Decree, Statement of Work, or this Agreement shall require the Trust Parties to take or assume any liability pursuant to CERCLA, RCRA, the Maine Uncontrolled Hazardous Substance Sites Law, or any

other statute, regulation, or other applicable requirements associated with Work due to existing contamination or conditions.

4.8.2 In no event shall any Trust Parties be held liable to any third parties for any liability, action, or inaction of any other party, including Mallinckrodt or any other Trust Party. The liability of the Trust Parties shall be limited as provided in the Consent Decree and this Agreement, and the Trust Parties shall, further, be indemnified and exculpated in accordance with Section 4.9 of this Agreement. The Trustee shall not be deemed in breach of its duties or responsibilities on account of the insufficiency of funds in the Project Trust.

4.8.3 No provision of this Agreement or the Consent Decree shall require the Trustee to expend or risk its own personal funds or otherwise incur any personal financial liability in the performance of any of its duties or the exercise of any of its authorities as Trustee hereunder, except as provided in Section 4.13 (Trustee Insurance) and except on account of the Trustee's gross negligence, fraud, or willful misconduct as provided in Section 4.9 (Exculpation).

4.8.4 To the fullest extent permitted by applicable law, except as required or authorized by the Consent Decree, the Trust Parties shall not be deemed an owner or operator of the Site or an owner, operator, generator, arranger, or transporter of hazardous waste at the Site under CERCLA, RCRA, the Maine Uncontrolled Hazardous Substance Sites Law, or similar laws on account of the Trust Parties' performance of Work other than as provided in Section 4.9. The Trust Parties shall not be liable for any injury or damages to Persons or property resulting from acts or omissions of any Person in implementing the requirements of the Consent Decree or this Agreement other than as provided in Section 4.9.

#### 4.9 Exculpation.

4.9.1 Except as otherwise provided in the Consent Decree or this Agreement, to the fullest extent permitted by applicable law, the Trust Parties are exculpated by all Persons of and from any and all claims, causes of action, and other assertions of liability arising out of the discharge of the powers and duties conferred upon the Project Trust and/or Trustee by the Consent Decree or this Agreement. No Person will be allowed to pursue any claims or causes of action against any Trust Party for any claim against Mallinckrodt, for making payments in accordance with the Consent Decree or this Agreement, or for implementing the provisions of the Consent Decree or this Agreement. Notwithstanding anything in this Section 4.9 or elsewhere in this Agreement to the contrary, nothing in this Agreement shall be construed to exculpate the Trust Parties from any liability resulting from any act or omission constituting gross negligence, fraud, or willful misconduct of such Trust Party. In the event of any claim or cause of action by a third party, including but not limited to a governmental entity, against the Project Trust, or the Trustee or a Trust Party with respect to the Project Trust, there shall be (i) an irrebuttable presumption that specific actions taken or not taken by the Project Trust, Trustee, or a Trust Party with the approval of the Court, expressed in any decision, order, decree, or dispute resolution related to the Action, do not constitute gross negligence, fraud, or willful misconduct, and (ii) a presumption that actions taken or not taken by the Project Trust, Trustee, or a Trust Party to implement the Consent Decree and this Agreement that meet the Standard of Care required by Paragraph 31(b) (Standard of Care) of the Consent Decree do not constitute gross negligence, fraud, or willful misconduct.

4.9.2 In the event of any claim or cause of action by a third party, including but not limited to a governmental entity, against a Trust Party, the Project Trust shall indemnify, defend, and hold harmless (without the Trust Parties having to first pay from their personal funds) the Trust Parties from and against any and all claims, causes of action, liabilities, obligations, losses, costs, judgments, damages, or expenses (including attorneys' fees) and any other assertion of liability arising out of or in relation to the discharge of the Trustee's powers and duties, provided that such indemnification, and any related recovery, shall be satisfied first, by the responding insurance coverage maintained by one or more professionals retained hereunder, second, by the responding insurance coverage maintained by the Trustee, and, third, by funds already in the Trust Administrative Account. The Project Trust shall not indemnify Trust Parties for acts or omissions that the Court, by a final order, finds constituted gross negligence, fraud, or willful misconduct.

