IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SYNTHEGO CORPORATION,[1]	Case No. 25-10823 (___)
Debtor.	

MOTION FOR (I) AN ORDER (A) AUTHORIZING ENTRY INTO ASSET PURCHASE AGREEMENT WITH RESPECT TO THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, (B) APPROVING BID PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, (C) SCHEDULING AN AUCTION AND SALE HEARING, (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (E) APPROVING CERTAIN TERMINATION FEE AND EXPENSE REIMBURSEMENT PROVISIONS, AND (F) GRANTING RELATED RELIEF; AND (II) AN ORDER (A) APPROVING THE SALE OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (C) GRANTING RELATED RELIEF

The above-captioned debtor and debtor-in-possession (the "Debtor") files this motion (the "Motion") for entry of an order, pursuant to sections 105(a), 363, 365, 503, 507, 1107, and 1108 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), substantially in the proposed form attached hereto as **Exhibit A** (the "Bid Procedures Order"):

i. establishing bid procedures (the "Bid Procedures"), substantially in the form attached as Exhibit 1 to the Bid Procedures Order, in connection with the sale (the "Sale") of substantially all of the Debtor's assets (the "Assets") pursuant to section 363 of the Bankruptcy Code;

ii. scheduling an auction (an "Auction") and approving the form and manner of notice thereof (the "Bid Procedures/Auction Notice");

[1] The Debtor's mailing address is 3696 Haven Avenue, Suite A, Redwood City, California, 94063, and the last four digits of the Debtor's federal tax identification number is 9518.

iii. establishing certain procedures relating to the assumption, assumption and assignment, or transfer of executory contracts and unexpired leases (the "Transferred Contracts") in connection with the Sale (the "Contract and Lease Procedures"), and approving the form and manner of notice (the "Cure Notice") of the potential assumption, assumption and assignment, or transfer of executory contracts and unexpired leases (the "Potential Assumed/Assigned Contracts");

iv. approving the proposed termination fee and expense reimbursement in favor of the Stalking Horse Bidder (defined below);

v. setting a hearing for approval of any Sale(s) (the "Sale Hearing");

vi. approving the sale to the Stalking Horse Bidder or other Successful Bidder (as defined below) pursuant to section 363 of the Bankruptcy Code, including the assumption and assignment of the Transferred Contracts pursuant to section 365 of the Bankruptcy Code and finding that the Stalking Bidder or successful overbidder is a good faith purchaser for purposes of section 363(m) of the Bankruptcy Code; and

vii. granting related relief.

At the Sale Hearing, the Debtor further requests entry of an order, in the proposed form to be submitted prior to the Sale Hearing (the "Sale Order"), (a) authorizing, but not directing, the Debtor to enter into an *Asset Purchase Agreement* with Perceptive Credit Holdings III, LP, a Delaware limited partnership (the "Stalking Horse Bidder")[2] substantially in the proposed form attached hereto as **Exhibit B** (without schedules) (the "Stalking Horse Purchase Agreement"), with the Stalking Horse Bidder or with the successful bidder at the Auction (if other than the Stalking Horse Bidder); (b) authorizing the Sale of the Assets free and clear of all Encumbrances,[3] except

[2] The Stalking Horse Bidder is also the Debtor's prepetition and postpetition senior secured lenders.

[3] As used herein, "Encumbrance" and "Encumbrances" include all of the following, in each case, to the extent against or with respect to the Debtor, or in, on, or against, or with respect to any of the Assets: liens (including as defined in section 101(37) of the Bankruptcy Code, and whether consensual, statutory, possessory, judicial, or otherwise), claims (as defined in section 101(5) of the Bankruptcy Code) ("Claims"), debts (as defined in section 101(12) of the Bankruptcy Code), encumbrances, obligations, liabilities, demands, guarantees, actions, suits, defenses, deposits, credits, allowances, options, rights, restrictions, limitations, contractual commitments, or interests of any kind or nature whatsoever, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to, on, or subsequent to, the commencement of this Chapter 11 Case, and in each case, whether imposed by agreement, understanding, law, equity, or otherwise, including, but not limited to: (i) mortgages, security deeds, deeds of trust, pledges, charges, security interests,

as provided in the Stalking Horse Purchase Agreement; and (c) approving the assumption and assignment of the Transferred Contracts. The Stalking Horse Purchase Agreement contemplates a credit bid as the primary purchase price for the Assets.

In support of this Motion, the Debtor relies upon and refers this Court to the *Declaration of Craig Christianson in Support of the Debtor's Chapter 11 Petition and First Day Relief* (the

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levies, hypothecations, encumbrances, easements, servitudes, leases, subleases, licenses, rights-of-way, encroachments, restrictive covenants, restrictions on transferability, voting, sale, transfer or other similar restrictions, rights of setoff (except for setoffs validly exercised before the Petition Date, or preserved in a timely filed proof of claim or motion filed with the Court), rights of use or possession, conditional sale arrangements, deferred purchase price obligations, profit sharing interest, or any similar rights; (ii) all Claims, including, without limitation, all rights or causes of action (whether in law or equity), proceedings, warranties, guarantees, indemnities, rights of recovery, setoff (except for setoffs validly exercised before the Petition Date, or preserved in a timely filed proof of claim or motion filed with the Court), indemnity or contribution, obligations, demands, restrictions, indemnification claims, or liabilities relating to any act or omission of the Debtor or any other Person, consent rights, options, contract rights, covenants, and interests of any kind or nature whatsoever (known or unknown, matured or unmatured, accrued, or contingent and regardless of whether currently exercisable), whether arising prior to or subsequent to the commencement of this Chapter 11 Case, and whether imposed by agreement, understanding, law, equity, or otherwise; (iii) all debts, liabilities, obligations, contractual rights and claims, including labor, employment, and pension claims; (iv) any rights that purport to give any party a right or option to effect any forfeiture, modification, right of first offer or first refusal, or consents, or termination of the Debtor's or the Successful Bidder(s)' interest in the Assets, or any similar rights; (v) any rights under labor or employment agreements; (vi) any rights under pension, multiemployer plan (as such term is defined in section 3(37) or section 4001(a)(3) of the Employment Retirement Income Security Act of 1974 (as amended, "ERISA")), health or welfare, compensation or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plans of the Debtor or any multiemployer plan to which the Debtor has at any time contributed to or had any liability or potential liability; (vii) any other employee claims related to worker's compensation, occupation disease, or unemployment or temporary disability, including, without limitation, claims that might otherwise arise under or pursuant to (a) ERISA, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employment Act of 1967 and the Age Discrimination in Employment Act, each as amended, (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including, without limitation, the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Internal Revenue Code of any similar state law, (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, (k) any other state or federal benefits or claims relating to any employment with the Debtor or any of its predecessors, or (l) the WARN Act (29 U.S.C. §§ 2101, et seq.) or any state or other laws of similar effect; (viii) any bulk sales or similar law; (ix) any tax statutes or ordinances or other laws of similar effect, including, without limitation, the Internal Revenue Code of 1986, as amended, and any taxes arising under or out of, in connection with, or in any way relating to the operation of the Assets before the closing of a Sale; (x) any unexpired and executory contract or unexpired lease to which the Debtor is a party that is not an Transferred Contract; (xi) any other excluded liabilities under the Stalking Horse Purchase Agreement; and (xii) Encumbrances arising under or in connection with any acts, or failures to act, of the Debtor or any of its predecessors, affiliates, or subsidiaries, including, but not limited to, Encumbrances arising under any doctrines of successor liability (to the greatest extent permitted by applicable law), or transferee or vicarious liability, violation of the Securities Act, the Exchange Act, or other applicable securities laws or regulations, breach of fiduciary duty, or aiding or abetting breach of fiduciary duty, or any similar theories under applicable law or otherwise.

"Christianson First Day Declaration") and the *Declaration of Allen Soong in Support of the Debtor's Chapter 11 Petition and First Day Relief* (the "Soong First Day Declaration" and, together with the Christianson First Day Declaration, the "First Day Declarations"), incorporated herein by reference.[4] In further support of the Motion, the Debtor respectfully represents as follows:

PRELIMINARY STATEMENT

1. In order to set a floor for the value of the Assets, the Debtor has negotiated a proposed transaction with the Stalking Horse Bidder for a credit bid Sale of the Assets under section 363 of the Bankruptcy Code. The Stalking Horse Purchase Agreement is subject to higher and/or better offers, and in furtherance of the Debtor's efforts to maximize the value of its estate, is subject to overbids and an auction. The Debtor hereby seeks approval of the Bid Procedures and related relief to facilitate the marketing and sale of the Assets through an open process that protects the best interests of the Debtor's estate and creditors and preserves the Debtor's ability to exercise its fiduciary duties throughout the Sale process (the "Sale Process"). The Debtor also seeks, following the conclusion of the Sale Process and subject to the terms of the Sale Order, approval of the Sale to the Stalking Horse Bidder or other Successful Bidder pursuant to section 363 of the Bankruptcy Code and assumption and assignment of the Transferred Contracts to such purchaser pursuant to section 365 of the Bankruptcy Court, along with a good faith finding in favor of such purchaser for purposes of section 363(m) of the Bankruptcy Code.

2. The Bid Procedures provide the formal framework for a Sale and have been structured to elicit value-maximizing bids for the Assets. Among other things, the Bid Procedures: (a) set forth the timeline for the Sale Process that is reasonable and appropriate to produce value-

[4] A capitalized term used but not defined herein shall have the meaning ascribed to it in the First Day Declarations.

maximizing bids for the Debtor's Assets and are consistent with the DIP milestones set forth in this case; (b) establish the basic rules for submitting overbids for the purchase of the Debtor's Assets; and (c) provide consultation rights to an official committee, if appointed, at various stages in the process. The proposed Bid Procedures comply with the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and, therefore, should be approved.

3. Consistent with the Debtor's need to consummate a Sale as efficiently as possible, the Debtor proposes the following key dates and deadlines for the Sale Process:[5]

Date[6]	Event
[P + 21], 2025 at 5:00 p.m.	Bid Procedures Motion Objection Deadline
[P + 30], 2025 at _:00 _.m.	Bid Procedures Hearing
[P + 35], 2025	Deadline to File and Serve Cure Notice
[P + 49], 2025 at 5:00 p.m.	Contract Objection Deadline (including any Cure Objection or Assumption/Assignment Objection)[7]
[P + 49], 2025 at 5:00 p.m.	Deadline to Object to Sale
[P + 50], 2025 at 5:00 p.m.	Deadline to Submit Qualified Bids
[P + 51], 2025	Deadline to Designate Qualified Bids and File Auction Notice
[P + 52], 2025 at 10:00 a.m.	Sale Auction
[P + 53], 2025 at 10:00 a.m.	Deadline to File Notice of Successful Bidder and Back-Up Bidder
[P + 56], 2025 at 5:00 p.m.	Post-Auction Objection Deadline
[P + 56], 2025 at 5:00 p.m.	Adequate Assurance Objection Deadline
[P + 58], 2025 at 10:00 a.m.	Sale Hearing

[5] The Debtor, consistent with its fiduciary duties, in the exercise of its business judgment, and in consultation with the Consultation Parties, reserves the right to modify these dates consistent with the DIP Order (defined below) and the Stalking Horse Purchase Agreement to achieve a value-maximizing Sale or Sales.

[6] All times are prevailing Eastern time. The Debtor may extend the deadlines set forth herein, subject to the terms of the DIP Order (as defined below) and the Stalking Horse Purchase Agreement.

[7] Contract Counterparty whose executory contracts or unexpired leases are included in an Additional Cure Notice shall have until the later of the Contract Objection Deadline or seven (7) calendar days after the Debtor files and serves the Additional Cure Notice to file a Contract Objection.

Date[6]	Event
[P + 70], 2025	Deadline to Close Transaction

4. In addition, as listed in the key dates above and set forth in more detail below, the Debtor seeks to establish certain procedures relating to the assumption, assumption and assignment, or transfer of executory contracts and unexpired leases in connection with the Sale. Accordingly, as discussed in detail herein, the Debtor respectfully requests entry of the Bid Procedures Order.

5. Further, following the conclusion of the Sale Process, the Debtor seeks entry of the Sale Order approving the Sale, and authorizing the assumption and assignment of the Transferred Contracts, to the Stalking Horse Bidder or Successful Bidder free and clear of the Encumbrances and finding that such purchaser has acted in good faith in connection with the Sale.

JURISDICTION AND VENUE

6. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. The Debtor confirms its consent, pursuant to Rule 9013-1(f) of the Local Rules, to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

7. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

8. The statutory bases for the relief requested herein are Bankruptcy Code sections 105, 363, and 365, and Bankruptcy Rules 2002, 6004, 6006, and 9008.

BACKGROUND

A. Case Background

9. On May 5, 2025 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Case"). The Debtor is authorized to continue to operate its business and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in this chapter 11 case.

10. A detailed description of the Debtor's business and facts precipitating the filing of the Debtor's chapter 11 proceedings is set forth in the First Day Declarations.

B. The Debtor's Marketing Process

11. The Debtor's Sale Process is being managed by their investment banker, Raymond James. Raymond James was retained by the Debtor on April 7, 2025 to, among other things, assist the Debtor in marketing its Assets. To that end, prior to the Petition Date, Raymond James worked closely with the Debtor's management to analyze the Assets' current financial position, prepare marketing and diligence materials, and populate a digital data room (the "Data Room") for prospective purchasers interested in purchasing all or any portion of the Debtor's Assets.

12. Beginning on or about April 23, 2025, Raymond James targeted over 100 parties consisting of both strategic and financial buyers. Raymond James worked closely with the Debtor to align on these outreach targets, which includes those that have familiarity with the Debtor. Most of the parties contacted by Raymond James remain active in the process, some of which have signed NDAs and have started the diligence process by accessing the Data Room. Raymond James will continue to aggressively engage with potentially interested parties with intention to procure bids consistent with the milestones proposed in the bid procedures.

13. Following multiple discussions among the Debtor, the Prepetition Lender, and their respective professionals, the Debtor entered into the Stalking Horse Purchase Agreement with the Stalking Horse Purchaser, which is also the Prepetition Lender. The Stalking Horse Purchase Agreement contemplates the sale of substantially all of the Debtor's Assets in exchange for consideration equal to (i) a credit bid pursuant to Section 363(k) of the Bankruptcy Code of obligations equal to an amount not less than $72,411,918.28 plus up to $12,500,000 in respect of the new DIP Loans (as defined in the DIP Order),[8] *plus*, as applicable, accrued and unpaid prepetition and postpetition interest thereon as set forth below and (ii) the assumption of certain liabilities. The Debtor hereby seeks Court approval to consummate the transaction, subject to overbid at an auction pursuant to certain proposed overbid procedures and protections. Following entry by the Court of the Bid Procedures Order providing for the Termination Fee and Expense Reimbursement for the Stalking Horse Bidder, Raymond James will continue its marketing efforts with potential bidders. The Debtor believes that this marketing and sale process will preserve going concern value and maximize recoveries for all stakeholders.

C. The Stalking Horse Purchase Agreement

14. The following are the material terms of the proposed Stalking Horse Purchase Agreement:[9]

Purchase Price	The purchase price under the Stalking Horse Purchase Agreement consists of: (i) a credit bid pursuant to Section 363(k) of the Bankruptcy Code (the "Credit Bid"), on a dollar-for-dollar

[8] "DIP Order" means any interim and final orders entered by the Court in respect of the *Motion of the Debtor for Entry of Interim and Final Orders (I) Authorizing the Debtor to Obtain Postpetition Financing and Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief*.

