

PENOBSCOT ESTUARY MERCURY REMEDIATION TRUST AGREEMENT

BY AND AMONG

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

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

AND

**MAINE PEOPLE'S ALLIANCE and NATURAL RESOURCES DEFENSE COUNCIL
As Beneficiaries**

As of October 11, 2022

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PENOBSCOT ESTUARY MERCURY REMEDIATION TRUST AGREEMENT (as modified by the Parties and approved by the Court on October 11, 2022)

This Penobscot Estuary Mercury Remediation 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 Remediation Trust LLC, not individually but solely in its representative capacity as trustee (“Trustee”) of the Penobscot Estuary Mercury Remediation Trust established hereby (the “Remediation Trust” or the “Trust”), Maine People’s Alliance (“MPA”), and Natural Resources Defense Council (“NRDC”).

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 Remediation Trust and the transfer of funds to the Remediation Trust to be administered by the Trustee pursuant to this Agreement and the Consent Decree and (2) concurrent therewith, the establishment of the Penobscot Estuary Beneficial Environmental Projects Trust (the “Project Trust”) and the transfer of funds to the Project Trust to be administered pursuant to the Project Trust’s trust agreement and the Consent Decree; and

WHEREAS, the Beneficiaries (defined below) and Trustee acknowledge and agree that the purpose of the Remediation Trust and the Project 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 Remediation Trust as an independent entity that will hold the remediation funds provided for in the Consent Decree for the purpose of carrying out the Work (defined below) required by the Consent Decree and fulfilling other obligations as set forth in the Consent Decree and this Agreement; and

WHEREAS, the Remediation 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 Remediation Trust; and

WHEREAS, upon fully funding the Remediation Trust in accordance with this Agreement and the Consent Decree, including the distribution of any remaining Project Trust assets into the Remediation Trust upon the termination of the Project Trust, and Mallinckrodt's then compliance with all obligations in this Agreement and the Consent Decree, Mallinckrodt's obligations under this Agreement and the Consent Decree shall be fully satisfied; and

WHEREAS, this Agreement and the Consent Decree govern the Remediation Trust, which is created pursuant to Section 1.468B-1, *et seq.* of the Treasury Regulations promulgated under section 468B of the Code (Section 468B of the Code and related Treasury Regulations, collectively, the "QSF Provisions"); and

WHEREAS, Greenfield Penobscot Estuary Remediation Trust LLC has been selected to be the Trustee of the Remediation 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 as given in the preamble.

1.1.2 "Action" has the meaning as given in the Recitals.

1.1.3 "Beneficiary" or "Beneficiaries" means Mallinckrodt, MPA, and NRDC.

1.1.4 "Code" means the Internal Revenue Code of 1986, as amended.

1.1.5 "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.

1.1.6 "Court" means the United States District Court for the District of Maine.

1.1.7 "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.

1.1.8 "Effective Date" has the meaning as given in the preamble.

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

1.1.10 “IRS” means the Internal Revenue Service.

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

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

1.1.13 “Mallinckrodt” means 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.

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

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

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

1.1.17 “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.

1.1.18 “Plaintiffs” means MPA and NRDC.

1.1.19 “Project Trust” has the meaning as given in the Recitals.

1.1.20 “Property” means any and all real and personal property, tangible and intangible property, or 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.

1.1.21 “QSF Provisions” has the meaning as given in the Recitals.

1.1.22 “Remediation Trust” or “Trust” has the meaning given in the preamble.

1.1.23 “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.

1.1.24 “Site” means the Penobscot River Estuary, which generally includes the tidal portions of the Penobscot River from the location of the former Veazie Dam to upper Penobscot Bay. Specifically, the Site includes each of the Study Reaches shown in Appendix E to the Consent Decree, which is Figure 1-1 of the Phase III Engineering Study Report, ECF No. 972-1, prepared by Amec Foster Wheeler Environment & Infrastructure, Inc. (n/k/a Wood Environment & Infrastructure Solutions, Inc.), including any intertidal areas that fringe the Study Reaches.

1.1.25 “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.

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

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

1.1.28 “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 for Trust Administrative Costs and to which Funding is specially allocated as described in Paragraph 15 (Trust Administrative Costs) of the Consent Decree.