#### 4.10 Removal, Resignation and Replacement of the Trustee.

4.10.1 Removal. During the term of the Trustee's initial appointment or during any subsequent appointment or reappointment, the Trustee may be removed by (1) the entry of an order by the Court finding that the Trustee breached its fiduciary duty or committed gross negligence, fraud, or willful misconduct; (2) the entry of an order by the Court finding that (i) the Trustee in any material respect exacerbated hazardous conditions at the Site, (ii) is seriously or repeatedly deficient or late in performance of its duties or responsibilities under this Agreement, or (iii) has violated the provisions of this Agreement or the Consent Decree; (3) the Court approving an amendment to the Consent Decree by and among the Beneficiaries pursuant to which the Beneficiaries unanimously consent to removing the Trustee and proposing another Person as successor Trustee; or (4) the Court's approval of a petition entered by a Beneficiary to have the Trustee removed and proposing another Person as successor Trustee.

4.10.2 Resignation. The Trustee may resign by giving not less than 90 days prior written notice thereof to the Court and the Beneficiaries.

4.10.3 Replacement. The Trustee may be replaced upon completion of any ten-year term.

4.10.4 Surviving Provisions. The provisions of this Section 4.10 and of Sections 4.6 (Reliance by the Trust Parties), 4.8 (Liability of the Trust Parties), 4.9 (Exculpation), 4.11 (Appointment of Successor Trustees), 4.14 (Mutual Covenants Not to Sue), and 7.3 (Property Assignment and Preservation) shall survive the removal, replacement, and/or resignation of the Trustee.

4.11 Appointment of Successor Trustees. Any successor Trustee shall be proposed by the Beneficiaries and appointed by the Court. Any successor Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall file such acceptance with the Project Trust records. Thereupon, such successor Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of its predecessor in the Project Trust with like effect as if originally named herein; provided, however, that a removed or resigning Trustee shall, nevertheless, when requested in writing by the successor Trustee, execute

and deliver an instrument or instruments conveying and transferring to such successor Trustee under the Project Trust all the estates, properties, rights, powers, and trusts of such predecessor Trustee.

4.12 No Bond. Notwithstanding any state law to the contrary, the Trustee, including any successor Trustee, shall be exempt from giving any bond or other security.

4.13 Trustee Insurance. As required by Paragraph 47 (Insurance Policies) of the Consent Decree, at all times that a Person is acting as the Trustee of the Project Trust, the Trustee shall obtain and continue to hold appropriate insurance as agreed to by the Project Trust after consultation with the Beneficiaries regarding the type(s) and amount of insurance to be obtained. To the extent the Person then serving as Trustee provides services to the Project Trust outside of its capacity as Trustee, the Person shall be treated as a consultant, contractor, and third-party professional to the Project Trust to the extent of such services and shall be required to obtain and fund insurance with respect to such services in accordance with Section 4.1.3 (Third-Party Insurance) as if the services were performed by a third-party. Mallinckrodt, MPA, and NRDC shall receive insured protection on all such insurance policies obtained by the Trustee.

4.14 Mutual Covenants Not to Sue. Except as specifically provided herein and without limiting the Beneficiaries' or the Trustee's, if applicable, right to seek to enforce the terms of the Consent Decree and this Agreement and to seek dispute resolution as provided in the Consent Decree, upon the earlier of the Effective Date or the date on which the Project Trust receives funds pursuant to Section 2.1.2 (Transfer of Funding to the Project Trust), the Beneficiaries covenant not to sue or assert any claims or causes of action against any of the Trust Parties with respect to the matters addressed herein, except to the extent such claim or causes of action are attributable to a Trust Party's fraud or willful misconduct as determined by the Court, and the Trust Parties covenant not to sue or assert any claims or causes of action against any Beneficiary.

