

# **Exhibit E**

(Election Form for Electing Creditors and Electing Interest Holders)

## **PRIVATE ACTIONS TRUST ELECTION**

The Private Actions Trust<sup>1</sup> is being established to hold, prosecute and liquidate claims that certain DBSI investors may have against third parties. Eligible investors can assign a claim they may have against third parties to the Private Actions Trust by completing and signing this Election Form. The only claims that will be assigned are those defined as Non-Estate Causes of Action in the Plan (quoted below). In summary, these are claims arising from matters involving the DBSI Plan Debtors and Consolidated Non-Debtors against (i) any former officer, director, member, shareholder or employee of one of the Plan Debtors and/or Consolidated Non-Debtors, (ii) against a person that did business with any Plan Debtor and/or Consolidated Non-Debtor, (iii) against professionals that provided services to Plan Debtors and/or Consolidated Non-Debtors and (iv) real estate or securities brokers or dealers that provided services to the Electing Creditor or Electing Interest Holder in connection with an investment related to a Plan Debtor or Consolidated Non-Debtor or other DBSI-related investment. Contract claims and claims currently being asserted in any class action relating to the Plan Debtors may not be assigned (such as those claims in the case Myles W. and Jannelle S. Spann Trust v. DBSI, Inc., et al., Case No CV OC 0820435, Fourth Judicial District Court, Ada County, Idaho). Claims assignable to the Private Actions Trust are defined as “Non-Estate Causes of Action” in the Plan and below. A party that has purchased a Non-Estate Cause of Action from a Creditor and an eligible Interest Holder can also assign that claim to the Private Actions Trust and participate in the proceeds thereof, provided such purchaser has received a lawful and valid assignment of the qualifying claim from the original holder of such claim and the purchaser elects to assign the claim to the Private Actions Trust.

Under the Plan, the right to receive the proceeds of the Private Actions Trust will be divided into [one million (1,000,000)] units of Private Actions Trust Beneficial Interests (each a “Trust Beneficial Interest”). The DBSI Real Estate Liquidating Trust shall receive [150,000] Trust Beneficial Interests and the DBSI Liquidating Trust shall receive [50,000] Trust Beneficial Interests, in accordance with the Global Claims Settlement. The remaining [800,000] Trust Beneficial Interests will be allocated to the assigning Creditors and Interest Holders, in return for their assigned Non-Estate Causes of Action, ratably based upon the amount of that person’s Allowed Unsecured Claim held by each such Electing Creditor, or the Participation Amount for each Electing Interest Holder, respectively, as compared in relation to the aggregate total of the Allowed Unsecured Claims amounts and Participations Amounts of all Electing Creditors and Electing Interest Holders. The proceeds from prosecuting, settling or otherwise liquidating the claims assigned to the Private Actions Trust will be distributed to the holders of Private Actions Trust Beneficial Interests based upon the number of Interests each holds, net of fees, costs and repayment of debts incurred by the Private Actions Trust to finance its activities. If there is a recovery on account of a Cause of Action that is asserted by both the DBSI Estate Litigation Trust and the Private Actions Trust, and the recovery is not allocated by court order, the recovery shall be allocated 50% to the DBSI Estate Litigation Trust and 50% to the Private Actions Trust.

The Trustee of the Private Actions Trust will have full discretion to make decisions regarding the prosecution, settlement or abandonment of any claim assigned to the Trust, borrow money to finance Trust activities, and engage attorneys and other professionals--subject to review by the Trust Oversight Committee. The Trustee will report to and meet regularly with the Trust Oversight Committee and any action by the Trustee outside the ordinary course of Trust business will require the consent of the Oversight Committee. The Oversight Committee shall have the power to remove the Trustee under the terms set forth in the Private Actions Trust Agreement. The Private Actions Trust will be initially funded by a loan from the DBSI Real Estate Liquidating Trust of one million dollars (\$1,000,000). This money will be repaid from the first proceeds earned by the Private Actions Trust.

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<sup>1</sup> Capitalized terms in this summary are defined in the Plan and the terms of the Plan will control if there is any conflict between it and this summary.

The foregoing is only a summary of the terms of the Private Actions Trust, and is qualified in its entirety by the Plan and the Private Actions Trust Agreement. Creditors who wish further information may access and download a copy of the Private Actions Trust Agreement (when available), the Plan and the Disclosure Statement in their entirety, which exceed 400 pages in length, at <http://www.kccllc.net/DBSI> or request in writing a paper copy to Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, CA 90245, attention Leanne Scott.