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

1.1.30 “Trust Administrative Costs” refer to all costs, obligations, or liabilities associated with administration and management of the Remediation Trust, to be paid from the 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;

1.1.31 “Trust Parties” means, collectively, the Remediation 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.

1.1.32 “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 specific Work Categories.

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

1.1.34 "Work Category" or "Work Categories" means, individually or collectively, the Work described in Paragraphs 10 (Orrington Reach), 11 (Mobile Sediments and Surface Deposits), 12 (Orland River and East Channel around Verona Island), 13 (Beneficial Environmental Projects), and 14 (Long-Term Monitoring) of the Consent Decree to which Funding is specifically allocated.

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

ARTICLE II THE REMEDIATION TRUST

2.1 Creation of and Transfer of Assets to the Remediation Trust.

2.1.1 Pursuant to the Consent Decree, Mallinckrodt hereby establishes the Remediation Trust under the Maine Act for the benefit of the Beneficiaries, and Mallinckrodt hereby transfers, assigns, and delivers to the Remediation Trust, or to the Trustee, not individually but solely in its representative capacity as Trustee of the Remediation 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 Remediation 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 Remediation Trust. Within twenty (20) days after the Effective Date, Mallinckrodt shall cause to be transferred to the Remediation Trust cash in the amount of \$9.5 million (the "Initial Funding"). Thereafter, in accordance with Paragraphs 19 (Initial Funding of the Trusts) and 35 (Financial Forecasts and Invoices to Mallinckrodt) of the Consent Decree, Mallinckrodt shall transfer additional funds to the Remediation 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 two Trusts and the Capped Funding for each Work Category and Trust Account set forth in Paragraphs 10 through 15 (Orrington Reach through Trust Administrative Costs) and Paragraph 18 (Capped Funding) of the Consent Decree. Mallinckrodt shall have no funding obligation beyond the Capped Funding amount in the Consent Decree. The Trustee may seek Funding from the financial assurance 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 Remediation Trust may also receive Funding from the Project Trust. 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. The Trustee shall not invoice Mallinckrodt for any Work on Beneficial Environmental Projects until the Remediation Trust’s right, if any, to Committed Funding vests in accordance with Paragraphs 13 and 33 (Beneficial Environmental Projects; Termination of Project Trust) 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 Remediation 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 Work in the Work Categories as selected, approved, and authorized pursuant to the terms of the Consent Decree. Upon receipt of the Initial Funding, the Trustee shall segregate the Trust Remediation Account into separate subaccounts for each Work Category. As the Trustee receives Funding allocable to the Trust Remediation Account, the Trustee will allocate such Funding among the Work Categories’ subaccounts in accordance with the allocation stated on the invoice to which such Funding relates, all as described in Paragraphs 19 (Initial Funding of the Trusts), 34 (Decisions Regarding Annual Budgets, Work Plans, and Cash Flow Projections), and 35 (Financial Forecasts and Invoices to Mallinckrodt) of the Consent Decree. The Trustee may create additional subaccounts within the Trust Remediation Account, and within any Work Category subaccount, dedicated for specific 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 shall be allocated, paid, and credited to, and/or deducted from, such Trust Account.

2.2 Objective and Purpose.

2.2.1 The exclusive purposes and functions of the Remediation Trust are to hold the Trust Assets, carry out administrative functions related to the Trust Assets, oversee, implement and fund Work at the Site, oversee, implement and fund Beneficial Environmental Projects, pay future oversight costs and other costs as provided herein and in the Consent Decree, and carry out Long-Term Monitoring at the Site. The Remediation Trust shall 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 Remediation Trust shall be responsible for securing all regulatory permits and other approvals required to implement the Work 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.

2.2.2 The Remediation Trust is established pursuant to this Agreement and the Consent Decree and approved by the Court for the sole purpose of resolving Plaintiffs' claims asserting environmental liabilities of Mallinckrodt. Mallinckrodt's Funding of the Remediation Trust, pursuant to Paragraphs 10 through 15 (Orrington Reach through Trust Administrative Costs) and 18 (Capped Funding) of the Consent Decree and in accordance with Section 2.1.2 (Transfer of Funding to the Remediation Trust) hereof up to the Capped Funding, shall fully satisfy Mallinckrodt's liabilities with respect to the Action, provided Mallinckrodt is then in compliance with all obligations under the Consent Decree. As provided in the Consent Decree, the Court will retain continuing jurisdiction over the Remediation Trust and the underlying legal action.