## ARTICLE V BENEFICIARIES

5.1 Beneficiaries. Beneficial interests in the Project Trust shall be held by each of the Beneficiaries.

5.2 Identification of Beneficiaries.

5.2.1 In order to determine the actual names and addresses of the authorized representatives of a Beneficiary, the Project Trust and the Trustee shall be entitled to rely conclusively on the name and contact information of the authorized representative for such Beneficiary listed in Section 7.8 (Sufficient Notice) of this Agreement, who may from time to time provide additional or replacement names and contact information of authorized representatives, or listed in any written notice provided to the Trustee in the future by an authorized representative of such Beneficiary.

5.2.2 The Trustee shall send copies of all reports, budgets, forecasts, and other documents that the Trustee is required to submit to a Beneficiary under the Consent Decree or this

Agreement, and related implementation documents by electronic mail (unless otherwise requested) to the Person(s) listed in Section 7.8 (Sufficient Notice) to this Agreement as applicable. The Trustee shall send all reports that the Trustee is required to submit to the Court under the Consent Decree or this Agreement in accordance with applicable Court procedures.

5.3 Transfer of Beneficial Interests. The interest of the Beneficiaries of the Project Trust, which are reflected only on the records of the Project Trust maintained by the Project Trust, are not negotiable and may be transferred only after written notice to the Project Trust, by order of the Court, or by operation of law. The Project Trust shall not be required to record any transfer in favor of any transferee where, in the sole discretion of the Project Trust, such transfer is or might be construed to be ambiguous or to create uncertainty as to the holder of the interest in the Project Trust. Until a transfer is in fact recorded on the books and records maintained by the Project Trust for the purpose of identifying Beneficiaries, the Project Trust, whether or not in receipt of documents of transfer or other document relating to the transfer, may nevertheless send communications to Beneficiaries, as though it has no notice of any such transfer, and in so doing the Project Trust and Trustee shall be fully protected and incur no liability to any purported transferee or any other Person. The Trustee and Project Trust shall not unreasonably withhold transfer of beneficial interests to a successor of a Beneficiary recognized by the Court consistent with Paragraphs 3 and 68 (Succession and Assignment; Successors to NRDC or MPA) of the Consent Decree.

## ARTICLE VI REPORTING AND TAXES

6.1 Reports. Within ninety (90) days after the end of each calendar quarter (which shall end on March 31, June 30, September 30, and December 31), beginning with the quarter ended after assets are first received by the Project Trust and ending as soon as practicable upon termination of the Project Trust, the Trustee shall submit to the Beneficiaries a written report as set forth in Paragraph 38 (Quarterly Reporting Requirements) of the Consent Decree; provided, however, that the Trustee may withhold confidential business information and protected personal information, if any, from such submittals and filings. The Project Trust shall promptly submit additional reports to the Beneficiaries whenever, as determined by outside counsel, accountants, or other professional advisors, an adverse material event or change occurs that affects the Project Trust. The Project Trust shall also provide the reports or information required by Section 3.2 (Payments by the Project Trust) of this Agreement.

6.2 Other. The Project Trust shall also file (or cause to be filed) any other statements, returns, or disclosures relating to the Project Trust that are required by any applicable governmental unit.

6.3 Taxes. The Project Trust is intended to be created and treated as an environmental remediation trust as described in Treasury Regulation Section 301.7701-4(e) and a “grantor trust” within the meaning of Sections 671 through 679 of the Code for all federal income tax purposes, with Mallinckrodt treated as the owner of the Project Trust and Trust Assets for federal tax purposes. The Trustee will file any returns or reports required by Treasury Regulation Section 1.671-4 and similar state and local laws, in order to enable Mallinckrodt to calculate its share of the Project Trust’s Tax obligations and attributes. The foregoing treatment shall also apply, to the

extent permitted by law, for state and local tax purposes. All Taxes of any kind that may be assessed or levied against or in respect of the Project Trust shall be paid from the earnings and interest on Trust Assets, whether directly to the taxing authority or indirectly through Mallinckrodt.