*Non-Estate Causes of Action* are defined in the Plan to mean:

Causes of Action held by a Creditor or Holder of a Sharing Unit or a Non-Preferred Unit arising from any matter involving the Plan Debtors and Consolidated Non-Debtors against: (i) all current and former officers, directors, members, shareholders or employees of any of the Plan Debtors and/or Consolidated Non-Debtors; (ii) all Persons or Entities that conducted transactions with any of the Plan Debtors and/or Consolidated Non-Debtors, including, without limitation, investment bankers and lenders; (iii) all Persons or entities that provided professional services to any of the Plan Debtors and/or Consolidated Non-Debtors, including, without limitation, all attorneys, accountants, auditors, financial advisors and other parties providing services to the Plan Debtors and/or Consolidated Non-Debtors in connection with the public issuance of debt or equity, including, without limitation, all underwriters, due diligence providers, or securities brokers/dealers and (iv) real estate and/or securities brokers/dealers who provided services to any Electing Creditor or Electing Interest Holder in connection with an investment related to a DBSI Plan Debtor and/or Consolidated Non-Debtor, and/or another DBSI-related or sponsored investment; provided, however, Non-Estate Causes of Action shall exclude (a) contract claims against third parties, (b) claims for violations of securities laws that are currently being asserted in the class action styled Myles W. and Janelle S. Spann Trust v. DBSI, Inc., et al., Case No CV OC 0820435, Fourth Judicial District Court, Ada County, Idaho; and (c) other claims currently being asserted in class actions relating to the Plan Debtors and/or Consolidated Non-Debtors, if any. A non-exclusive list of potential defendants in the Non-Estate Causes of Action is attached to the Disclosure Statement as Schedule 11.

**THE PRIVATE ACTIONS TRUST ELECTION IS ENTIRELY VOLUNTARY.**

If you wish to voluntarily make the Private Actions Trust Election, the information below must be completed and this Private Actions Trust Election must be signed and returned in the enclosed envelope to Kurtzman Carson Consultants LLC, 2335 Alaska Avenue, El Segundo, CA 90245, so that it is **received** by [\_\_\_\_\_, 2010] in order for the Private Actions Trust Election to be valid and effective.

**DO NOT MAKE THE PRIVATE ACTIONS TRUST ELECTION IF YOU WISH TO RETAIN YOUR NON-ESTATE CAUSES OF ACTION.**

If you are the Holder of Non-Estate Causes of Action and wish to voluntarily make the Private Actions Trust Election thereby indicating that you elect to contribute your Non-Estate Causes of Action and assign the proceeds thereof to the Private Actions Trust, please complete Items 1 and 2 below.

**Item 1. PRIVATE ACTIONS TRUST ELECTION.**

Check the box *only* if you wish to make the Private Actions Trust Election.

Yes, I wish to make the Private Actions Trust Election.

**Item 2. Acknowledgements and Certifications Concerning Private Actions Trust Election.** By signing this Private Actions Trust Election, I acknowledge, agree and certify as follows:

- (a) I am the Holder of Non-Estate Causes of Action, as defined above; and
- (b) I am voluntarily contributing my Non-Estate Causes of Action and assigning my allocable share of any proceeds from the Non-Estate Causes of Action to the Private Actions Trust; and
- (c) neither the Plan Proponents nor the Private Actions Trustee, or their respective agents (i) have any obligation to conduct due diligence, otherwise investigate, pursue, prosecute or attempt to resolve by means of negotiation, settlement, litigation or any other means whatsoever the Non-Estate Causes of Action that is/are being assigned by this Private Actions Trust Election; and (ii) are making any representation, promise or guaranty about the monetary outcome of the Non-Estate Causes of Action or the Private Actions Trust Election; and
- (d) the sole source of recovery, if any, from the Non-Estate Causes of Action that I am contributing by this Private Actions Trust Election will be from the Private Actions Trust in accordance with the Plan and the Private Actions Trust Agreement, and I have no recourse against any other Person; and
- (e) I have carefully read the Disclosure Statement and Plan and have had the ability to consult with counsel of my choosing, and following that review and any such consultation, I have executed this irrevocable Private Actions Trust Election knowingly and voluntarily; and

\_\_\_\_\_  
Name of Electing Creditor or Electing Interest Holder

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Federal Tax I.D. No. or Social Security Number

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Date

**ANY HOLDER OF NON-ESTATE CAUSES OF ACTION WHO DOES NOT WISH TO PARTICIPATE IN THE PRIVATE ACTIONS TRUST ELECTION OR OTHERWISE FAILS TO TIMELY AND PROPERLY COMPLETE THIS PRIVATE ACTIONS TRUST ELECTION FORM WILL RECEIVE NO DISTRIBUTION, IF ANY, FROM THE PRIVATE ACTIONS TRUST BUT WILL RETAIN THE RIGHT TO PURSUE NON-ESTATE CAUSES OF ACTION.**