2.3 Holder of Trust Assets. The Remediation 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 Remediation Account to provide funding and proceeds for Work set forth in Paragraphs 10 through 14 (Orrington Reach through Long-Term Monitoring) 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, the Trustee shall solely fund Work in a specific Work Category with the Trust Assets held in the Trust Account for that Work Category. 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 Remediation Trust outside of its capacity as Trustee, costs incurred by the Remediation 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, the Trustee by October 1 of each year, beginning with the first such date after the Effective Date, shall prepare a draft annual budget, work plan, and cash flow projections by quarter for the next calendar year for the Trust Remediation Account and the Trust Administrative Account. Decisions regarding annual budgets, work plans, 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 shall not be commingled with, distributed to, or used to fund Work under another Trust subaccount. At such time that it is determined by the Trustee, in accordance with Paragraphs 10 through 14 (Orrington Reach through Long-Term Monitoring) of the Consent Decree and after consultation with the

Beneficiaries, that Work in a Work Category 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 Work Category's subaccount may be transferred to the subaccount of another Work Category, after which such funds shall be deemed a part of the Trust Assets of such transferee subaccount and shall be used to fund Work in such Work Category, all in accordance with Paragraphs 10 through 14 and 17 (Orrington Reach through Long-Term Monitoring; Remaining Funding) of the Consent Decree. No Contingent Funding remaining for any Work Category may be transferred to another Trust Account or subaccount and in no event shall remaining Contingent Funding be used to fund Work in any other Work Category.

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, with Remediation Account funds further segregated into sub-accounts by Work Category. 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 Remediation 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 Remediation 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 Remediation 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 Remediation Trust to invest and reinvest the Trust Assets or any income earned by the Remediation 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 Remediation 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 Remediation 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 Remediation 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 10 through 15 (Orrington Reach through Trust Administrative Costs) 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 Remediation Trust, and the assets and liabilities of, and claims

against or assumed by, the Remediation Trust 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 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 Remediation 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 Remediation 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 Remediation Trust Limitations.

2.7.1 No Beneficiary, nor any of its 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 Remediation Trust.

2.7.2 The Remediation Trust is irrevocable. Mallinckrodt (i) shall not retain any ownership whatsoever with respect to the Trust Assets and shall not retain any residual interest whatsoever with respect to the Trust Assets, including, but not limited to, the funds transferred by Mallinckrodt to fund the Remediation Trust pursuant to the terms of the Consent Decree, except as provided in Sections 2.8 and 3.5 (Termination; Unclaimed Distributions); (ii) shall not have any liabilities or funding obligations with respect to the Remediation Trust (to the Trustees, the Beneficiaries, or otherwise) other than the Funding obligations expressly set forth in the Consent Decree; (iii) shall not have any liability or obligation to pay tax on any income or gains from any investment of the Trust Assets; and (iv) shall not have any rights or role with respect to the management or operation of the Remediation Trust except in its capacity as a Beneficiary and as expressly provided in the Consent Decree and this Agreement.

2.8 Termination. The Trustee shall not unduly prolong the duration of the Remediation 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 Remediation Trust as soon as practicable so long as consistent with this Agreement and the Consent Decree. If the Consent Decree is not entered by the Court, the Remediation Trust will terminate and all remaining funds will be returned to Mallinckrodt.

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 Remediation 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), 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 otherwise provided 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 Remediation 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 Paragraph 18 (Capped Funding) of the Consent Decree.