[9] The following is only a summary of certain of the terms and provisions of the Stalking Horse Purchase Agreement. In the event of any conflict between the summary set forth in this Motion and the Stalking Horse Purchase Agreement, the terms and provisions of the Stalking Horse Purchase Agreement control.

basis, of (A) the full amount of the DIP Obligations outstanding as of the Closing, plus (B) an amount of the Pre-Petition Obligations equal to (1) the full amount of the Pre-Petition Obligations outstanding as of the Closing less (2) $1,000,000; (ii) the assumption of the Assumed Liabilities; (iii) any amount that is required to be funded at Closing in accordance with the proviso to the definition of "Excluded Cash"; and (iv) a full and final waiver and relinquishment of any and all rights, liens or claim in all other Excluded Cash (the sum of clauses (i) through (iv), collectively, the "Purchase Price"). Stalking Horse Purchase Agreement § 2.9.

"Excluded Cash" means the cash on hand and cash drawn by the Debtor under the DIP Financing Agreement in an amount equal to (a) after taking into account any amounts held by the Debtor or estate professionals, or any funds of the Debtor held in escrow or reserves with respect to the fees and expenses of the Debtor's estate professionals, an amount sufficient to satisfy the professional fees and expenses of estate professionals through the effective date of an Acceptable Chapter 11 Plan (as defined in the DIP Financing Agreement) (solely to the extent that such Debtor's estate professional fees are included in the Approved Budget, which amount shall not be duplicative of any amounts in the Professional Fee Reserve (as defined in the DIP Financing Agreement)), including any success or transaction fees approved by the Bankruptcy Court plus (b) an amount, consistent with the Approved Budget or otherwise agreed upon by Stalking Horse Bidder and the Debtor, to pay all other estimated Administrative Expenses arising or incurred on or after the Petition Date and that are accrued and unpaid as of the effective date of an Acceptable Chapter 11 Plan, any allowed priority claims, and any other claims for payroll, compensation, accrued paid time off (but only to the extent not assumed by the Stalking Horse Bidder and required by

	Applicable Law), taxes or other liabilities (in each case, through the effective date of an Acceptable Chapter 11 Plan) that if not paid could result in personal liability of any current officer or director of the Debtor or its subsidiaries (but only to the extent such Administrative Expenses are not Assumed Liabilities), and plus (c) the Wind-Down Amount (which shall be used solely to fund the Wind-Down Expenses); provided, that if cash on hand and cash drawn under the DIP Financing Agreement is not sufficient to fund all cash of the amounts of (a), (b) and (c) in this definition of "Excluded Cash", the Stalking Horse Bidder shall fund an amount in cash at Closing equal to the sum of each of (a), (b) and (c) in this definition of "Excluded Cash" to an account or accounts controlled by the Debtor. "Wind-Down Amount" means an amount equal to $700,000; provided that such amounts shall only be used to pay Wind-Down Expenses.
Purchased Assets	All of the Debtor's rights, title and interests in, to and under the "Transferred Assets" (as defined in the Stalking Horse Purchase Agreement), including *inter alia* accounts, receivables, inventory, permits, equipment, contracts, intellectual property, litigation claims, cash (except "Excluded Cash" as defined above), the Debtor's claims for 'employee retention credits' under the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. No. 116-36), avoidance actions against any party (which will not be pursued) and any causes of action against any Transferred Employee, and other assets related to the operation of the Debtor's business. Stalking Horse Purchase Agreement § 2.1.
Excluded Assets	"Excluded Assets" (as defined in the Stalking Horse Purchase Agreement), include *inter alia* certain Excluded Cash for funding professional fees, administrative expense and priority claims, and wind-down and plan implementation expenses; certain books and

	records; permits; tax attributes (not including the Debtor's claims for 'employee retention credits' under the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. No. 116-36)); rights, claims and causes of action, excluding avoidance actions, against current and former officers and directors of the Debtor (except Transferred Employees); and prepayments. Stalking Horse Purchase Agreement § 2.2.
Assumed Liabilities	"Assumed Liabilities" (as defined in the Stalking Horse Purchase Agreement) include liabilities arising out of the ownership or operation of the Transferred Assets by Stalking Horse Bidder or arise under the Transferred Contracts solely to the extent such liabilities arise on or after and relate to the period following the Closing; Determined Cure Costs (as defined in the Stalking Horse Purchase Agreement); and certain employee-related liabilities including (i) all Liabilities, solely to the extent incurred after the Closing Date, relating to the employment or performance of services, or termination of employment or services, of any Transferred Employee by the Stalking Horse Bidder or its Affiliates, (ii) any Liabilities under each Assumed Employee Plan and (iii) any Liabilities specifically assumed by the Stalking Horse Bidder pursuant to Section 6.5 of the Stalking Horse Purchase Agreement. Stalking Horse Purchase Agreement § 2.3.
Termination Fee and Expense Reimbursement	Subject to limitations in the Bid Procedures Order and Stalking Horse Purchase Agreement, in consideration of Stalking Horse Bidder having expended considerable time and expense in connection with the Stalking Horse Purchase Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Transferred Assets, and to compensate Stalking Horse Bidder as a stalking-horse bidder, the Debtor shall pay to the Stalking Horse Bidder an amount equal to 1.5% of the Credit Bid (the ("Termination Fee") and reimbursement of expenses up to a maximum

	amount of $1,000,000 (the "Expense Reimbursement") in the event (i) that the Stalking Horse Purchase Agreement is terminated pursuant to Section 9.1(b) in which case the Termination Fee and the Expense Reimbursement shall be due and payable simultaneously with any termination of the Stalking Horse Purchase Agreement from the proceeds of an Alternative Transaction or (ii)(A) that the Stalking Horse Purchase Agreement is terminated pursuant to Section 9.1(d), Section 9.1(e), Section 9.1(g), Section 9.1(j) or Section 9.1(k) and (B) the Debtor consummates an Alternative Transaction (as defined in the Stalking Horse Purchase Agreement) within six (6) months of such termination, the Debtor shall pay the Expense Reimbursement. Stalking Horse Purchase Agreement § 9.3.
Closing Deadline	The Stalking Horse Purchase Agreement may be terminated by the Stalking Horse Bidder or the Debtor if the Closing has not occurred on or prior to July 18, 2025 (the "Outside Date"), provided that the Parties may jointly agree to extend the Outside Date. Purchase Agreement § 9.1.
Representations and Warranties	The Stalking Horse Purchase Agreement contains standard representations and warranties for a transaction of this kind. Stalking Horse Purchase Agreement Art. 3 (Debtor) & Art. 4 (Stalking Horse Bidder).
Conditions to Closing	Among the customary conditions to the closing, including no injunctions, no defaults in the Debtor's DIP financing facility, and the entry of the Bid Procedures Order and the Sale Order, the Stalking Horse Bidder's conditions to closing include the Debtor's compliance with pre-Closing covenants, the delivery by the Debtor of deliverables under the Stalking Horse Purchase Agreement, and that consents of counterparties to Transferred Contracts have been obtained where required. Stalking Horse Purchase Agreement §§ 8.1, 8.2 & 8.3.

Deliveries at Closing	Among other customary deliverables at or prior to the Closing by each of the Debtor and the Stalking Horse Bidder, the Debtor shall deliver at or prior to Closing (a) an executed Bill of Sale and Assignment and Assumption Agreement and other customary transfer documents necessary to transfer to the Stalking Horse Bidder (or its Affiliate) all right, title and interest of the Stalking Horse Bidder to or in the Transferred Assets; (b) (i) the Patent Assignment Agreement and (ii) the Trademark Assignment Agreement (each as defined in the Stalking Horse Purchase Agreement); and (c) certified board resolutions, certificates of service that all counterparties to Transferred Contracts have been furnished notice of assumption and assignment, certificates, dated as of the Closing Date, of the Debtor's non-foreign status, in accordance with Treasury Regulation § 1.1445-2(b); among other deliverables. Stalking Horse Purchase Agreement; § 2.8.
Covenants Prior to Closing	Pursuant to Article 6 of the Stalking Horse Purchase Agreement, the Debtor must be in compliance with various affirmative and negative covenants prior to the Closing, including, among others, agreeing to carrying on the Debtor's business, in all material respects, in the ordinary course of business; preserving the Debtor's relationships with its customers, suppliers and licensees, among others; avoiding modifications to any Transferred Contracts, lapses of intellectual property rights to the extent included in the Transferred Assets, and entry into compromises or settlements Actions (as defined in the Stalking Horse Purchase Agreement). Additionally, the covenants include provisions intended to provide the Stalking Horse Bidder with access to information and the maintenance of confidentiality of information provided to the Stalking Horse Bidder. The Stalking Horse Purchase Agreement further contains covenants of the Stalking Horse Bidder for

	offers of employment by the Stalking Horse Bidder to the Debtor's employees following the Closing ("Transferred Employees"), and the associated allocation of liabilities to the Stalking Horse Bidder with respect to such Transferred Employees. Stalking Horse Purchase Agreement, Art. 6.
Termination Rights	The Stalking Horse Purchase Agreement may be terminated as on the terms set forth in Article 9 of the Stalking Horse Purchase Agreement including, *inter alia*, by mutual consent of the Debtor and the Stalking Horse Bidder for any reason; automatically, if an alternative transaction is consummated; by the Debtor or the Stalking Horse Bidder if the Chapter 11 Case is dismissed or converted to Chapter 7 of the Bankruptcy Code; by Stalking Horse Bidder if the Debtor withdraws this Motion or moves to dismiss the Chapter 11 Case or to convert the Chapter 11 Case to Chapter 7 or to appoint an examiner with expanded powers or a trustee; upon termination of the DIP Financing Agreement or material modification of any DIP Order without consent of the requisite DIP Lenders (each as defined in the Stalking Horse Purchase Agreement); if the Closing does not occur by the Outside Date. Stalking Horse Purchase Agreement Art. 9.
Sale Milestones	The Stalking Horse Purchase Agreement may be terminated by the Stalking Horse Bidder or the Debtor, if the Closing has not occurred on or prior to July 18, 2025 (the "Outside Date"); provided, that the Parties may agree to extend the Outside Date; provided, further, however, that the party exercising the right to terminate the Stalking Horse Purchase Agreement pursuant to this provision shall not have been responsible for such failure of the Closing to occur through a breach or inaccuracy of a covenant, representation or warranty contained in the Stalking Horse Purchase Agreement. Stalking Horse Purchase Agreement § 9.1(j).

> The Stalking Horse Purchase Agreement may be terminated by the Stalking Horse Bidder if (i) the Bid Procedures Order shall not have been entered by the Bankruptcy Court by the date that is thirty (30) days after the Petition Date, (ii) the Sale Order shall not have been entered by the Bankruptcy Court by the date that is fifty-eight (58) days after the Petition Date, or (iii) following the entry of the Sale Order, the Sale Order shall (A) fail to be in full force and effect, (B) have been reversed, (C) have been stayed and such stay shall continue to be in effect for more than fourteen (14) days or (D) have been modified or amended in any manner adverse to the Stalking Horse Bidder without the prior written consent of the Stalking Horse Bidder. Stalking Horse Purchase Agreement 9.1(k).

RELIEF REQUESTED[10]

15. By this Motion, the Debtor seeks the entry of the Bid Procedures Order: (i) approving the Bid Procedures; (ii) approving various forms and the manner of notice thereof; (iii) approving the Bid Protections; (iv) establishing the Contract and Lease Procedures, and approving the form and manner of notice of the Cure Notice; (v) scheduling the Auction and a Sale Hearing; and (vi) granting related relief.

16. Additionally, by this Motion, the Debtor further requests that, at the Sale Hearing, the Court enter the Sale Order (i) approving the Sale of the Assets to the Stalking Horse Bidder or other Successful Bidder, free and clear of all Encumbrances, except as provided in the Stalking Horse Purchase Agreement or competing purchase agreement (with all Encumbrances to attach to the Sale proceeds with the same validity and in the same order of priority as they attach to the Assets prior to the Sale); (ii) authorizing the assumption and assignment to the Stalking Horse

[10] In compliance with Local Rule 6004-1 and for the convenience of the reader, the salient terms of the Stalking Horse Purchase Agreement have been summarized and are attached hereto as **Exhibit C**.

Bidder or other Successful Bidder of the Transferred Contracts; and (iii) authorizing the Debtor to consummate the Sale and all documents, agreements, and contracts executed in conjunction therewith.

A. Bid Procedures

17. To maximize the value of its Assets for the benefit of the Debtor's estate and creditors, the Debtor seeks to implement a competitive bidding process to culminate in a Sale. As described more fully in the Bid Procedures and the Bid Procedures Order, the Debtor seeks approval to sell the Assets to the Stalking Horse Bidder or other Successful Bidder that makes the highest or otherwise best offer for the Assets. The Debtor requests that competing bids for the Assets be governed by the Bid Procedures and Bid Procedures Order, which, among other things, collectively establish:

a. the requirements that an Interested Party must satisfy to be entitled to participate in the bidding process and become a Potential Bidder [Bid Procedures at § I.A.2];

b. the requirements for Potential Bidders to submit bids and the method and criteria by which such bids become Qualified Bids [Bid Procedures at §§ I.B.3, I.C];

c. the deadline by which bids must be submitted [Bid Procedures at § I.C.1];

d. certain procedures related to the assumption and assignment or transfer of executory contracts and unexpired leases [Bid Procedures at § I.K]; and

e. various other matters relating to the Sale Process generally, including the Auction, designation of the Successful Bidder, and Sale Hearing [Bid Procedures at §§ I.D, I.E, I.I].

18. After submission of all Qualified Bids, the Debtor, after consultation with the parties entitled to consultation rights under the Bid Procedures (the "Consultation Parties")[11] will

[11] "Consultation Parties" is defined in the Bid Procedures to mean the official committee of unsecured creditors (the "Committee"), if any. For the avoidance of doubt, the Stalking Horse Bidder and its affiliates shall not be

select Qualified Bid(s) for one or more of the Assets or all or substantially all of the Assets (any one or more such Qualified Bids, a "Baseline Bid"). In no event shall any Qualified Bidder, other than the Stalking Horse Bidder, be entitled to any Bid Protections.

19. The Bid Procedures contain the following provisions, some of which are required to be highlighted pursuant to Local Rule 6004-1(c) and which are more fully described in the Bid Procedures and the Bid Procedures Order:[12]

(a) **Provisions Governing Qualification of Bidders** [Bid Procedures § I.A.2]. To participate in the bidding process and receive due diligence information, including full access to the Debtor's electronic data room (the "Data Room") and additional non-public information regarding the Debtor (the "Diligence Materials"), parties interested in receiving due diligence information to participate in the bidding process (each, an "Interested Party") must deliver or have previously delivered to the Debtor, if determined to be necessary by the Debtor in its sole discretion, the following documents (collectively, the "Preliminary Bid Documents"): (a) an executed confidentiality agreement using the Debtor's form, as may be amended, on terms reasonably acceptable to the Debtor, to the extent not already executed (a "Confidentiality Agreement") and (b) a statement and/or other factual support demonstrating to the Debtor's satisfaction in the exercise of its reasonable business judgment that the Interested Party has a *bona fide* interest in purchasing all or any portion of the Assets. Any Interested Party who, in the Debtor's determination, qualifies for access to the Diligence Materials shall be deemed a "Potential Bidder." For the avoidance of doubt, the Stalking Horse Bidder (as defined herein) shall be a Potential Bidder and does not need to submit the Preliminary Bid Documents.