## ARTICLE VII MISCELLANEOUS PROVISIONS

7.1 Amendments and Waivers. Any provision of this Agreement may be amended or waived by mutual written consent of the Parties; provided, however, that unless ordered by the Court no change shall be made to this Agreement that would violate the Consent Decree or, unless agreed to in writing by the Trustee, the rights or obligations of, or the liability protections or immunities accorded to, the Trustee. Technical amendments to this Agreement may be made as necessary to clarify this Agreement to enable the Trustee to effectuate the terms of this Agreement, or perform its intended duties in a manner consistent with the Consent Decree with the mutual consent of the Parties.

7.2 Ex Parte Communications. From the Effective Date until the termination of the Project Trust, no Trustee shall make or knowingly cause to be made to a Beneficiary, and no Beneficiary shall make or knowingly cause to be made to a Trustee, any material oral or written communication relevant to the Consent Decree or the Work that was not made contemporaneously to the other Beneficiaries. If such communication is received by the Trustee or a Beneficiary, such receiving party shall cause such communication to be served on all other Beneficiaries as soon as reasonably practical. The prohibition in this Section 7.2 shall not apply to communications regarding non-substantive administrative issues.

7.3 Property Assignment and Preservation. The Project Trust is the sole and exclusive owner of all Property now or hereinafter held in the name of the Trustee, in its capacity as Trustee, and all underlying rights therein without any further obligations to Trustee. If any such Property, or any portion thereof, is deemed not to be owned by the Project Trust, the Trustee hereby irrevocably conveys, transfers and assigns to the Project Trust all right, title and interest in and to such Property, including the right to receive all past, present and future proceeds and damages therefrom. Trustee shall, at any time during and after the Trustee's term under this Agreement, make such applications, sign such papers, take all rightful oaths, and perform all acts as may be requested from time to time by the Court or a successor Trustee or ordered by the Court (following dispute resolution provided for in this Agreement and the Consent Decree) with respect to the Property, at the Project Trust's expense. The Trustee shall also execute assignments to the Project Trust (or its successor Trustee, not individually but in its capacity as successor Trustee) and give the Project Trust and its successor Trustee all reasonable assistance (including the giving of testimony) to obtain, protect, enforce or defend the Property for the Project Trust's benefit. A Person serving as Trustee shall cooperate and assist in the transition of the Project Trust administration to a successor Trustee, including after such Person is no longer the Trustee, as reasonably requested by the successor Trustee or the Beneficiaries. The Trustee appoints the Project Trust and any duly-appointed successor Trustee as the Trustee's co-agents and grants each a power of attorney for the limited purpose of executing all such documents and to do all other lawful acts that the Project Trust, under the administration of a successor Trustee, is entitled to



require Trustee to do pursuant to this Section 7.3. The Trustee shall preserve all Property that in any way relates to the Site in accordance with the Statement of Work section V. Upon a Person's termination as Trustee for any reason or by resignation, the Trustee shall promptly deliver to the Project Trust (or its successor Trustee) all Project Trust records, Trust Property in the Trustee's possession or under Trustee's control, and documents that in whole or in part contain material information regarding the Project Trust. The Trustee may keep copies of such Project Trust records as then agreed to by the successor Trustee or ordered by the Court following dispute resolution. The Trustee, or any successor Trustee, shall notify the Beneficiaries and provide the Beneficiaries an opportunity to object prior to utilizing or relying upon any Property to carry out the Trustee's duties under this Agreement if such utilization or reliance could be inconsistent with the Property assignment in this Section.

7.4 Dispute Resolution. Each of the Trustee and the Beneficiaries hereby acknowledge and agree that in the event of any dispute with respect to the Project Trust or the terms of this Agreement, the Trustee and Beneficiaries shall follow and be bound by the dispute resolution provisions set forth in Section XIV (Dispute Resolution) in the Consent Decree.

7.5 Cooperation.

7.5.1 Mallinckrodt represents that it has provided, or has provided access to, all information required by Paragraph 43 of the Consent Decree, and otherwise has complied, and will continue to comply, post-Effective Date, with the provisions of Section IX (Cooperation and Obligations of the Parties Regarding the Trustees) of the Consent Decree.