3.2.3 Expenses of the Remediation Trust. The expenses of the Remediation Trust relating to Work in a Work Category shall be paid solely from the Trust Assets held in the Trust subaccount for such Work Category. The Remediation 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 Remediation 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 prior to the Court's endorsement of the Consent Decree in furtherance of activities that would constitute Work in a Work Category under the Consent Decree, those fees and expenses shall be paid from the Trust Assets held in the Trust subaccount for the applicable Work Category and Trust 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. The Trustee shall be entitled to remuneration from the Remediation Trust Administrative Account for its reasonable fees and expenses incurred prior to the Effective Date in connection with the Consent Decree, this Agreement, and planning and creation of the Remediation Trust (the "Pre-Effective Date Fees"), which remuneration shall not exceed \$38,000. Within 45 days after the Effective Date of the Remediation Trust, the Remediation Trustee will submit detailed invoices reflecting its Pre-Effective Date Fees for remuneration from the Trust Administrative Account for comment and non-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 Remediation Trust and Project Trust, and (iv) provide informal consultation to the Trustee regarding management of the Remediation 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 Remediation 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 as 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 Contingent Funding remains in the Remediation Trust after it has been determined by the Court, in such manner as is required by the Consent Decree, that the Remediation Trust has completed all Work set forth under the Consent Decree to which use such Contingent Funding is restricted and after Remaining Funding has been used as provided in Paragraph 17 (Remaining Funding), any remaining Contingent Funding shall be transferred to Mallinckrodt within 30 days of termination of the Remediation Trust.

ARTICLE IV THE TRUSTEE

4.1 Appointment.

4.1.1 Trustee. Greenfield Penobscot Estuary Remediation Trust LLC is hereby appointed subject to approval by the Court to serve as the Trustee to administer the Remediation 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 Remediation 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 Remediation 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 Remediation Trust, and the Beneficiaries shall have reasonable opportunity to comment on or object to these recommendations in accordance with Paragraphs 31 and 39 (Decisions Regarding Work and Deliverables; Selection and Hiring of Contractors) of the Consent Decree, prior to finalizing any such contracts. The legal relationship of each consultant, contractor, and third-party professional to the Remediation Trust and Trustee is that of an independent contractor professional, not that of an entity employed by the Remediation 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 Remediation 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 Remediation 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, and to the extent project-specific insurance is necessary, the Remediation 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 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 Remediation 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 Remediation 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 Remediation 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 Remediation 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 Remediation Trust in its sole discretion, each subcontractor retained by a professional engaged by the Remediation 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 Remediation Trust, Trustee, and the Beneficiaries of the Remediation 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 Remediation 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 Remediation Trust and any successor Trustee, or successor or assign to the Remediation 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 Remediation Trust and 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 Remediation 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 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 Remediation Trust or the Trust Accounts from funds held by the Trustee, the Remediation 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 Remediation Trust, if applicable; (ii) to engage employees and professional Persons to assist the Remediation 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 Remediation Trust, the Trust Assets, or the Trustee from any and all claims that might be asserted against each relating to the Remediation Trust; (vii) to file quarterly documents in Court on behalf of the Trustee and the Remediation 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 Work to be funded and implemented by the Remediation 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 Section 4.5.2 (Coordination with Project 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 Assurances, Drawdown) of the Consent Decree; and (xi) to effect all actions, including defending or resolving claims asserted against the Remediation 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 Remediation 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

Remediation 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 the 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 Remediation 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 Remediation 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 powers and duties under this Agreement and the Consent Decree, including, without limitation: (i) legal counsel to the Remediation 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 Remediation Trust as may be appropriate in the Trustee's reasonable discretion and to prepare and file any tax returns or informational returns for the Remediation 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. Beneficiaries shall be given notice and the ability to object to the use or retention of other professionals.

4.5 Limitation of the Trustee's Authority.

4.5.1 General Limit. The Remediation 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 Remediation Trust. The Remediation Trust and the Trustee shall not take any actions that would cause the Remediation Trust to fail to qualify as a qualified settlement fund under the QSF Provisions.

4.5.2 Coordination with Project Trust. The Trustee shall coordinate with the trustee of the Project 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 receiving a proposed timeline for termination of Project Trust, the Trustee shall work in good faith with the trustee of the Project Trust to facilitate transfer of the Project 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 accept and receive into the Remediation Trust's Trust Accounts all assets and liabilities of the Project Trust, including continuation of Work on Beneficial Environmental Projects then outstanding, unless the Trustee reasonably determines that receipt thereof would violate the Trustee's fiduciary duties to the Remediation 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 Paragraph 33 (Termination of the Project Trust) of the Consent Decree. The Trustee shall not cause the Remediation Trust to accept any distribution from the Project Trust to the extent it would cause the Remediation Trust to fail to qualify as a qualified settlement fund under the QSF Provisions.