(b) **Provisions Governing Qualified Bids** [Bid Procedures § I.C.2]

(i) Purpose and Identity of Assets to be Purchased. Each Bidder must state that the Bid includes an offer by the Bidder to effectuate a Sale Transaction and identify with specificity which Assets are included in the Bid.

(ii) Good Faith Deposit. Each Bid must be accompanied by a cash deposit (the "Good Faith Deposit") in the form of a wire transfer, certified check, or cash

Consultation Parties, and the Debtor shall establish reasonable procedures to prevent such parties or their representatives from being privy to confidential information concerning the bids of other Bidders for the Assets for so long as the Stalking Horse Bidder or any other affiliate remains a Bidder; provided, however, that if the Stalking Horse Bidder later withdraws such bid the DIP Agent (as defined in the DIP Order) shall immediately be treated as a Consultation Party and shall have any consent rights provided herein, as applicable for purposes of these Bid Procedures.

[12] These provisions are excerpted from the Bid Procedures. However, to the extent any inconsistencies between this summary and the Bid Procedures exist, the Bid Procedures shall govern.

payable to the order of counsel pursuant to instructions to be provided by the Debtor equal to 10% of the Bidder's proposed Purchase Price (as defined herein), which will be held in a non-interest bearing escrow or trust account. For the avoidance of doubt, the Stalking Horse Bidder is not required to submit a Good Faith Deposit.

(iii) Purchase Price. Each Bid must clearly set forth the cash purchase price (the "Cash Consideration") and identify any non-cash consideration included in such Bid (together with the Cash Consideration, the "Purchase Price") including, without limitation, which executory contracts and unexpired leases the Bidder expects the Debtor to assume and assign to the Bidder (the "Transferred Contracts") and which liabilities, if any, of the Debtor the Bidder is agreeing to assume (the "Assumed Liabilities"). The Purchase Price associated with each Bid may include only cash and/or other consideration acceptable to the Debtor after consultation with the Consultation Parties. The cash component of any other Qualified Bid with respect to all or any portion of the Assets must be no less than an amount necessary to satisfy the Termination Fee and Expense Reimbursement, as defined in the Stalking Horse Purchase Agreement, and be a Topping Bid with respect to the applicable Assets. In order for the Bid to qualify as a "Topping Bid," it must provide for consideration at Closing (as defined herein) that is, in the aggregate, equal to or in excess of the sum of: (i) the Stalking Horse Bid; (ii) the Expense Reimbursement; (iii) the Termination Fee; and (iv) $500,000.

(iv) Binding and Irrevocable. Each Bid must include a signed writing stating that it is binding and irrevocable until the selection of the Successful Bidder, provided that if such Bidder is selected as the Successful Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the closing of the Sale with the Successful Bidder or, as applicable, the Back-Up Bidder (the "Closing").

(v) Contemplated Transaction Documents. Other than for any Acceptable Chapter 11 Plan Bid, each Bid must include an executed purchase agreement marked against the Stalking Horse Purchase Agreement pursuant to which the Qualified Bidder proposes to effectuate the contemplated Sale Transaction including: (i) a redlined copy of the purchase agreement marked to show all changes requested by the Qualified Bidder against the Stalking Horse Purchase Agreement; and (ii) any changes to any exhibits or schedules to the Stalking Horse Purchase Agreement (collectively, the "Contemplated Transaction Documents"). The terms and conditions of the Contemplated Transaction Documents must be, in the aggregate, not materially more burdensome to the Debtor than the provisions contained in the Stalking Horse Purchase Agreement with the Stalking Horse Bidder. A Bid must identify with particularity each and every condition to Closing and all Transferred Contracts pursuant to the Contemplated Transaction Documents. All Bids must provide that all Cure Amounts (as defined

herein) will be paid by such Bidder. ***The Contemplated Transaction Documents must include a commitment to close by no later than [P + 70], 2025***. A Bid shall contain a detailed description of how the Potential Bidder intends to treat current employees of the Debtor.

(vi) Contingencies. A Bid may not be conditioned on obtaining financing or any internal approval or on the outcome or completion of due diligence, but may be subject to the accuracy in all material respects at Closing of representations and warranties at or before Closing or the satisfaction in all material respects of customary representations and warranties for transactions of similar size and nature at or before Closing or the satisfaction in all material respects of customary conditions for transactions of similar size and nature at or before Closing. A Bid must disclose any governmental approvals identified by the Potential Bidder other than as set forth in the Contemplated Transaction Documents that may impact the evaluation of such Bid.

(vii) No Collusion. Each Bid must include a representation that the Bidder has not engaged in any collusion with respect to its Bid submission (though Potential Bidders may be permitted to make joint bids with the prior written consent of the Debtor) and that the Bidder will not engage in any collusion with respect to any Bids, the Auction, or the Sale Process.

(viii) Authorization to Bid and Identity of Bidder. Each Bid must include evidence of authorization and approval from such Potential Bidder's board of directors (or comparable governing body, or a statement as to why such approval is unnecessary) with respect to the submission, execution, delivery, and closing of the Contemplated Transaction Documents. A Bid must also fully disclose the identity of the entity that is submitting the Bid, including the identity of the ultimate beneficial owners of the Bidder and the identity of any person or entity providing debt or equity financing for the Bid.

(ix) Financing Sources. Each Bid must include written evidence that demonstrates the Potential Bidder has the necessary financial ability to close the contemplated Sale Transaction and provide adequate assurance of future performance under all Transferred Contracts. Such information may include, *inter alia*, the following:

a. the Potential Bidder's current financial statements (audited, if they exist);

b. contact names, telephone numbers, and e-mail addresses for verification of financing sources;

c. evidence of the Potential Bidder's internal resources and proof of any debt or equity funding commitments that are needed to close the

contemplated Sale Transaction (including confirmation that the funding of such commitments is not subject to any contingency); and

d. any other form of financial disclosure of credit-quality support information acceptable to the Debtor demonstrating that such Potential Bidder has the ability to close the contemplated Sale Transaction.

(x) Adequate Assurance of Future Performance. Each Bid must demonstrate, in the Debtor's reasonable business judgment, after consultation with the Consultation Parties, that the potential Bidder can provide adequate assurance of future performance to the applicable counterparty under all Transferred Contracts as required by section 365 of the Bankruptcy Code.

(xi) No Fees Payable to Qualified Bidder. A Bidder (other than the Stalking Horse Bidder) may not request any break-up fee, termination fee, expense reimbursement, or any similar type of payment. Moreover, by submitting a Bid, a Bidder shall be deemed to waive the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code relating in any way to the submission of its Bid, compliance with the Bid Procedures, or participation in the Sale Process.

(xii) Payment of the Termination Fee and Expense Reimbursement. A Bid must allow for the payment of the Termination Fee and Expense Reimbursement to the Stalking Horse Bidder from the first proceeds of the cash portion of the Purchase Price of such Bid upon Closing.

(xiii) Non-Reliance. A Bid must include an acknowledgement and representation of the Potential Bidder that it has had an opportunity to conduct any and all due diligence regarding the Assets (as applicable to its Bid) and Assumed Liabilities prior to making its Bid, that it has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and that it did not rely upon any written or oral statements, representations, warranties, or guaranties, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or, as applicable, the physical condition of the Assets, the Assumed Liabilities, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Contemplated Transaction Documents.

(xiv) As Is, Where Is. A Bid must include an acknowledgement and representation of the Potential Bidder that it understands that any Sale Transaction shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtor, its agents, or its estate except to the extent set forth in the Stalking Horse Purchase Agreement or the purchase agreement of the Successful Bidder, as applicable.

Subject to the terms of the DIP Order and section 363(k) of the Bankruptcy Code, persons or entities holding a perfected security interest in the Assets may seek to submit a credit bid on such Assets, to the extent permitted by applicable law, any other Court orders and the documentation governing the Debtor's secured debt. For the further avoidance of doubt, nothing herein shall impact any rights of the DIP Secured Parties or the Prepetition Secured Parties (each as defined in the DIP Order).

(c) **Provisions Governing the Auction** [Bid Procedures § I.D]. After the receipt and review of all Qualified Bids, the Debtor shall make a determination, after consultation with the Consultation Parties, whether to accept the highest or best Qualified Bid(s) for all or any portion of the Assets. For the avoidance of doubt, the Stalking Horse Bid constitutes a Qualified Bid.

To the extent the Debtor receives Qualified Bids and determines to proceed to Auction, the Debtor, after consultation with the Consultation Parties, shall determine which Qualified Bid represents the then highest or otherwise best Bid for the Assets (the "Baseline Bid"). The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitutes the Successful Bid (as defined herein) shall take into account any factors the Debtor, after consultation with the Consultation Parties, reasonably deems relevant to the value of the Qualified Bid to its estate, including, *inter alia*: (a) the amount and nature of the consideration; (b) the certainty of closing; (c) the net economic effect of any changes to the value to be received by the Debtor's creditors from the proposed Sale Transaction; (d) the allocation of the Purchase Price between or among Assets; (e) tax consequences of such Qualified Bid; and (f) any other quantitative or qualitative criteria available to assess such Bid (collectively, the "Bid Assessment Criteria"). The Baseline Bid must be not less than the Purchase Price of the Stalking Horse Bid *plus* (ii) the Termination Fee *plus* (iii) the Expense Reimbursement *plus* (iv) $500,000.

On or before ***[P + 51], 2025***, the Debtor shall file a notice on the Court's docket (an "Auction Notice") providing notice of the location of the Auction.

Unless otherwise designated by the Debtor, after consultation with the Consultation Parties, the Auction shall commence at ***10:00 a.m. (Eastern Time) on [P + 52], 2025*****,** at a location to be designated in the Auction Notice. In the Debtor's discretion, the Auction may be held by telephonic or video conference.

The Auction shall be conducted according to the following procedures:

(i) *Participation at the Auction*. Only the Stalking Horse Bidder(s) and Qualified Bidders that have submitted Qualified Bids are eligible to participate at the Auction. Only the authorized representatives and professional advisors of each of the Qualified Bidders, the Stalking Horse Bidder, the Debtor, the Consultation Parties, the United States Trustee for

the District of Delaware, and creditors of the Debtor subject to the below notice requirement shall be permitted to attend the Auction.

Except as otherwise set forth herein, the Debtor, after consultation with the Consultation Parties may conduct the Auction in the manner it determines will result in the highest or best offer(s) for the Assets in accordance with the Bid Procedures.

(ii) *The Debtor Shall Conduct the Auction*. The Debtor and its professionals shall direct and preside over the Auction. At the start of the Auction, the Debtor shall describe the terms of the Baseline Bid. All Bids made thereafter shall be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Bid shall be fully disclosed to all other Qualified Bidders. The Debtor reserves the right to conduct the Auction, after consultation with the Consultation Parties, in the manner designed to maximize value based upon the nature and extent of the Qualified Bids received in accordance with the Bid Procedures, the Bid Procedures Order, the Bankruptcy Code, and any other order of the Court entered in connection herewith and disclosed to each Qualified Bidder. The Debtor shall maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid. Pursuant to Local Rule 6004-1, each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the Sale Process, the Bid Procedures, the Auction, or the proposed Sale Transaction.

(iii) *Terms of Overbids*. An "Overbid" is any bid made at the Auction by a Qualified Bidder subsequent to the Debtor's announcement of the applicable Baseline Bid(s) that satisfies the following conditions:

a. Minimum Increment. During the Auction, bidding shall begin with the Baseline Bid. The Debtor reserves all rights with respect to the comparison of Qualified Bids to the Stalking Horse Bid and the determination of the Baseline Bid subject to the rights of the Consultation Parties as provided for herein. Any Overbid to the initial Baseline Bid at the start of the Auction (the "Initial Overbid") shall be in increments of no less than a value equal to an amount to be determined by the Debtor in an exercise of its business judgment, after consultation with the Consultation Parties (the "Minimum Increment"); *provided, however*, that to the extent that the Baseline Bid constitutes the Stalking Horse Bid, the bidding for such Assets at the first round of bidding will start at an amount equal to the sum of: (i) the value of the Baseline Bid, plus (ii) the amount of the Termination Fee and Expense Reimbursement, *plus* (iii) $500,000, in cash or other consideration acceptable to the Debtor, after consultation with the Consultation Parties. Any Overbids subsequent to the Initial Overbid shall be made in increments of the Minimum Increment; *provided, however*, that any Overbids by the Stalking Horse Bidder shall only be required to be equal

to the sum of (x) (1) the Baseline Bid or the then existing highest Bid *plus* (2) the Minimum Increment *less* (y) the sum of the amount of the Bid Protections applicable to the Assets included in the Bid.

Any Overbid made by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless the Debtor, after consultation with the Consultation Parties, accepts a higher Qualified Bid as an Overbid.

b. Consideration of Overbids. Subject to the terms of the DIP Order, the Debtor reserves the right, after consultation with the Consultation Parties, to make one or more adjournments in the Auction to, among other things: facilitate discussions between the Debtor and individual Qualified Bidders; allow individual Qualified Bidders to consider how they wish to proceed; and give Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor, in the exercise of its business judgment and after consultation with the Consultation Parties, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed Sale Transaction at the prevailing Overbid amount.

c. Closing Evidence. To the extent not previously provided on or before the Bid Deadline, a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, evidence reasonably acceptable to the Debtor, after consultation with the Consultation Parties, demonstrating such Qualified Bidder's ability to close the Sale Transaction proposed by such Overbid.

(iv) *Additional Procedures*. The Debtor, after consultation with the Consultation Parties, may (a) determine which Qualified Bid or Qualified Bids, if any, is the highest or best offer for all or any portion of the Assets, (b) reject at any time before entry of an order of the Court approving the Sale Transaction of the Assets pursuant to a Qualified Bid, any Bid (other than the Stalking Horse Bid) that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, the Bid Procedures, or the Bid Procedures Order; or (iii) contrary to the best interest of the Debtor, its estate, and its creditors, and (c) subject to the terms of the DIP Order and Stalking Horse Purchase Agreement, modify the Bid Procedures in response to the bidding activity at the Auction.

(v) *Consent to Jurisdiction as Condition to Bidding*. All Qualified Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Court and to have waived any right to a jury trial in connection with any disputes relating to the Sale Process, the Auction, the Bid Procedures, and the construction and enforcement of each Qualified Bidder's Contemplated Transaction Documents, as applicable.

(vi) *Closing the Auction*. The Auction shall continue until there is only one Qualified Bid for all of the Assets that the Debtor determines, in the exercise of its business judgment and after consultation with the Consultation Parties, is the highest or otherwise best Qualified Bid (such Qualified Bid, the "Successful Bid", and such Qualified Bidder, the "Successful Bidder"), and that further bidding is unlikely to result in a higher or otherwise better Qualified Bid, at which point, the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction. In selecting the Successful Bid, the Debtor, after consultation with the Consultation Parties, may consider all factors relevant to the sale of the Assets, including the Bid Assessment Criteria.

Upon the closing of the Auction, the Debtor, after consultation with the Consultation Parties, shall identify the Successful Bidder and the Successful Bid and the Back-Up Bidder and Back-Up Bid as soon as reasonably practicable which highest or best offer will provide the greatest amount of net value to the Debtor, and advise the Qualified Bidders of such determination. Due to the potential combinations of Assets that may be included in any Bid, the Debtor reserves all rights with respect to the comparison of Qualified Bids and the determination of the Successful Bidder and Back-Up Bidder (as defined herein).