7.5.2 The Project Trust and Trustee shall take such actions and execute such documents as are reasonably requested by Mallinckrodt with respect to effectuating the Consent Decree and the transactions contemplated thereby, provided that such actions are not inconsistent with this Agreement or the Consent Decree.

7.5.3 To the fullest extent possible, the Trustee, the Trust Parties, and the Beneficiaries agree and covenant to fully cooperate to efficiently and effectively carry out the intent of the Consent Decree and this Agreement and to take reasonable steps to protect the Project Trust, Trustee and Trust Parties from third-party liability arising from the Project Trust's, Trustee's, and Trust Parties' responsibilities and obligations under the Consent Decree and this Agreement, including but not limited to liability under CERCLA, RCRA and the state counterparts to those statutes, but nothing in this paragraph requires the Beneficiaries to expend funds, to accept liability or responsibility, or to indemnify or hold harmless the Project Trust, Trustee, and Trust Parties except to the extent such is required elsewhere in the Consent Decree or this Agreement.

7.6 Situs of the Project Trust. The situs of the Project Trust herein established is Maine, and, except to the extent federal law is applicable, the rights, duties, and obligations arising under this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Maine, including the Maine Act, without giving effect to the principles of conflict of law thereof.

7.7 Severability. If any provision of this Agreement or application thereof to any Person or circumstance shall be finally determined by the Court to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected hereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

7.8 Sufficient Notice. For any notice or other communication that is to be given or is allowed under this Agreement, such notice or other communication shall be written, shall be conveyed electronically by email, and shall be provided at the same time to the designated representatives of all of the Parties. The Parties shall give notice if their designated representatives change or have a change in contact information. As of the Effective Date, the designated representatives are:

For Plaintiffs:

Mitchell Bernard, NRDC, 40 West 20th Street, New York, NY 10011; (212) 727-4469; mbernard@nrdc.org; and

Jared Thompson, NRDC, 1152 15th Street NW, Suite 300, Washington, DC 20005; (202) 513-6249; jared.thompson@nrdc.org.

For Mallinckrodt:

Patricia Hitt Duft, Mallinckrodt US LLC, 710 Medtronic Parkway, LC 300, Minneapolis, MN 55432; (314) 753-0413; patricia.h.duft@medtronic.com;

Lisa Palin, Mallinckrodt US LLC, c/o Medtronic plc, 15 Hampshire Street, Mansfield, MA 02048; (508) 452-4272; lisa.palin@medtronic.com; and

Jeffrey Talbert, Preti Flaherty, One City Center, Portland, ME 04112; (207) 791-3000; jtalbert@preti.com.

For Remediation Trust:

Cynthia Brooks, Greenfield Penobscot Estuary Remediation Trust LLC c/o Greenfield Environmental Trust Group, Inc., 11 Flagg Street, Unit 1, Cambridge, MA 02138; (617) 448-9762; cb@g-etg.com;

Lauri Gorton, Greenfield Penobscot Estuary Remediation Trust LLC c/o Greenfield Environmental Trust Group, Inc., 2116 East Estes Street, Milwaukee, WI 53207; (414) 732-4514; lg@g-etg.com;

Craig Kaufman, Greenfield Penobscot Estuary Remediation Trust LLC c/o Greenfield Environmental Trust Group, Inc., 1506 D Street, SE Washington, DC 20003; (215) 837-3702; ck@g-etg.com; and

Jennifer Roberts, Greenfield Penobscot Estuary Remediation Trust LLC c/o Greenfield Environmental Trust Group, Inc., PO Box 1189, Helena, MT 59624; (406) 457-2142; jr@g-etg.com.

For Trustee:

Cynthia Brooks, Greenfield Penobscot Estuary Project Trust LLC c/o Greenfield Environmental Trust Group, Inc., 11 Flagg Street, Unit 1, Cambridge, MA 02138; (617) 448-9762; cb@g-etg.com;

Lauri Gorton, Greenfield Penobscot Estuary Project Trust LLC c/o Greenfield Environmental Trust Group, Inc., 2116 East Estes Street, Milwaukee, WI 53207; (414) 732-4514; lg@g-etg.com;

Craig Kaufman, Greenfield Penobscot Estuary Project Trust LLC c/o Greenfield Environmental Trust Group, Inc., 1506 D Street, SE Washington, DC 20003; (215) 837-3702; ck@g-etg.com; and

Jennifer Roberts, Greenfield Penobscot Estuary Project Trust LLC c/o Greenfield Environmental Trust Group, Inc., PO Box 1189, Helena, MT 59624; (406) 457-2142; jr@g-etg.com.