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 Remediation 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 Remediation Trust), professional fees, postage, photocopying, telephone, and facsimile charges, all in accordance with an annual budget or fee schedule approved as provided in Section 3.2 and upon receipt of periodic billings. Any Trust Parties who perform services for the Remediation Trust shall be entitled to receive reasonable compensation for services rendered on behalf of the Remediation 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, for services performed as Trustee, out of any available cash in the Trust Administrative Account or, for services performed in furtherance of the Work for any Work Category at the Site, in accordance with the provisions of Section 2.4.1, out of available funds in the Trust Remediation Account, and the Remediation 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 Remediation 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.

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 Remediation 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 Remediation Trust, or the Trustee or a Trust Party with respect to the Remediation Trust, there shall be (i) an irrebuttable presumption that specific actions taken or not taken by the Remediation 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 Remediation 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 Remediation 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 Remediation 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 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 Remediation 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 Trustee in the Remediation 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 Remediation 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 Remediation Trust, the Trustee shall obtain and continue to hold appropriate insurance as agreed to by the Remediation 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 Remediation Trust outside of its capacity as Trustee, the Person shall be treated as a consultant, contractor, and third-party professional to the Remediation 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 Remediation Trust receives funds pursuant to Section 2.1.2 (Transfer of Funding to the Remediation 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 Remediation Trust shall be held by each of the Beneficiaries.

5.2 Identification of Beneficiaries' Representatives.

5.2.1 In order to determine the actual names and addresses of the authorized representatives of a Beneficiary, the 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 interests of the Beneficiaries of the Remediation Trust, which are reflected only on the records of the Remediation Trust maintained by the Remediation Trust, are not negotiable and may be transferred only after written notice to the Remediation Trust, by order of the Court, or by operation of law. The Remediation Trust shall not be required to record any transfer in favor of any transferee where, in the sole discretion of the Remediation Trust, such transfer is or might be construed to be ambiguous or to create uncertainty as to the holder of the interest in the Remediation Trust. Until a transfer is in fact recorded on the books and records maintained by the Remediation Trust for the purpose of identifying Beneficiaries, the Remediation 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 Remediation Trust and Trustee shall be fully protected and incur no liability to any purported transferee or any other Person. The Trustee and Remediation 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 ending after assets are first received by the Remediation Trust and ending as soon as practicable upon termination of the Remediation Trust, the Trustee shall submit to the Beneficiaries, and file with the Court, 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 Remediation 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 Remediation Trust. The Remediation Trust shall also provide the reports or information required by Section 3.2 (Payments by the Remediation Trust) of this Agreement.

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

6.3 Taxes.

6.3.1 The Remediation Trust is intended to be a qualified settlement fund, for which no grantor trust election has been made, pursuant to the QSF Provisions and, to the extent provided by law, this Agreement shall be governed and construed in all respects consistent with such intent. The Remediation Trust and the Trustee shall not take any actions, or fail to take any actions, that would cause the Remediation Trust to fail to be treated as a “qualified settlement fund.” The Trustee shall use its best efforts, including but not limited to submitting an application to the IRS to obtain a Private Letter Ruling from the IRS, to clarify an uncertain application of federal Tax law to the Remediation Trust. If applicable, the Trustee and Mallinckrodt shall fully cooperate in filing a relation-back election under Treasury Regulation Section 1.468B-1(j)(2), to treat the Remediation Trust as coming into existence as a qualified settlement fund as of the earliest date possible. Any contingent right of Mallinckrodt to distribution of Contingent Funding from the Remediation Trust pursuant to Section 3.5 (Unclaimed Distributions) above is solely available upon approval by the Court and, in the event of such distribution, Mallinckrodt shall comply with the provisions of Treasury Regulation Section 1.468B-3(f) and include in income amounts so received to the extent required by the tax benefit rule, as provided in Section 111(a) of the Code.