The Qualified Bidder with the second highest or otherwise best Bid at the Auction, as determined by the Debtor, after consultation with the Consultation Parties, shall be required to serve as the back-up bidder (the "Back-Up Bidder"). The identity of the Back-Up Bidder and the amount and material terms of the final Bid of the Back-Up Bidder (the "Back-Up Bid") shall be announced by the Debtor at the conclusion of the Auction at the same time the Debtor announces the Successful Bid. Any Back-Up Bidder shall keep its Back-Up Bid open and irrevocable until the Closing of the Sale Transaction with the Successful Bidder. The Good Faith Deposit of the Back-Up Bidder shall be returned by the Debtor within three (3) days after Closing of the Successful Bid.

Within one (1) business day after the close of the Auction, (i) the Successful Bidder shall supplement the Successful Bidder's Good Faith Deposit such that the Good Faith Deposit shall be equal to an amount that is ten percent (10%) of the Purchase Price of the Successful Bid; and (ii) the Back-Up Bidder shall supplement the Back-Up Bidder's Good Faith Deposit such that the Good Faith Deposit shall be equal to an amount that is ten percent (10%) of the Purchase Price of the Back-Up Bid.

The Debtor shall not consider any Bids or Overbids submitted after the closing of the Auction and any and all such Bids and Overbids shall be deemed untimely.

As stated above, the Successful Bid of the Successful Bidder and the Back-Up Bid of the Back-Up Bidder, respectively, must be irrevocable until Closing.

(vii) *Commissions*. The Debtor shall be under no obligation to pay any commissions, fees, or expenses to any Potential Bidder's agent, advisor, or broker. All commissions, fees, or expenses for any such agents, advisors, or brokers shall be paid by the applicable Potential Bidder at such Potential Bidder's discretion. In no case shall any commissions, fees, or expenses for any Potential Bidder's agent, advisor, or broker be deducted from any proceeds derived from any Sale of the Assets. This paragraph shall not apply to any bid protections that become payable pursuant to the terms of the Stalking Horse Purchase Agreement.

B. Procedures Related to the Assumption and Assignment of Transferred Contracts

20. The Debtor is seeking approval of (i) the Contract and Lease Procedures for notifying counterparties to executory contracts and unexpired leases (the "Contract Counterparties") of, among other things, proposed Cure Amounts (as defined below) with respect to the Potential Assumed/Assigned Contracts; and (ii) procedures with respect to a Successful Bidder's provision of adequate assurance of future performance for a Transferred Contract.

i. *Cure and Assumption/Assignment Procedures*

21. Within five days of entry of the Bid Procedures Order, the Debtor will file a notice (the "Cure Notice") identifying the Potential Assumed/Assigned Contracts (such list, the "Cure Schedule"),[13] substantially in the form attached as Schedule A to Exhibit 3 to the Bid Procedures Order, and will serve such notice on all Contract Counterparties to the Potential Assumed/Assigned Contracts. The Cure Notice served on each Contract Counterparty shall: (i) identify the Potential Assumed/Assigned Contracts; (ii) list the proposed cure amounts, if any, that the Debtor believes must be paid to cure all defaults outstanding under each Potential Assumed/Assigned Contract (the "Cure Amounts") as of such date; (iii) include a statement that

[13] For the avoidance of doubt, the Debtor reserves all rights to remove any executory contract or unexpired lease from the Cure Schedule prior to the closing of any Sale.

assumption, assumption and assignment, or transfer of such Potential Assumed/Assigned Contract is not required or guaranteed; and (iv) inform such Contract Counterparty of the requirement to file any Contract Objection (as defined below) by the Contract Objection Deadline (as defined below). Service of the Cure Notice, including the Cure Schedule, upon a Contract Counterparty does not constitute an admission that a particular Potential Assumed/Assigned Contract is an executory contract or unexpired lease, or confirm that the Debtor is required to assume, assume and assign, and/or transfer such contract or lease.[14]

22. The Debtor further requests that a Contract Counterparty must file any objection to the Cure Amount and/or the assumption, assumption and assignment, and/or transfer of such Potential Assumed/Assigned Contract no later than fourteen (14) days after filing and service of the Cure Notice (the "Contract Objection Deadline").

23. In addition, if the Debtor identifies additional executory contracts or unexpired leases that it wishes to add to or remove from the Cure Schedule (each an "Additional Contract") the Debtor shall, as soon as practicable after making such a determination, send a supplemental Cure Notice (an "Additional Cure Notice") to the applicable Contract Counterparties to such Additional Contracts.

24. The Debtor requests that the Court require that any objections to a proposed Cure Amount (a "Cure Objection") and/or any other objections to the assumption, assumption and assignment, and/or transfer of any of the Potential Assumed/Assigned Contracts (an "Assumption/Assignment Objection" and, together with a Cure Objection, a "Contract Objection") must: (i) be made in writing and filed on the docket for this Chapter 11 Case no later than the

[14] The Debtor reserves all rights concerning the characterization of the Potential Assumed/Assigned Contracts in all respects.

Contract Objection Deadline; (ii) state the basis of such objection with specificity, including, without limitation, the Cure Amount alleged to be due by such Contract Counterparty, and include complete contact information for such Contract Counterparty (including address, telephone number, and email address); (iii) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules; and (iv) be served upon the Notice Parties (as defined in the Cure Notice), so as to be actually received by such parties on or before the Contract Objection Deadline.

25. In addition, the Debtor requests that the Court require that any objections from any Contract Counterparty to a proposed Cure Amount listed on an Additional Cure Notice (an "Additional Cure Objection") and/or any other objections to the assumption, assumption and assignment, and/or transfer of any of the Potential Assumed/Assigned Contracts listed on an Additional Cure Notice (an "Additional Assumption/Assignment Objection" and, together with an Additional Cure Objection, an "Additional Contract Objection") must: (i) be made in writing and filed on the docket by the later of (a) the Contract Objection Deadline and (b) seven (7) calendar days after the Debtor file and serve the Additional Cure Notice (as applicable, the "Additional Contract Objection Deadline"); (ii) state the basis of such objection with specificity, including, without limitation, any Cure Amount alleged by such Contract Counterparty, and include contact information for such Contract Counterparty; (iii) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules; and (iv) be served upon the Notice Parties so as to be actually received on or before the Additional Contract Objection Deadline.

26. The Cure Notice also provides that Contract Objections, if any, will be heard at (i) the Sale Hearing or (ii) on such other date subsequent to the Sale Hearing as the Court may designate prior to, during, or after the Sale Hearing (the "Cure/Assignment Hearing"). Any Additional Contract Objections will be resolved at a hearing to be held by the Court (i) on or before

seven (7) calendar days from the timely filing of the Additional Contract Objection; (ii) at the Cure/Assignment Hearing; or (iii) such other date designated by the Court.

ii. ***Adequate Assurance of Future Performance Procedures***

27. In addition, pursuant to this Motion, the Debtor seeks to establish procedures with respect to a Successful Bidder's provision of adequate assurance of future performance for a Transferred Contract. As discussed below, upon determination of the Successful Bid(s), no later than one (1) day after the Auction, the Debtor will file a Notice of Successful Bidder with the Court. Any Contract Counterparty to a Transferred Contract seeking additional assurance of future performance than that provided by the Successful Bidder(s) (the "Adequate Assurance Objection") should immediately contact James E. O'Neill (joneill@pszjlaw.com) and the applicable Successful Bidder to attempt to resolve any Adequate Assurance Objection. All Adequate Assurance Objections must be filed and served on the Notice Parties and the applicable Successful Bidder no later than three (3) days after filing of the Notice of Successful Bidder. To the extent the parties are unable to consensually resolve the Adequate Assurance Objection prior to Closing, the Court will set a hearing on the Adequate Assurance Objection to determine whether terms of the Successful Bid are compliant with section 365 of the Bankruptcy Code in providing adequate assurance of future performance to the Contract Counterparty of the applicable Transferred Contract, which may be at the Sale Hearing. The Debtor intends to cooperate with Contract Counterparties to Transferred Contracts to attempt to reconcile any Adequate Assurance Objection.

28. At the Sale Hearing, (i) the Successful Bidder shall present evidence necessary to demonstrate adequate assurance of future performance by the Successful Bidder with respect to the Transferred Contracts and (ii) the Debtor will request entry of an order approving the

assumption and assignment of any or all Potential Assumed/Assigned Contracts to be assumed by the Debtor and assigned to the Successful Bidder. For the foregoing reasons, the Debtor believes that granting the relief requested herein is appropriate and in the best interests of all parties-in-interest.

C. Scheduling and Notice

29. Pursuant to the applicable DIP milestones, the Debtor is required to: (i) obtain entry of the Bid Procedures Order by no later than **thirty (30) days after the Petition Date**, and (ii) obtain entry of an order approving the Sale(s) no later than **fifty-eight (58) days after the Petition Date**. In addition, the DIP milestones require that the Closing occur no later than **seventy (70) days after the Petition Date**.

30. Given the Debtor's ongoing robust marketing efforts and the approximately 50-day post-petition marketing and diligence period (*i.e.*, the period from the Petition Date through the Bid Deadline) to be established by the Bid Procedures, the proposed timeline is sufficient to complete a fair and open sale process that will maximize the value received for the Assets while complying with the applicable DIP milestones. The proposed timeline will provide all Potential Bidders with sufficient time to perform due diligence. Thus, the schedule proposed above will allow for the consummation of the Sale Transactions as quickly as possible and in a manner designed to maximize the value received for the Assets.

31. **Notice of Motion**. On the date the notice of this Motion is filed or as soon as is practicable thereafter, the Debtor will cause Notice of this Motion to be served upon (a) the Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Lock Box 35, Wilmington, Delaware, 19801, Attn: Jonathan W. Lipshie, Esq. (Jon.Lipshie@usdoj.gov); (b) counsel to the Committee, if any; (c) counsel to the Stalking Horse Bidder, (i) Morrison & Foerster LLP, 250 West 55th Street, Floor 20, New York, NY 10019, Attn: James A. Newton, Esq.

(jnewton@mofo.com) and Miranda K. Russell, Esq. (mrussell@mofo.com); and (ii) Potter Anderson & Corroon LLP, Attn: Christopher M. Samis (csamis@potteranderson.com) and Brett M. Haywood (bhaywood@potteranderson.com); (d) the United States Attorney's Office for the District of Delaware; (e) the state attorneys general for all states in which the Debtor conducts business; (f) the Securities Exchange Commission; (g) all parties reasonably known to the Debtor that assert liens, claims, and encumbrances, and other interests with respect to the Assets; (h) all entities known to have expressed an interest in bidding on the Assets; (i) the Internal Revenue Service, the Securities and Exchange Commission, and any other federal, state or local governmental agency to the extent required by the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or order of the Court; and (j) any party that requests service pursuant to Bankruptcy Rule 2002 (collectively, the "Sale Notice Parties").

32. **Notice of Bid Procedures**. Within two (2) calendar days of the entry of the Bid Procedures Order, or as soon thereafter as practicable, the Debtor shall cause to be served, by first-class mail, postage prepaid, a notice (the "Bid Procedures Notice") setting forth, among other things, the dates established for submission of Qualified Bids, the Auction, and the Sale Hearing, substantially in the form attached to the Bid Procedures Order as Exhibit 2, upon the Sale Notice Parties and all of the Debtor's known creditors.

33. **Cure Notice**. No later than five (5) days after entry of the Bid Procedures Order, the Debtor shall cause to be filed and served by first class mail, postage prepaid the Cure Notice. The Cure Notice will include a schedule (the "Cure Schedule") identifying (i) the Potential Assumed/Assigned Contracts that may be assumed, assumed and assigned, or transferred in connection with any Sale(s) and (ii) the amount, if any, the Debtor believes is necessary to cure all monetary defaults under such Potential Assumed/Assigned Contracts pursuant to section 365 of

the Bankruptcy Code, substantially in the form attached to the Bid Procedures Order as Exhibit 3, upon the Notice Parties and the Contract Counterparties.

34. **Notice of Successful Bidder(s)**. Following the Auction, the Debtor will promptly file with the Court a notice (the "Notice of Successful Bidder") that will inform the Court of the results of the Auction. The Notice of Successful Bidder will identify, among other things: (i) the Successful Bidder(s) as the proposed purchaser(s) of the Assets; (ii) the amount and form of consideration to be paid by the Successful Bidder(s) for the Assets; and (iii) the liabilities to be assumed by the Successful Bidder(s). The Notice of Successful Bidder will also include similar information relating to the Back-Up Bidder and the Back-Up Bid. In addition, the Debtor will attach to the Notice of Successful Bidder: (i) the Sale Order approving the Sale to the Successful Bidder; and (ii) a copy of the purchase agreement entered into by the Debtor and the Successful Bidder. The Debtor will file the Notice of Successful Bidder on the docket for this Chapter 11 Case as promptly as is reasonably practicable prior to the Sale Hearing, but will not be required to serve the same on any parties-in-interest in this Chapter 11 Case.[15]

D. Bid Protections

35. Recognizing the Stalking Horse Bidder's expenditure of time, energy and resources, and that the Stalking Horse Bidder provides a floor bid with respect to the Assets that it offers to purchase, the Debtor seeks authority (pursuant to the Bid Procedures Order) to provide the following bidding protections to the Stalking Horse Bidder:

(a) (i) a Termination Fee in the amount of 1.5 % of the Credit Bid as a termination fee and (ii) an Expense Reimbursement of up to $1,000,000, in each case pursuant to and in

[15] The Debtor proposes that it may, in its discretion, serve a Notice of Successful Bidder by U.S. Mail without attached copies of a purchase agreement and/or proposed Sale Order; *provided, however*, that any such Notice of Successful Bidder must identify where parties receiving such notice may access such documents free of charge.

accordance with terms of the Stalking Horse Purchase Agreement and Bid Procedures Order.

(b) Any Bid submitted on the Bid Deadline by a party or parties other than the Stalking Horse Bidder must be in an amount that is sufficient to pay the Termination Fee and the Expense Reimbursement and result in additional consideration to the Debtor's estate in the amount of at least $500,000 (as compared to the Purchase Price offered by the Stalking Horse Bidder), after payment of the Termination Fee and Expense Reimbursement.

E. Sale Order

36. The Debtor requests that this Court set the Sale Hearing no later than fifty-eight (58) days after the Petition Date, at time to be determined by the Court. At the Sale Hearing, the Debtor intends to seek the entry of the Sale Order: (a) approving the Sale free and clear of all Encumbrances, (b) authorizing the assumption and assignment or transfer of the Transferred Contracts, and (c) finding that the Stalking Horse Bidder or Successful Bidder is a good faith purchaser for purposes of section 363(m) of the Bankruptcy Code, among other things. Pursuant to the Sale Order, the Debtor will sell any Assets that are the subject of a Sale Transaction free and clear of all Encumbrances to the fullest extent possible pursuant to section 363(f) of the Bankruptcy Code (except for those Assumed Liabilities and obligations expressly assumed by the Successful Bidder), and the Successful Bidder will be protected from liability for and cannot be pursued for any claims owed by the Debtor, except as otherwise agreed by the Successful Bidder and the Debtor or as set forth in the Sale Order. In addition, the Sale Order will have findings that the Sale is not a fraudulent conveyance. The Bid Procedures provide proper and adequate notice for these and the other terms and conditions of the bidding, Auction, and Sale Process.