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

7.10 Actions Taken on Other Than Business Day. If any payment or act under the Consent Decree or this Agreement is required to be made or performed on a date that is not a business day, then the making of such payment or the performance of such act may be completed on the next succeeding business day, but shall be deemed to have been completed as of the required date. For the purposes of this Agreement, a business day shall be any of the days Monday through Friday excluding recognized federal holidays.

7.11 Consistency of Agreements and Construction. To the extent reasonably possible, the provisions of this Agreement shall be interpreted in a manner consistent with the Consent Decree. Where the provisions of this Agreement are irreconcilable with the provisions of the Consent Decree, the provisions of the Consent Decree shall prevail, with the exception of Article IV, Section 1.1.18 (definition of “Parties”), Section 1.1.33 (definition of “Trust Administrative Costs”), and Section 7.5 (“Cooperation”), in which case this Agreement controls.

7.12 Compliance with Laws. Any and all distributions of Trust Assets shall be in compliance with applicable laws, including, but not limited to, applicable federal and state securities laws.

7.13 No Recourse to Plaintiffs. In no event shall the Plaintiffs have any responsibility for paying any expenses, fees, liabilities, or other obligations of the Project Trust, and in no event shall the

Project Trust or the Trustee, or any of their agents, representatives, or professionals, have recourse to the Plaintiffs therefor.

7.14 Uniform Custodial Trust Act. The Agreement shall not be subject to any provision of the Uniform Custodial Trust Act as adopted by any state, now or in the future.

7.15 Authority to Enter into Agreement; Counterparts. The undersigned representatives for each Party represent and warrant that they are duly authorized to enter into the terms of this Agreement and to bind such Party legally to this Agreement, and that such Party has the right, power, and authority to enter into this Agreement, to become a Party to this Agreement, and to perform its obligations under this Agreement. This Agreement may be signed electronically in counterparts and such counterpart signature pages shall be given full force and effect.

IN WITNESS WHEREOF, THE UNDERSIGNED PARTIES ENTER INTO THIS PENOBSCOT ESTUARY BENEFICIAL ENVIRONMENTAL PROJECTS TRUST AGREEMENT.

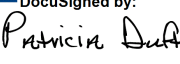
Signature Page for Penobscot Estuary Beneficial Environmental Projects Trust Agreement

**FOR MALLINCKRODT US LLC:**

1/27/2023

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Date

DocuSigned by:  
  
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Name: Patricia H. Duft  
Title: Vice President

Signature Page for Penobscot Estuary Beneficial Environmental Projects Trust Agreement

**FOR MAINE PEOPLE'S ALLIANCE:**

1/30/2023

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Date

DocuSigned by:  
*Jesse Graham*  
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Name: Jesse Graham  
Title: Co-Director

Signature Page for Penobscot Estuary Beneficial Environmental Projects Trust Agreement

**FOR NATURAL RESOURCES DEFENSE COUNCIL, INC.:**

1/29/2023

Date

DocuSigned by:  
*Mitchell S. Bernard*  
96420BF480BB4B8...

Name: Mitchell S. Bernard  
Title: President and Chief Counsel

Signature Page for Penobscot Estuary Beneficial Environmental Projects Trust Agreement

**FOR GREENFIELD PENOBSCOT ESTUARY PROJECT TRUST LLC**, not individually but solely in its representative capacity as trustee of the Penobscot Estuary Beneficial Environmental Projects Trust:

**By: Greenfield Environmental Trust Group, Inc., Member**

1/27/2023

Date

DocuSigned by:  
*Cynthia Brooks*  
BT2175B8DA2D453...

Name: Cynthia Brooks  
Title: President