6.3.2 For all federal income tax purposes, the Trustee and Mallinckrodt shall treat the transfer of the Trust Assets to the Remediation Trust as a transfer to a qualified settlement fund pursuant to section 468B of the Code and the QSF Provisions. The Trustee shall at all times seek to have the Remediation Trust treated as a “qualified settlement fund” as that term is defined in the QSF Provisions. The Court shall retain continuing jurisdiction over the Remediation Trust and Trust Accounts sufficient to satisfy the requirements of the QSF Provisions. The Trustee shall cause Taxes, if any, imposed on the earnings of the Remediation Trust to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the Remediation Trust under applicable tax laws.

6.3.3 The Trustee shall be the “administrator,” within the meaning of Treasury Regulation Section 1.468B-2(k)(3), of the Remediation Trust. Subject to definitive guidance from the IRS or a judicial decision to the contrary, the Trustee shall be responsible for timely filing all required Tax Returns, ensuring compliance with the income tax withholding and reporting requirements, and paying applicable Taxes, if any, with respect to the Remediation Trust in a manner consistent with the QSF Provisions. All such Taxes shall be paid from the Trust Administrative Account. Mallinckrodt shall provide to the Trustee and the IRS the statement described in Treasury Regulation 1.468B-3(e)(2) no later than February 15th of the year following each calendar year in which Mallinckrodt makes a transfer to the Remediation Trust.

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, alter the provisions of Section 6.3 (Taxes) hereof or adversely affect the federal income tax status of the Remediation Trust as a “qualified settlement fund” (in accordance with Section 6.3 (Taxes) hereof), 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 Remediation 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 a 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 Remediation 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 Remediation Trust, the Trustee hereby irrevocably conveys, transfers, and assigns to the Remediation 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. The 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 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 Remediation Trust’s expense. The Trustee shall also execute assignments to the Remediation Trust (or its successor Trustee, not individually but in its capacity as successor Trustee) and give the Remediation Trust and its successor Trustee all reasonable assistance (including the giving of testimony) to obtain, protect, enforce, or defend the Property for the Remediation Trust’s benefit. A Person serving as Trustee shall cooperate and assist in the transition of the Remediation 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 Remediation 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 Remediation Trust, under the administration of a successor Trustee, is entitled to require the Trustee to do pursuant to this Section. 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 Remediation Trust (or its successor Trustee) all Remediation 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 Remediation Trust. The Trustee may keep copies of such Remediation 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. The Trustee and the Beneficiaries hereby acknowledge and agree that in the event of any dispute with respect to the Remediation 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 Remediation 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, 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 Remediation Trust, Trustee and Trust Parties from third-party liability arising from the Remediation 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 Remediation 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 Remediation Trust. The situs of the Remediation 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 Trustee:

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.

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 Section IV (The Trustee), Section 1.1.16 (definition of “Parties”), Section 1.1.30 (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 Remediation Trust, and in no event shall the Remediation 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 MERCURY REMEDIATION TRUST AGREEMENT.

Signature Page for Penobscot Estuary Mercury Remediation Trust Agreement

FOR MALLINCKRODT US LLC:

1/27/2023

Date

DocuSigned by:
Patricia Duft
84F33504AF7F4C5...

Name:

Patricia H. Duft

Title:

Vice President

Signature Page for Penobscot Estuary Mercury Remediation Trust Agreement

FOR MAINE PEOPLE'S ALLIANCE:

1/30/2023

Date

DocuSigned by:
Jesse Graham
63C99A71F6CA4E0...

Name: Jesse Graham
Title: Co-Director

Signature Page for Penobscot Estuary Mercury Remediation 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 Mercury Remediation Trust Agreement

**FOR GREENFIELD PENOBSCOT ESTUARY
REMEDATION TRUST LLC**, not individually but solely in its
representative capacity as trustee of the Penobscot Estuary
Mercury Remediation Trust:

By: Greenfield Environmental Trust Group, Inc., Member

1/27/2023

Date

DocuSigned by:
Cynthia Brooks
B42175B6DA2D463...

By: Cynthia Brooks, President