BASIS FOR RELIEF REQUESTED

A. Approval of the Sale(s) Is Warranted Under Section 363(b) of the Bankruptcy Code and the Bid Procedures Are Appropriate and in the Best Interests of the Debtor's Estate and Its Creditors

37. Section 363(b)(1) of the Bankruptcy Code provides that the "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. . . . "[16] Section 105(a) of the Bankruptcy Code further provides, in relevant part, that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

38. A debtor may be authorized to sell assets outside of the ordinary course of business pursuant to section 363 of the Bankruptcy Code if it demonstrates a sound business purpose for doing so.[17]

39. Indeed, the paramount goal of a chapter 11 process is to maximize the proceeds received by the estate.[18] To that end, courts have recognized that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate of

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[16] 11 U.S.C. § 363(b)(1).

[17] *See In re Fed. Mogul Glob., Inc.*, 293 B.R. 124, 126 (D. Del . 2003) (finding that a court should approve a debtor's use of assets outside ordinary course of business if debtor can demonstrate a sound business justification for proposed transaction); *see also In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 154 (Bankr. D. Del. 1999) (finding that the debtor's sound business purpose justified its sale of the assets outside of the ordinary course of business).

[18] *See Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) ("[A] primary objective of the [Bankruptcy] Code [is] to enhance the value of the estate at hand."); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 149 (3d Cir. 1986) (noting the fairness and reasonableness of prices); *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) ("It is a well-established principle of bankruptcy law that the . . . debtor's duty . . . is to obtain the highest price or greatest overall benefit possible for the estate.") (quoting *Cello Bag Co. v. Champion Intl Corp. (In re Atlanta Packaging Prods., Inc.)*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988)); *In re Summit Glob. Logistics, Inc.*, No. 08-11566, 2008 Bankr. LEXIS 896, at *43 (Bankr. D.N.J. Mar. 26, 2008) (describing a proposed transaction as one that "maximize[d] value and return to interested parties.").

a debtor and therefore are appropriate.[19] With this in mind, courts have deferred to a debtor's business judgment in the context of bidding and auction procedures.[20]

40. In exercising its fiduciary duties and in the sound exercise of its business judgment, the Debtor has determined that the Bid Procedures are the most appropriate method for encouraging competing bids that will maximize creditor recoveries and that will ensure the value received for its Assets is the highest or best the market can generate.

41. The Bid Procedures provide a framework to facilitate and entertain bids for the purchase of any or all of the Debtor's Assets and, if such bids are received, to conduct an Auction in an orderly yet competitive fashion, thereby encouraging bids that maximize the value realized from a Sale of the Assets. In particular, the Bid Procedures contemplate an open and fair auction process with minimum barriers to entry and provide Bidders with sufficient time to perform due diligence and to acquire the information necessary to submit a timely and well-informed bid.

42. The Bid Procedures provide the Debtor with an adequate opportunity to consider competing bids and select the highest or best offer(s) for the purchase of any or all of the Debtor's Assets. The Debtor therefore believes that submitting the purchase of its Assets to a market-based test will ensure maximum recovery for all stakeholders. Accordingly, the Debtor and its stakeholders can be assured that the consideration obtained will be fair and reasonable.

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[19] *See, e.g., In re Dura Auto. Sys.*, 379 B.R. 257, 263 (Bankr. D. Del. 2017); *Integrated Res.*, 147 B.R. at 659 (providing that such procedures "encourage bidding and to maximize the value of the debtor's assets."); *In re Fin. News Network Inc.*, 126 B.R. 152, 156 (S.D.N.Y. 1991) ("[C]ourt-imposed rules for the disposition of assets [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estate.").

[20] *See, e.g., In re Culp*, 550 B.R. 683, 697 (D. Del. 2015) ("'In determining whether to authorize use, sale or lease of property of the estate under Section 363, courts require the [Debtor] to show that a sound business purpose justifies such actions.' If the [Debtor's] decision evidences a sound business purpose, then the Bankruptcy Court should approve the sale." (quoting *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999)); *In re Trans World Airlines Inc.*, No. 01-0056, 2001 Bankr. LEXIS 980, at *29 (Bankr. D. Del. Apr. 2, 2001) ("It is not the function of a bankruptcy court to independently exercise a business judgment as to which proposal among competing proposals should be adopted by the debtor in effecting a § 363(b) sale.").

43. Similar bidding, auction, and notice procedures have been previously approved by this Court in other chapter 11 cases. *See, e.g.*, *In re Gritstone Bio, Inc.*, No. 24-12305 (KBO) (Bankr. D. Del. Nov. 14, 2024); *In re Amyris, Inc.*, No. 23-11131 (TMH) (Bankr. D. Del. Oct. 16, 2023); *In re PhaseBio Pharms., Inc.*, No. 22-10995 (LSS) (Bankr. D. Del. Nov. 28, 2022); *In re Genapsys, Inc.*, No. 22-10621 (BLS) (Bankr. D. Del. Aug. 17, 2022); *In re SanityDesk, Inc.*, No. 22-10527 (JTD) (Bankr. D. Del. Aug. 3, 2022); *In re Enjoy Tech., Inc.*, No. 22-10580 (JKS) (Bankr. D. Del. July 26, 2022); *In re Hamon Holdings Corp.*, No. 22-10375 (JTD) (Bankr. D. Del. July 13, 2022); *In re Healthe, Inc.*, No. 21-11567 (MFW) (Bankr. D. Del. Mar. 21, 2022); *In re Wardman Hotel Owner, L.L.C.*, No. 21-10023 (JTD) (Bankr. D. Del. June 15, 2021); *In re MobiTV, Inc.*, No. 21-10457 (LSS) (Bankr. D. Del. Apr. 7, 2021); *In re EHT US1, Inc.*, No. 21-10036 (CSS) (Bankr. D. Del. Mar. 24, 2021); *In re RTI Holding Co., LLC*, No. 20-12456 (JTD) (Bankr. D. Del. Nov. 20, 2020); *In re BL Rests. Holding, LLC*, No. 20-10156 (MFW) (Bankr. D. Del. Feb. 28, 2020); *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Feb. 4, 2020).[21]

44. In sum, the Debtor believes that the proposed Bid Procedures create an appropriate framework for expeditiously establishing that the Debtor is receiving the best and highest offers for its Assets. Accordingly, the proposed Bid Procedures are reasonable, appropriate, and within the Debtor's sound business judgment under the circumstances.

B. The Purchased Assets Should be Sold Free and Clear of Liens, Claims, and Encumbrances Pursuant to Section 363(f) of the Bankruptcy Code

45. As set forth in the Stalking Horse Purchase Agreement and in the interest of attracting the best competing offers, the Debtor requests authorization to sell its Assets free and clear of any and all Encumbrances in accordance with section 363(f) of the Bankruptcy Code, with

[21] Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtor's counsel.

any such Encumbrances attaching to the proceeds of the Sale of the Assets. Specifically, the Stalking Horse Purchase Agreement constitutes a credit bid for the Assets on the basis of such bidder's affiliate's prepetition and postpetition senior secured liens and claims against the Debtor.

46. Under section 363(f) of the Bankruptcy Code, a debtor may sell estate property free and clear of liens, claims, encumbrances, and other interests if one of the following conditions is satisfied: (i) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (ii) such entity consents; (iii) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (iv) such interest is in bona fide dispute; or (v) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.[22] Because section 363(f) of the Bankruptcy Code is written in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets "free and clear" of liens, claims, encumbrances, and other interests.[23]

47. Furthermore, section 105(a) of the Bankruptcy Code grants the court broad discretionary powers, providing that "[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. This equitable power may be utilized to effectuate the provisions of section 363(f).[24]

48. Here, the Debtor's prepetition and postpetition lenders consent to the credit bid Sale of the Assets to their affiliate, the Stalking Horse Bidder. The Debtor will further demonstrate at the Sale Hearing that the Sale(s) satisfies the requirements of section 363(f). Accordingly, the Debtor requests authorization to sell its Assets free and clear of all Encumbrances.

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22 11 U.S.C. § 363(f).

23 *See, e.g.*, *In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002); *In re Dundee Equity Corp.*, No. 89-B-10233, 1992 Bankr. LEXIS 436, at *12 (Bankr. S.D.N.Y. Mar. 6, 1992).

24 *See, e.g., In re Trans World Airlines, Inc*., 2001 Bankr. LEXIS 723, at *18–19 (Bankr. D. Del. Mar. 27, 2001) (highlighting bankruptcy courts' equitable authority to authorize sale of estate assets free and clear).

C. The Stalking Horse Bidder or Other Successful Bidder Should Be Entitled to the Protections of Section 363(m) of the Bankruptcy Code

49. Pursuant to section 363(m) of the Bankruptcy Code, a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims.[25] As noted above, the Stalking Horse Purchase Agreement (and any other purchase agreement executed by a Successful Bidder) has been negotiated at arm's-length and in good faith in accordance with the Bid Procedures and Bid Procedures Order, with each of the parties represented by its own advisors and counsel. Accordingly, the Debtor requests that the Sale Order include a provision that the Stalking Horse Bidder or any other Successful Bidder for the Debtor's Assets is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code. The Debtor maintains that providing the Stalking Horse Bidder or other Successful Bidder with such protection will ensure that the maximum price will be received by the Debtor for the Assets.

D. Assumption and Assignment of the Transferred Contracts Should be Authorized

50. To enhance the value of the Debtor's estate, the Debtor requests authority under section 365 of the Bankruptcy Code to assume and assign or transfer the Transferred Contracts to the Stalking Horse Bidder or other Successful Bidder. The Debtor further requests that the Sale Order provide that the Transferred Contracts will be transferred to, and remain in full force and effect for the benefit of, the Stalking Horse Bidder or other Successful Bidder notwithstanding any provisions in such assigned contracts and/or leases, including those described in sections 365(b)(2), (f)(1), and (f)(3) of the Bankruptcy Code, that prohibit such assignments.

51. A debtor may, subject to court approval, assume and assign executory contracts and unexpired leases under section 365(a) of the Bankruptcy Code. Courts routinely approve motions

[25] *See, e.g., In re Abbotts Dairies of Pennsylvania, Inc*., 788 F.2d 143, 147 (3d Cir. 1986); *Miami Ctr. Ltd. P'ship v. Bank of New York*, 838 F.2d 1547, 1554 (11th Cir. 1988); *In re Mark BellFurniture Warehouse, Inc*., 992 F.2d 7, 9 (1st Cir. 1993); *In re Willemain v. Kivitz*, 764 F.2d 1019, 1023 (4th Cir. 1985).

to assume and assign executory contracts or unexpired leases upon a showing that a debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment.[26] The assumption and assignment of the Transferred Contracts related to the Assets is an integral component of any Sale, without which a Sale would not be a viable option.

52. Section 365(b)(1) of the Bankruptcy Code requires that, if there has been a default in a debtor's unexpired lease or executory contract, other than certain nonmonetary defaults as set forth in the statute, such unexpired lease or executory contract may not be assumed unless, at the time of the assumption, (i) such default is cured or there is adequate assurance that such default will be cured, (ii) compensation or adequate assurance of compensation is provided for any actual pecuniary loss resulting from such default, and (iii) adequate assurance of future performance under the lease is provided.[27] The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case but should be given "practical, pragmatic construction."[28]

53. As set forth above, the Debtor will send a Cure Notice and Additional Cure Notice, as applicable, to all Contract Counterparties to the Potential Assumed/Assigned Contracts notifying such Contract Counterparties of the potential assumption, assumption and assignment, or transfer of such contract and/or lease, including pursuant to a Sale of Assets. The Cure Notice and Additional Cure Notice, as applicable, will also set forth the Cure Amount, if any, owing for all such contracts and/or leases according to the Debtor's books and records.

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[26] *In re Fleming Co. Inc*., 499 F.3d 300, 305 (3d Cir. 2007).

[27] 11 U.S.C. § 365(b)(1).

[28] *EBG Midtown South Corp. v. McLaren/Hart Env. Eng' g Corp.* (*In re Sanshoe Worldwide*), 139 B.R. 585, 593 (S.D.N.Y. 1992); *see also In re Fleming Co. Inc*., 499 F.3d at 305; *Cinicola v. Scharffeberger*, 248 F.3d 110, 120 (3d Cir. 2001).

54. Contract Counterparties to Potential Assumed/Assigned Contracts will be given sufficient time to object to the proposed Cure Amounts, if any, set forth in the Cure Notice. If no objection is filed with regard to a particular Cure Amount and the Potential Assumed/Assigned Contract is a Transferred Contract pursuant to proposed Sale of Assets, such Cure Amount shall be binding on the Debtor, the Stalking Horse Bidder or other Successful Bidder, and the applicable Contract Counterparty. The payment of the Cure Amounts specified in the Cure Notice or Additional Cure Notice (or a different amount, either agreed to by the Debtor or resolved by this Court as a result of a timely-filed objection by the relevant Contract Counterparty) will be in full and final satisfaction of all obligations to cure defaults and compensate the Contract Counterparties for any pecuniary losses under the applicable Transferred Contracts pursuant to section 365(b)(1) of the Bankruptcy Code, unless the Debtor determines, before the Sale Hearing, that a particular lease or contract is not executory or unexpired, and does not need to be cured to transfer the Assets to the relevant Successful Bidder.

55. Section 365(f) of the Bankruptcy Code states that a debtor may assign its unexpired leases and executory contracts if, *inter alia,* the assignee provides "adequate assurance of future performance."[29] If necessary, the Stalking Horse Bidder or other Successful Bidder must submit, among other things, written evidence of the ability to provide adequate assurance of future performance under the applicable contracts or leases as set forth above and in the Bid Procedures Order. The affected Contract Counterparties will also be able to challenge the ability of the Stalking Horse Bidder or other Successful Bidder to provide adequate assurance as provided in the Bid Procedures Order.

[29] 11 U.S.C. § 365(f)(2)(B).

56. Any assumption and assignment or transfer of the Transferred Contracts will be subject to all of the provisions of such contract and/or lease, to the extent required by applicable law and in accordance with applicable provisions of the Bankruptcy Code. The Bid Procedures are designed to ensure that the Stalking Horse Bidder or other Successful Bidder is financially able and prepared to undertake all of the relevant obligations under the Transferred Contracts. The Debtor, together with the relevant Successful Bidder, will establish, as necessary, at the Sale Hearing, the requisite adequate assurance of future performance pursuant to section 365 of the Bankruptcy Code with respect to the potential assumption and assignment or transfer of the applicable Transferred Contracts. Consequently, assumption and assignment of the Transferred Contracts in connection with the Sale is appropriate under the circumstances.

E. The Bid Protections are Necessary and Appropriate and Should be Approved

57. The Debtor submits that the Bid Protections are a normal and necessary component of transactions outside the ordinary course of business under section 363 of the Bankruptcy Code. In particular, such protections encourage a potential transaction counterparty to invest the requisite time, money, and effort to conduct due diligence and sale negotiations with a debtor despite the inherent risks and uncertainties of the chapter 11 process.[30] The Debtor believes that the presence of the Stalking Horse Bidder will set a floor for the value of the particular Assets and attract other potential buyers to bid for such Assets, thereby maximizing the realizable value of such assets for

[30] *See, e.g., In re Integrated Res., Inc.*, 147 B.R. 650, 660 (S.D.N.Y. 1992) (noting that fees may be legitimately necessary to convince a "white knight" to offer an initial bid by providing some form of compensation for the expenses such bidder incurs and the risks such bidder faces by having its offer held open, subject to higher and better offers); *In re Hupp Indus.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1997) (without any reimbursement, "bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder's. . . due diligence"); *In re Marrose Corp.*, 1992 WL 33848, at *5 (Bankr. S.D.N.Y. 1992) (stating that "agreements to provide reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or 'stalking horse' which attracts more favorable offers"); *In re 995 Fifth Ave. Assocs.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (finding that bidding incentives may be "legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking") (citations omitted).

the benefit of the Debtor's estate, its creditors, and all other parties-in-interest. The Bid Protections, if any, will only be paid out of the cash proceeds of a Sale Transaction arising from a Topping Bid.

58. A proposed bidding incentive, such as the Bid Protections, should be approved when it is in the best interests of the estate.[31] Typically, this requires that the bidding incentive provide some benefit to the debtor's estate.[32]

59. In *O'Brien Environmental Energy*, the United States Court of Appeals for the Third Circuit found that whether breakup fees and expenses could be paid to a "stalking horse" bidder depended on whether such fees were necessary to preserve the value of the estate.[33] Providing such protections would be appropriate, the court held, where the bidder provides a benefit to the debtor's estate by promoting competitive bidding or researching the value of the assets at issue to increase the likelihood that the selling price reflected the true value of the company.[34] The Debtor believes that approval of the Bid Protections will promote a competitive bidding process.

60. The Debtor believes that the proposed Bid Protections are fair and would reasonably compensate the Stalking Horse Bidder for taking actions that will benefit the Debtor's estate. The Bid Protections compensate the Stalking Horse Bidder for diligence and professional fees incurred in negotiating the terms of the Stalking Horse Purchase Agreement on an expedited timeline.

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[31] *See In re S.N.A. Nut Co.*, 186 B.R. 98, 104 (Bankr. N.D. Ill. 1995); *see also In re America West Airlines, Inc.*, 166 B.R. 908 (Bankr. D. Ariz. 1994); *In re Hupp Indus., Inc.*, 140 B.R. 191 (Bankr. N.D. Ohio 1992).

[32] *Calpine Corp. v. O'Brien Envtl. Energy, Inc.* (*In re O'Brien Envtl. Energy, Inc.*), 181 F.3d 527, 533 (3d Cir. 1999) (holding even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions the administrative expense provisions of Bankruptcy Code section 503(b) govern in the bankruptcy context).

[33] *See* 181 F.3d at 536.

[34] *Id.* at 537.

61. The Debtor does not believe that the Bid Protections will have a chilling effect on the Sale Process. Rather, the existence of the Stalking Horse Bidder will increase the likelihood that the Debtor will receive the best possible price for the Assets by permitting other Qualified Bidders to rely on the diligence performed by the Stalking Horse Bidder, and moreover, by allowing Qualified Bidders to utilize the Stalking Horse Purchase Agreement as a platform for negotiations and modifications in the context of a competitive bidding process. Accordingly, the Bid Protections satisfy the requirements for approval in this Circuit and should be approved. Moreover, there is precedent for approving similar bid protections for a credit bidder.[35] The

[35] Termination/break-up fee and expense reimbursement: *In re NewAge, Inc.*, No. 22-10819 (LSS) (Bankr. D. Del. Sept. 21, 2022) (approving a 2.5% breakup fee and an expense reimbursement of up to $375,000 for a stalking horse bidder that was also serving as DIP lender and submitting a credit bid); *In re EYP Grp. Holdings, Inc.*, No. 22-10367 (MFW) (Bankr. D. Del. May 11, 2022) (approving a $2 million breakup fee and a $900,000 expense reimbursement for a stalking horse bidder that was also both the DIP lender and a prepetition lender); *In re Brooks Bros. Grp., Inc.,* No. 20-11785 (CSS) (Bankr. D. Del. Aug. 3, 2020) (authorizing a breakup fee of 3% and an expense reimbursement capped at $1 million); *In re Lucky Brand Dungarees, LLC*, No. 20-11768 (CSS) (Bankr. D. Del. July 30, 2020) (approving a 3% breakup fee and an expense reimbursement capped at $1 million to stalking horse bidders who were equity holders of the debtor); *In re BPS US Holdings Inc.*, No. 16-12373 (KJC) (Bankr. D. Del. Nov. 30, 2016) (approving a breakup fee and expense reimbursement for a stalking horse bidder that was the debtor's largest shareholder); *In re HSS Holding, LLC*, No. 13-12740 (Bankr. D. Del. Nov. 7, 2013) (BLS) (approving payment $1.145 million break-up fee to stalking horse bidder whose bid contained no cash-component and consisted almost entirely of a credit bid).

Termination fee only: *In re Enjoy Tech., Inc.*, No. 22-10580 (JKS) (Bankr. D. Del. July 26, 2022) (approving a breakup fee of $2,586,000 for a stalking horse bidder that was also serving as the DIP lender).

Expense reimbursement only: *In re Ideanomics, Inc.*, No. 24-12728 (CTG) (Bankr. D. Del. Jan. 8, 2025) (approving a $500,000 expense reimbursement for a stalking horse bidder submitting a credit bid and overruling the UST's objection that the expense reimbursement was not an actual and necessary expense under *O'Brien*); *In re AeroFarms, Inc.*, No. 23-10737 (MFW) (Bankr. D. Del. July 20, 2023) (approving an expense reimbursement to an insider stalking horse bidder that was owned by a number of the debtor's equity holders and also a board member); *In re Vesta Holdings, LLC*, No. 22-11019 (LSS) (Bankr. D. Del. Dec. 7, 2022) (approving an expense reimbursement of up to $1.5 million); *In re Templar Energy LLC*, No. 20-11441 (BLS) (Bankr. D. Del. June 29, 2020) (authorizing an expense reimbursement of up to $350,000 and a breakup fee of 3% of the cash component of the stalking horse purchase price); *In re DirectBuy Holdings, Inc.*, No. 16-12435 (CSS) (Bankr. D. Del. Dec. 1, 2016) (approving an expense reimbursement for a stalking horse bidder that was established by the holders of the debtors' prepetition secured notes, who were also 100% equity owners of the debtor parent); *In re iGPS Co.*, No. 13-11459 (KG) (Bankr. D. Del. July 3, 2013) (approving an expense reimbursement of up to $400,000 to a stalking horse bidder whose $49 million bid consisted of a $48 million credit bid and $1 million in cash plus assumption of assumed liabilities).

amount of the Bid Protections is consistent with the range of bid protections typically paid in sale transactions that have been recently approved by courts in this District.[36]

F. The Proposed Notices Are Appropriate Under Bankruptcy Rule 2002

62. The notices contemplated by the Bid Procedures give notice of the proposed Sale Process including a disclosure of the time, place, and methodology of the Auction, the terms and conditions for being a Qualified Bidder, the necessary terms to be included in the proposed Sale Transaction, and the deadline for filing any objections to the Sale Process or any part thereof. The Debtor submits that the notice procedures comply with Bankruptcy Rule 2002 and include information regarding the Bid Procedures necessary to enable interested Bidders to participate in the Auction, and constitute good and adequate notice of the Bid Procedures and the other components of the Sale Process. Therefore, the Debtor respectfully requests that this Court approve the proposed notice procedures.

G. Relief from Bankruptcy Rules 6004(h) and 6006(d) is Appropriate

63. Under Bankruptcy Rule 6004(h), unless the court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for fourteen (14) days after entry of the order. The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before the order is implemented.[37] Similarly, Bankruptcy Rule 6006(d) stays all orders authorizing a debtor to assign an executory

[36] *See, e.g.*, *In re Am. Eagle Del. Holding Co., LLC*, Case No. 22-10028 (JKS) (Bankr. D. Del. Mar. 8, 2022) (approving a breakup fee of 3% of the cash consideration of the stalking horse bid plus expense reimbursements equal to a maximum of 1.25% of the cash consideration of the stalking horse bid); *In re Makeup Liquidating Holdings, LLC*, Case No. 22-10050 (CSS) (Bankr. D. Del. Feb. 18, 2022) (approving breakup fee equal to 4% of the cash consideration of the stalking horse bid plus expense reimbursements equal to a maximum of approximately 3.5% of the cash consideration of the stalking horse bid); *In re Sequential Brands Grp., Inc.*, Case No. 21-11194 (JTD) (Bankr. D. Del. Sept. 24, 2021) (approving a break-up fee of 3.65% of the purchase price); *In re Knotel, Inc.*, Case No. 21-10146 (MFW) (Bankr. D. Del. Case 22-10367 Mar. 11, 2021) (approving a break-up fee of 3% of the purchase price).

[37] *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h).

contract or unexpired lease pursuant to section 365(f) of the Bankruptcy Code for fourteen (14) days, unless the court orders otherwise.

64. To preserve the value of the Debtor's estate and limit the costs of administering and preserving the Assets, it is critical that the Debtor close the Sale of the Assets as soon as possible after all closing conditions have been met or waived. Accordingly, the Debtor hereby requests that the Court waive the fourteen (14) day stay periods under Bankruptcy Rules 6004(h) and 6006(d) with respect to the Bid Procedures Order and the Sale Order.

NO PRIOR REQUEST

65. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter the Bid Procedures Order granting the relief requested herein and such other and further relief as this Court deems appropriate.

Dated: May 6, 2025

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

Debra I. Grassgreen, (*pro hac vice* pending)
Maxim B. Litvak, (*pro hac vice* pending)
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Proposed Counsel to the
Debtor and Debtor in Possession

EXHIBIT A

Bid Procedures Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SYNTHEGO CORPORATION,[1]	Case No. 25-10823 (___)
Debtor.	

ORDER (A) AUTHORIZING ENTRY INTO ASSET PURCHASE AGREEMENT WITH RESPECT TO THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, (B) APPROVING BID PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, (C) SCHEDULING AN AUCTION AND SALE HEARING, (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (E) APPROVING CERTAIN TERMINATION FEE AND EXPENSE REIMBURSEMENT PROVISIONS, AND (F) GRANTING RELATED RELIEF

Upon consideration of the motion (the "Motion")[2] of the above-captioned debtor and debtor-in-possession (the "Debtor"), for the entry of an order pursuant to sections 105(a), 363, 365, 503, 507, 1107, and 1108 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") to establish certain sales procedures which will culminate in a sale of substantially all of the Debtor's assets, scheduling an auction and sale hearing, approving the proposed termination fee and expense reimbursement in favor of the Stalking Horse Bidder, and related relief, all as more fully set forth in the Motion; and upon consideration of the First Day Declarations; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing*

[1] The Debtor's mailing address is 3696 Haven Avenue, Suite A, Redwood City, California, 94063, and the last four digits of the Debtor's federal tax identification number is 9518.

[2] A capitalized term used but not defined herein have the meaning ascribed to it in the Motion.

Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at an interim hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:[3]

A. The Debtor has articulated good and sufficient reasons for, and the best interests of its estate and stakeholders will be served by, the Court scheduling or fixing dates pursuant to this order (this "Order") for, among other things, the (i) Bid Deadline; (ii) Sale Objection Deadline; (iii) Auction; and (iv) Sale Hearing, each as defined below.

B. The Bid Procedures are fair, reasonable, and appropriate and represent the best available method for maximizing value for the benefit of the Debtor's estate.

C. It is necessary to induce the Stalking Horse Bidder and provide Bid Protections pursuant to the terms of this Order.

D. The Bid Procedures were negotiated at arm's length, in good faith, and without

[3] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

collusion. The Bid Procedures balance the Debtor's interests in emerging expeditiously from this Chapter 11 Case while preserving the opportunity to attract value-maximizing proposals beneficial to the Debtor's estate, its creditors, and other parties in interest.

E. The Bid Procedures Notice, Auction Notice, and Notice of Successful Bidder are reasonably calculated to provide the Sale Notice Parties, the Contract Counterparties, and other interested parties with proper notice of the (i) Bid Procedures; (ii) Auction; (iii) Sale Hearing; and (iv) Sale(s).

F. The Contract and Lease Procedures are fair, reasonable, and appropriate and represent the best available method for maximizing value for the benefit of the Debtor's estate.

G. The Cure Notice is reasonably calculated to provide the Contract Counterparties and other interested parties with proper notice of the Contract and Lease Procedures (including the Contract Objection Deadline and Additional Contract Objection Deadline).

H. The Motion, the Bid Procedures, and the Contract and Lease Procedures comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

I. Due, sufficient, and adequate notice of the relief granted herein has been given to all parties in interest.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted as set forth herein.

2. All formal and informal objections, if any, to the relief requested in the Motion that have not been withdrawn, waived, or settled are overruled on the merits.

3. The Bid Procedures, which are attached hereto as Exhibit 1 and incorporated herein by reference, are hereby approved in all respects and shall govern all Bidders and Bids, including those that may be submitted by Qualified Bidders at the Auction.

4. Bidders seeking to submit Bids for the Assets must do so in accordance with the terms of the Bid Procedures and this Order.

5. The Debtor is authorized, in accordance with the Bid Procedures, to grant the Bid Protections to the Stalking Horse Bidder, and such Bid Protections may be paid without further action or order by the Court in accordance with the Bid Procedures. For the avoidance of doubt, the Bid Protections are hereby authorized in the form of (a) a termination fee equal to 1.5% of the Credit Bid (the "Termination Fee") plus (b) expense reimbursement for the Stalking Horse Bidder's actual out-of-pocket costs of not to exceed $1,000,000 (the "Expense Reimbursement" [and, together with the Termination Fee, the "Bid Protections"). Any Bid Protections incurred by the Debtor pursuant to this Order and the Bid Procedures will be payable to the Stalking Horse Bidder, in the event the Stalking Horse Bidder is not a Successful Bidder, from the proceeds of the cash portion of the Purchase Price of the applicable Successful Bid upon Closing.

6. The deadline for all Potential Bidders to submit a Qualified Bid (other than the Stalking Horse Bidder) is **_____, 2025 at 5:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline"), as set forth in the Bid Procedures.

7. By **_____, 2025**, the Debtor shall file a notice on the Court's docket (an "Auction Notice") providing notice of the location of the Auction.

8. As set forth in the Bid Procedures, if at least one Qualified Bid is received by the Bid Deadline (in addition to the Stalking Horse Bidder's deemed Qualified Bid), the Debtor will hold the Auction beginning on **_____, 2025 at 10:00 a.m. (prevailing Eastern Time)** in accordance with the Bid Procedures at the location designated by the Debtor in the Auction Notice.

9. The Cure Notice substantially in the form attached to this Order as Exhibit 3 is approved in all respects. No other or further notice of the Contract and Lease Procedures, or relevant objection or other deadlines is required.

10. On or before _____**, 2025**, the Debtor will file and serve the Cure Notice on each of the non-debtor counterparties (the "Contract Counterparties") listed on the Cure Schedule by first class mail.

11. If, subsequent to filing the Cure Notice, the Debtor identifies additional executory contracts or unexpired leases that it wishes to add to or remove from the Cure Schedule (each an "Additional Contract"), the Debtor shall, as soon as practicable after making such a determination, send a supplemental Cure Notice (a "Additional Cure Notice") to the applicable Contract Counterparties to such Additional Contracts.

12. Objections to a proposed Cure Amount with respect to any Potential Assumed/Assigned Contracts (a "Cure Objection") must be: (i) made in writing and filed on the docket for the Chapter 11 Case no later than _____**, 2025 at 5:00 p.m. (prevailing Eastern Time)** (the "Contract Objection Deadline"); (ii) state the basis of such Cure Objection with specificity, including, without limitation, the Cure Amount alleged to be due to such Contract Counterparty, and include complete contact information for such Contract Counterparty (including address, telephone number, and email address); (iii) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and (iv) be served on the Notice Parties, so as to be actually received by them on or before the Contract Objection Deadline.

13. Any Contract Counterparty that fails to file a Cure Objection by the Contract Objection Deadline in accordance with the Contract and Lease Procedures: (i) shall be deemed to have forever waived and released any right to assert a Cure Objection and (ii) shall be forever

barred and estopped from (a) objecting to the Cure Amount set forth on the Cure Schedule with respect to the Potential Assumed/Assigned Contract and (b) seeking additional amounts arising under the Potential Assumed/Assigned Contract prior to the closing of the Sale.

14. Any Contract Counterparty that fails to file an Assignment Objection by the Contract Objection Deadline in accordance with the Contract and Lease Procedures: (i) shall be deemed to have forever waived and released any right to assert an Assignment Objection; (ii) shall be deemed to have consented to the assumption, assumption and assignment, or transfer, as the case may be, of its Potential Assumed/Assigned Contract without the necessity of obtaining any further order of the Court; and (iii) shall be forever barred and estopped from objecting to the assumption, assumption and assignment, or transfer, as the case may be, of its Potential Assumed/Assigned Contract.

15. Any Contract Counterparty that fails to file an Additional Contract Objection by the Additional Contract Objection Deadline in accordance with the Contract and Lease Procedures: (i) shall be deemed to have forever waived and released any right to assert an Cure Objection or Assignment Objection; (ii) shall be deemed to have consented to the assumption, assumption and assignment, or transfer, as the case may be, of their Potential Assumed/Assigned Contract without the necessity of obtaining any further order of the Bankruptcy Court; and (iii) shall be forever barred and estopped from (a) objecting to the Cure Amount set forth in an Additional Contract Notice with respect to the Potential Assumed/Assigned Contract and (b) seeking additional amounts arising under the Potential Assumed/Assigned Contract prior to, during, or after the closing of the Sale.

16. On or before _____**, 2025**, the Debtor will file with the Court and serve on the Sale Notice Parties and on all Contract Counterparties to Transferred Contracts included in the

Successful Bid(s), the Notice of Successful Bidder. With respect to any Sale Transaction, a filed Notice of Successful Bidder shall include, as exhibits, (a) a copy of the Stalking Horse Purchase Agreement or the purchase agreement of the Successful Bidder, as applicable; and (b) a copy of the proposed Sale Order.[4]

17. Any Contract Counterparty to a Transferred Contract that objects to a Successful Bidder's provision of additional assurance of future performance (the "Adequate Assurance Objection") must file such Adequate Assurance Objection on or before _____, **2025 at 5:00 p.m. (prevailing Eastern Time)** and serve such objection on the Notice Parties and the applicable Successful Bidder. To the extent the parties are unable to resolve an Adequate Assurance Objection, the Court will set a hearing, which may be at the Sale Hearing, on the Adequate Assurance Objection to determine whether terms of the Successful Bid are compliant with section 365 of the Bankruptcy Code in providing adequate assurance of future performance to the Contract Counterparty of the applicable Transferred Contract.

18. Following the conclusion of the Auction, the Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Sale Hearing or by filing a notice on the Court's docket. At the Sale Hearing, the Debtor shall present the Successful Bid(s) to the Court for approval.

19. The Debtor is hereby authorized to conduct the Sale(s) without the necessity of complying with any state or local transfer laws or requirements.

20. The Bid Procedures Notice substantially in the form attached to this Order as Exhibit 2 is approved in all respects. Other than with respect to the Notice of Successful Bidder,

[4] The Debtor may, in its discretion, serve a Notice of Successful Bidder by U.S. Mail without attached copies of a purchase agreement and/or proposed Sale Order; *provided, however*, that any such Notice of Successful Bidder must identify where parties receiving such notice may access such documents free of charge.

no other or further notice of the Bid Procedures, the Sale Hearing, relevant objection or other deadlines, or the Sale(s) is required.

21. To be considered, any objection to the Sale(s) must: (a) comply with the Bankruptcy Rules and the Local Rules; (b) be made in writing and filed with the Court; and (c) be filed on or before **_____, 2025 at 5:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline").

22. The failure of any objecting person or entity to timely file an objection prior to the Sale Objection Deadline shall be a bar to the assertion at the Sale Hearing or thereafter of any objection to the relief requested by the Debtor, or the consummation and performance of the Sale of the Assets to the Successful Bidder, including the transfer of the Assets free and clear of all Encumbrances (with the same to attach to the cash proceeds of the Sale to the same extent and with the same order of priority, validity, force, and effect which they previously had against the Assets, subject to the rights and defenses of the Debtor and the Debtor's estate with respect thereto), and the Debtor's assumption and assignment or transfer of the Transferred Contracts to the Successful Bidder.

23. No Qualified Bidder or any other person or entity, other than the Stalking Horse Bidder, shall be entitled to any expense reimbursement, break-up fee, termination, or other similar fee or payment in connection with the Sale.

24. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h) or 6006(d), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

25. The Debtor is authorized and empowered to execute and deliver such documents, and to take and perform all actions necessary to implement and effectuate the relief granted in this Order.

26. All persons and entities that participate in the Sale Process and/or the Auction shall be deemed to have knowingly and voluntarily submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Bid Procedures, the Sale Process, and the Auction.

27. To the extent of any inconsistences between the Bid Procedures and this Order, this Order shall govern.

28. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the Bid Procedures or this Order.

EXHIBIT 1

Bid Procedures

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SYNTHEGO CORPORATION,[1]	Case No. 25-10823 (___)
Debtor.	

PROCEDURES FOR SALE OF THE DEBTOR'S ASSETS

On May 5, 2025 (the "Petition Date"), the above-captioned debtor and debtor in possession (the "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtor is operating its business and managing its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.[2]

On [●], 2025, the United States Bankruptcy Court for the District of Delaware (the "Court") entered an order (the "Bid Procedures Order") authorizing the Debtor to, among other things, solicit offers for a Sale Transaction (as defined herein) through the process and procedures set forth below (the "Bid Procedures").

The Debtor seeks to consummate a transaction (a "Sale Transaction") for the sale of substantially all of the Debtor's assets (the "Assets") under section 363 and, as applicable, section 365, of the Bankruptcy Code to the extent certain criteria are satisfied as set forth in greater detail below. Any Sale Transaction will be subject to the approval of the Court. ***A hearing by the Court on the approval of any Sale Transaction(s) is currently scheduled for _____, 2025 at __:00 _.m. (Eastern Time) (the "Sale Hearing").***

Summary of Key Dates Established by Bid Procedures

Date[3]	Event
[P + 21], 2025 at 5:00 p.m.	Bid Procedures Motion Objection Deadline

[1] The Debtor's mailing address is 3696 Haven Avenue, Suite A, Redwood City, California, 94063, and the last four digits of the Debtor's federal tax identification number is 9518.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion for (I) An Order (A) Approving Bid Procedures for the Sale of the Debtor's Assets; (B) Approving Certain Bid Protections in Connection with the Debtor's Entry Into Any Potential Stalking Horse Agreements; (C) Scheduling the Auction and Sale Hearing; (D) Approving the Form and Manner of Notice Thereof; and (E) Granting Related Relief; and (II) An Order or Orders (A) Approving the Sale of the Debtor's Assets Free and Clear of All Encumbrances; and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases [Docket No. ●] (the "Bid Procedures Motion").

[3] All times are prevailing Eastern time. The Debtor may extend the deadlines set forth herein, subject to the terms of the Interim Order (I) Authorizing the Debtor to Obtain Post-Petition Secured Financing, (II) Authorizing the Use of Cash Collateral, (III) Granting Liens and Superpriority Administrative Expense Status, (IV) Granting

Date[3]	Event
[P + 30], 2025 at _:00 _.m.	Bid Procedures Hearing
[P + 35], 2025	Deadline to File and Serve Cure Notice
[P + 49], 2025 at 5:00 p.m.	Contract Objection Deadline (including any Cure Objection or Assumption/Assignment Objection)[4]
[P + 49], 2025 at 5:00 p.m.	Deadline to Object to Sale
[P + 50], 2025 at 5:00 p.m.	Deadline to Submit Qualified Bids
[P + 51], 2025	Deadline to Designate Qualified Bids and File Auction Notice
[P + 52], 2025 at 10:00 a.m.	Sale Auction
[P + 53], 2025 at 10:00 a.m.	Deadline to File Notice of Successful Bidder and Back-Up Bidder
[P + 56], 2025 at 5:00 p.m.	Post-Auction Objection Deadline
[P + 56], 2025 at 5:00 p.m.	Adequate Assurance Objection Deadline
[P + 58], 2025 at 10:00 a.m.	Sale Hearing
[P + 70], 2025	Deadline to Close Transaction

I. BID PROCEDURES

A. General Sale Transaction Information

1. Assets for Sale

The Debtor is soliciting interest for the consummation of a Sale Transaction with respect to the Assets. All of the Debtor's rights, title, and interest in and to the Assets shall be sold free and clear of any Encumbrances (as defined in the Bid Procedures Motion) on an "as is, where is" and "with all faults" basis and without representations, warranties or guarantees, express, implied or statutory, written or oral, of any kind, nature or description, by the Debtor, its affiliates or their respective representatives, except as otherwise provided in the applicable purchase agreement, to the maximum extent permitted by sections 363 and 365 of the Bankruptcy Code, with such Encumbrances to attach to the net proceeds of the applicable Sale Transaction with the same

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Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling A Final Hearing, and (VII) Granting Related Relief (the "Interim DIP Order") or any final dip financing order that is entered in this chapter 11 case (the "Final DIP Order" and together with the Interim DIP Order, the "DIP Order") and the Stalking Horse Purchase Agreement.

[4] Contract Counterparty whose executory contracts or unexpired leases are included in an Additional Cure Notice shall have until the later of the Contract Objection Deadline or seven (7) calendar days after the Debtor files and serves the Additional Cure Notice to file a Contract Objection.

validity and priority as such Encumbrances applied against the respective the Assets purchased pursuant to these Bid Procedures.[5]

The Debtor, in its discretion, exercised in good faith and in consultation with the Consultation Parties,[6] will have the right to determine the highest or best value from the offers received.

Further information on the Assets being offered for sale pursuant to these Bid Procedures is available upon request from the Debtor's investment banker, Raymond James (Attn: Geoffrey Richards (Geoffrey.Richards@RaymondJames.com) and Simon Wein (Simon.Wein@raymondjames.com); on the terms and conditions set forth below.

2. Access to Due Diligence Materials

To participate in the bidding process and receive due diligence information, including full access to the Debtor's electronic data room (the "Data Room") and additional non-public information regarding the Debtor (the "Diligence Materials"), parties interested in receiving due diligence information to participate in the bidding process (each, an "Interested Party") must deliver or have previously delivered to the Debtor, if determined to be necessary by the Debtor in its sole discretion, the Preliminary Bid Documents (as defined herein) to the following parties (the "Recipient Parties"):

(i) counsel to the Debtor: (a) Fenwick & West, LLP, 902 Broadway, 18th Floor, New York, NY 10010, Attn: Ethan Skerry (eskerry@fenwick.com), and Brendan Montgomery (bmontgomery@fenwick.com); (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: James E. O'Neill (joneill@pszjlaw.com); and (c) Pachulski Stang Ziehl & Jones LLP, One Sansome Street, Suite 3430, San Francisco, CA 94104, Attn: Debra I. Grassgreen (dgrassgreen@pszjlaw.com) and Maxim Litvak (mlitvak@pszjlaw.com); and

(ii) investment banker to the Debtor: Raymond James & Associates, Inc., 320 Park Avenue, New York, NY 10022; Attn: Geoffrey Richards (Geoffrey.Richards@RaymondJames.com) and Simon Wein (Simon.Wein@raymondjames.com).

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[5] In connection with these Bid Procedures, Potential Bidders (as defined below) may also submit a bid to make an investment in the Debtor in connection with a chapter 11 plan (a "Chapter 11 Plan Bid").

[6] The "Consultation Parties" are the official committee of unsecured creditors (the "Committee"), if any. For the avoidance of doubt, the Stalking Horse Bidder and its affiliates shall not be Consultation Parties, and the Debtor shall establish reasonable procedures to prevent such parties or their representatives from being privy to confidential information concerning the bids of other Bidders for the Assets for so long as the Stalking Horse Bidder or any other affiliate of the DIP Agent (as defined in the DIP Order) or other DIP Lenders remains a Bidder; provided, however, that if the Stalking Horse Bidder later withdraws such bid the DIP Agent shall immediately be treated as a Consultation Party and shall have any consent rights provided herein, as applicable for purposes of these Bid Procedures.

The "Preliminary Bid Documents" that must be submitted to the Recipient Parties include: (a) an executed confidentiality agreement using the Debtor's form, as may be amended, on terms reasonably acceptable to the Debtor, to the extent not already executed (a "Confidentiality Agreement") and (b) a statement and/or other factual support demonstrating to the Debtor's satisfaction in the exercise of its reasonable business judgment that the Interested Party has a *bona fide* interest in purchasing all or any portion of the Assets. Any Interested Party who, in the Debtor's determination, qualifies for access to the Diligence Materials shall be deemed a "Potential Bidder." For the avoidance of doubt, the Stalking Horse Bidder (as defined herein) shall be a Potential Bidder and does not need to submit the Preliminary Bid Documents.

The Debtor will provide any Potential Bidder such due diligence access or additional information as the Debtor deems appropriate, which may include, without limitation, the right to withhold, restrict, or to delay providing any Diligence Materials to a Potential Bidder that the Debtor, in its reasonable discretion, determines are, among other things, business-sensitive, may risk unduly placing the Debtor at a competitive disadvantage, or are otherwise inappropriate for disclosure to such Potential Bidder at such time.

The Potential Bidder shall return or destroy any non-public information the Debtor or its advisors provided to the Potential Bidder in accordance with the terms of the confidentiality agreement executed by the Debtor and the Potential Bidder.

3. Due Diligence from Potential Bidders

Each Interested Party, Potential Bidder, and Qualified Bidder (as defined herein) (each, a "Bidder" and, collectively, the "Bidders") shall comply with all requests for additional information and due diligence access by the Debtor or its advisors regarding such Bidder and its contemplated Sale Transaction. Failure by a Potential Bidder to comply with requests for additional information and due diligence access will be a basis for the Debtor to determine that the Potential Bidder is not a Qualified Bidder. Failure by a Qualified Bidder to comply with such requests for additional information and due diligence access will be a basis for the Debtor to determine that a bid made by a Qualified Bidder is not a Qualified Bid.

B. Auction Qualification Process

1. Stalking Horse Bidder

The Debtor has (i) designated Perceptive Credit Holdings III, LP, a Delaware limited partnership, as the stalking horse bidder (the "Stalking Horse Bidder"), whose Qualified Bid shall serve as the stalking horse bid ("Stalking Horse Bid"), and (ii) executed, subject to higher or otherwise better offers, that certain Asset Purchase Agreement memorializing the proposed transaction set forth in the Stalking Horse Bid (the "Stalking Horse Purchase Agreement").

2. Form of Asset Purchase Agreement

A Potential Bidder must submit a proposed asset purchase agreement, similar in form and substance, as modified, to the Stalking Horse Purchase Agreement, accompanied by a comparison of the Potential Bidder's purchase agreement to the Stalking Horse Purchase Agreement.

3. Designation as Qualified Bidder

A "Qualified Bidder" is a Potential Bidder (or combination of Potential Bidders whose bids for the Assets constitute a Topping Bid (as defined herein)), that satisfies the Bid Conditions defined and as described below and otherwise satisfies the requirements of the Bid Procedures Order and the Bid Procedures set forth herein, and that the Debtor, after consultation with the Consultation Parties, determines is reasonably likely to submit a bona fide offer for all or any portion of the Assets and to be able to consummate a Sale Transaction (or Sale Transactions, as applicable) if selected as a Successful Bidder (as defined herein). For the avoidance of doubt, the Stalking Horse Bidder constitutes a Qualified Bidder.

The Debtor, after consultation with the Consultation Parties, shall determine and notify any Potential Bidder as to whether such Potential Bidder is a Qualified Bidder no later than **[_____], 2025**.

C. Bidding Process

The Debtor and its advisors shall, after consultation with the Consultation Parties: (i) determine whether a Potential Bidder is a Qualified Bidder; (ii) coordinate the efforts of Bidders in conducting their due diligence investigations, as permitted by the provisions hereof; (iii) receive offers from Qualified Bidders; and (iv) negotiate any offers made to purchase all or any portion of the Assets, including the terms of any submitted asset purchase agreements. The Debtor, in consultation with the Consultation Parties, shall have the right to adopt such other rules for the bidding process that are not inconsistent with the Bid Procedures Order, the DIP Order, or these Bid Procedures that will better promote the goals of such process.

1. Bid Deadline

The Bid Deadline is [P + 50], 2025 at 5:00 p.m. (prevailing Eastern Time). On or before the Bid Deadline, a Qualified Bidder that desires to make a proposal, solicitation, or offer for a Sale Transaction (each, a "Bid") shall deliver written and electronic copies of its Bid to the Recipient Parties. The Debtor shall promptly provide copies of all Bids to counsel for the Consultation Parties.

Subject to consultation with the Consultation Parties, a Bid received after the Bid Deadline shall not constitute a Qualified Bid.

2. Qualified Bids

To be eligible to participate in the Auction and to be eligible for consideration as a Qualified Bidder, a Potential Bidder must deliver a Bid, so as to be received by the Recipient Parties on or before the Bid Deadline, that meets the following requirements, as may be modified by the Debtor in its reasonable discretion (collectively, the "Bid Conditions"):

i. Purpose and Identity of Assets to be Purchased. Each Bidder must state that the Bid includes an offer by the Bidder to effectuate a Sale Transaction and identify with specificity which Assets are included in the Bid.

ii. Good Faith Deposit. Each Bid must be accompanied by a cash deposit (the "Good Faith Deposit") in the form of a wire transfer, certified check, or cash payable to the order of counsel pursuant to instructions to be provided by the Debtor equal to 10% of the Bidder's proposed Purchase Price (as defined herein), which will be held in a non-interest bearing escrow or trust account. For the avoidance of doubt, the Stalking Horse Bidder is not required to submit a Good Faith Deposit.

iii. Purchase Price. Each Bid must clearly set forth the cash purchase price (the "Cash Consideration") and identify any non-cash consideration included in such Bid (together with the Cash Consideration, the "Purchase Price") including, without limitation, which executory contracts and unexpired leases the Bidder expects the Debtor to assume and assign to the Bidder (the "Transferred Contracts") and which liabilities, if any, of the Debtor the Bidder is agreeing to assume (the "Assumed Liabilities"). The Purchase Price associated with each Bid may include only cash and/or other consideration acceptable to the Debtor after consultation with the Consultation Parties. The cash component of any other Qualified Bid with respect to all or any portion of the Assets must be no less than an amount necessary to satisfy the Termination Fee and Expense Reimbursement, as defined in the Stalking Horse Purchase Agreement, and be a Topping Bid with respect to the applicable Assets. In order for the Bid to qualify as a "Topping Bid," it must provide for consideration at Closing (as defined herein) that is, in the aggregate, equal to or in excess of the sum of: (i) the Stalking Horse Bid; (ii) the Expense Reimbursement; (iii) the Termination Fee; and (iv) $500,000.

iv. Binding and Irrevocable. Each Bid must include a signed writing stating that it is binding and irrevocable until the selection of the Successful Bidder, provided that if such Bidder is selected as the Successful Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the closing of the Sale with the Successful Bidder or, as applicable, the Back-Up Bidder (the "Closing").

v. Contemplated Transaction Documents. Other than for any Accepted Chapter 11 Plan Bid, each Bid must include an executed purchase agreement marked against the Stalking Horse Purchase Agreement with the Stalking Horse Bidder pursuant to which the Qualified Bidder proposes to effectuate the contemplated Sale Transaction including: (i) a redlined copy of the purchase agreement marked to show all changes requested by the Qualified Bidder against the Stalking Horse Purchase Agreement; and (ii) any changes to any exhibits or schedules to the Stalking Horse Purchase Agreement (collectively, the "Contemplated Transaction Documents"). The terms and conditions of the Contemplated Transaction Documents must be, in the aggregate, not materially more burdensome to the Debtor than the provisions contained in the Stalking Horse Purchase Agreement with the Stalking Horse Bidder. A Bid must identify with particularity each and every condition to Closing and all Transferred Contracts pursuant to the Contemplated Transaction Documents. All Bids must provide that all Cure Amounts (as defined herein) will be paid by such Bidder. ***The Contemplated Transaction Documents must include a commitment to close by no later than [P***

+ 70], 2025. A Bid shall contain a detailed description of how the Potential Bidder intends to treat current employees of the Debtor.

vi. Contingencies. A Bid may not be conditioned on obtaining financing or any internal approval or on the outcome or completion of due diligence, but may be subject to the accuracy in all material respects at Closing of representations and warranties at or before Closing or the satisfaction in all material respects of customary representations and warranties for transactions of similar size and nature at or before Closing or the satisfaction in all material respects of customary conditions for transactions of similar size and nature at or before Closing. A Bid must disclose any governmental approvals identified by the Potential Bidder other than as set forth in the Contemplated Transaction Documents that may impact the evaluation of such Bid.

vii. No Collusion. Each Bid must include a representation that the Bidder has not engaged in any collusion with respect to its Bid submission (though Potential Bidders may be permitted to make joint bids with the prior written consent of the Debtor) and that the Bidder will not engage in any collusion with respect to any Bids, the Auction, or the Sale Process.

viii. Authorization to Bid and Identity of Bidder. Each Bid must include evidence of authorization and approval from such Potential Bidder's board of directors (or comparable governing body, or a statement as to why such approval is unnecessary) with respect to the submission, execution, delivery, and closing of the Contemplated Transaction Documents. A Bid must also fully disclose the identity of the entity that is submitting the Bid, including the identity of the ultimate beneficial owners of the Bidder and the identity of any person or entity providing debt or equity financing for the Bid.

ix. Financing Sources. Each Bid must include written evidence that demonstrates the Potential Bidder has the necessary financial ability to close the contemplated Sale Transaction and provide adequate assurance of future performance under all Transferred Contracts. Such information may include, *inter alia*, the following:

a. the Potential Bidder's current financial statements (audited, if they exist);

b. contact names, telephone numbers, and e-mail addresses for verification of financing sources;

c. evidence of the Potential Bidder's internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated Sale Transaction (including confirmation that the funding of such commitments is not subject to any contingency);

d. proof by the Potential Bidder of its financial capacity to close its proposed Sale Transaction(s), which may include written representations of the Potential Bidder's financial wherewithal or

financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring all or any portion of the Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtor; and

e. any other form of financial disclosure of credit-quality support information acceptable to the Debtor demonstrating that such Potential Bidder has the ability to close the contemplated Sale Transaction.

x. Adequate Assurance of Future Performance. Each Bid must demonstrate, in the Debtor's reasonable business judgment, after consultation with the Consultation Parties, that the potential Bidder can provide adequate assurance of future performance to the applicable counterparty under all Transferred Contracts as required by section 365 of the Bankruptcy Code.

xi. No Fees Payable to Qualified Bidder. A Bidder (other than the Stalking Horse Bidder) may not request any break-up fee, termination fee, expense reimbursement, or any similar type of payment. Moreover, by submitting a Bid, a Bidder shall be deemed to waive the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code relating in any way to the submission of its Bid, compliance with the Bid Procedures, or participation in the Sale Process.

xii. Payment of the Termination Fee and Expense Reimbursement. A Bid must allow for the payment of the Termination Fee and Expense Reimbursement to the Stalking Horse Bidder from the first proceeds of the cash portion of the Purchase Price of such Bid upon Closing.

xiii. Non-Reliance. A Bid must include an acknowledgement and representation of the Potential Bidder that it has had an opportunity to conduct any and all due diligence regarding the Assets (as applicable to its Bid) and Assumed Liabilities prior to making its Bid, that it has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and that it did not rely upon any written or oral statements, representations, warranties, or guaranties, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or, as applicable, the physical condition of the Assets, the Assumed Liabilities, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Contemplated Transaction Documents.

xiv. As Is, Where Is. A Bid must include an acknowledgement and representation of the Potential Bidder that it understands that any Sale Transaction shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtor, its agents, or its estate except to the extent set forth in the Stalking Horse Purchase Agreement or the purchase agreement of the Successful Bidder, as applicable.

A Bid received from a Potential Bidder shall constitute a "Qualified Bid" if the Debtor believes, after consultation with the Consultation Parties, that such Bid would be consummated if selected as the Successful Bid. The Debtor shall have the right to reject any and all Bids that it believes, after consultation with the Consultation Parties, do not comply with the Bid Procedures. In the event that any Potential Bidder is determined by the Debtor not to be a Qualified Bidder, the Potential Bidder shall be refunded its Good Faith Deposit. For the avoidance of doubt, the Stalking Horse Bid constitutes a Qualified Bid.

Subject to the terms of the DIP Order and section 363(k) of the Bankruptcy Code, persons or entities holding a perfected security interest in the Assets may seek to submit a credit bid on such Assets, to the extent permitted by applicable law, any other Court orders and the documentation governing the Debtor's secured debt. For the further avoidance of doubt, nothing herein shall impact any rights of the DIP Secured Parties or the Prepetition Secured Parties (each as defined in the DIP Order).

D. Auction

After the receipt and review of all Qualified Bids, the Debtor shall make a determination, after consultation with the Consultation Parties, whether to accept the highest or best Qualified Bid(s) for all or any portion of the Assets.

To the extent the Debtor receives Qualified Bids and determines to proceed to Auction, the Debtor, after consultation with the Consultation Parties, shall determine which Qualified Bid represents the then highest or otherwise best Bid for the Assets (the "Baseline Bid"). The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitutes the Successful Bid (as defined herein) shall take into account any factors the Debtor, after consultation with the Consultation Parties, reasonably deems relevant to the value of the Qualified Bid to its estate, including, *inter alia*: (a) the amount and nature of the consideration; (b) the certainty of closing; (c) the net economic effect of any changes to the value to be received by the Debtor's creditors from the proposed Sale Transaction; (d) the allocation of the Purchase Price between or among Assets; (e) tax consequences of such Qualified Bid; and (f) any other quantitative or qualitative criteria available to assess such Bid (collectively, the "Bid Assessment Criteria"). The Baseline Bid must be not less than the Purchase Price of the Stalking Horse Bid *plus* (ii) the Termination Fee *plus* (iii) the Expense Reimbursement *plus* (iv) $500,000.

On or before _____***, 2025***, the Debtor shall file a notice on the Court's docket (an "Auction Notice") providing notice of the location of the Auction.

Unless otherwise designated by the Debtor, after consultation with the Consultation Parties, the Auction shall commence at ***10:00 a.m. (Eastern Time) on _____, 2025*****,** at a location to be designated in the Auction Notice. In the Debtor's discretion, the Auction may be held by telephonic or video conference.

The Auction shall be conducted according to the following procedures:

1. Participation at the Auction

Only the Stalking Horse Bidder(s) and Qualified Bidders that have submitted Qualified Bids are eligible to participate at the Auction. Only the authorized representatives and professional advisors of each of the Qualified Bidders, the Stalking Horse Bidder, the Debtor, the Consultation Parties, the United States Trustee for the District of Delaware, and creditors of the Debtor subject to the below notice requirement shall be permitted to attend the Auction.

Except as otherwise set forth herein, the Debtor, after consultation with the Consultation Parties may conduct the Auction in the manner it determines will result in the highest or best offer(s) for the Assets in accordance with the Bid Procedures.

In the event, after the conclusion of the Auction, that certain discrete Assets which are not included in the Successful Bid have not been sold (the "Unsold Assets"), the Debtor may, in the exercise of its business judgment and after consultation with the Consultation Parties, resume an auction for the sale of the Unsold Assets, on such bid procedures as may be implemented by the Debtor after consultation with the Consultation Parties.

2. Observing Auction by Creditors

Creditors of the Debtor that do not intend to bid at the Auction may attend and observe the auction so long as they confirm by email may that they plan to attend. Email should be sent to joneill@pszjlaw.com.

3. The Debtor Shall Conduct the Auction

The Debtor and its professionals shall direct and preside over the Auction. At the start of the Auction, the Debtor shall describe the terms of the Baseline Bid. All Bids made thereafter shall be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Bid shall be fully disclosed to all other Qualified Bidders. The Debtor reserves the right to conduct the Auction, after consultation with the Consultation Parties, in the manner designed to maximize value based upon the nature and extent of the Qualified Bids received in accordance with the Bid Procedures, the Bid Procedures Order, the Bankruptcy Code, and any other order of the Court entered in connection herewith and disclosed to each Qualified Bidder. The Debtor shall maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid. Pursuant to Local Rule 6004-1, each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the Sale Process, the Bid Procedures, the Auction, or the proposed Sale Transaction.

4. Terms of Overbids

An "Overbid" is any bid made at the Auction by a Qualified Bidder subsequent to the Debtor's announcement of the applicable Baseline Bid(s) that satisfies the following conditions:

(a) Minimum Increment

During the Auction, bidding shall begin with the Baseline Bid. The Debtor reserves all rights with respect to the comparison of Qualified Bids to the Stalking Horse Bid and the determination of the Baseline Bid subject to the rights of the Consultation Parties as provided for herein. Any Overbid to the initial Baseline Bid at the start of the Auction (the "Initial Overbid")

shall be in increments of no less than a value equal to an amount to be determined by the Debtor in an exercise of its business judgment, after consultation with the Consultation Parties (the "Minimum Increment"); *provided, however*, that to the extent that the Baseline Bid constitutes the Stalking Horse Bid, the bidding for such Assets at the first round of bidding will start at an amount equal to the sum of: (i) the value of the Baseline Bid, plus (ii) the amount of the Termination Fee and Expense Reimbursement, *plus* (iii) $500,000, in cash or other consideration acceptable to the Debtor, after consultation with the Consultation Parties. Any Overbids subsequent to the Initial Overbid shall be made in increments of the Minimum Increment; *provided, however*, that any Overbids by the Stalking Horse Bidder shall only be required to be equal to the sum of (x) (1) the Baseline Bid or the then existing highest Bid *plus* (2) the Minimum Increment *less* (y) the sum of the amount of the Bid Protections applicable to the Assets included in the Bid.

Any Overbid made by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless the Debtor, after consultation with the Consultation Parties, accepts a higher Qualified Bid as an Overbid.

(b) Consideration of Overbids

Subject to the terms of the DIP Order, the Debtor reserves the right, after consultation with the Consultation Parties, to make one or more adjournments in the Auction to, among other things: facilitate discussions between the Debtor and individual Qualified Bidders; allow individual Qualified Bidders to consider how they wish to proceed; and give Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor, in the exercise of its business judgment and after consultation with the Consultation Parties, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed Sale Transaction at the prevailing Overbid amount.

(c) Evidence of Ability to Close Sale Transaction

To the extent not previously provided on or before the Bid Deadline, a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, evidence reasonably acceptable to the Debtor, after consultation with the Consultation Parties, demonstrating such Qualified Bidder's ability to close the Sale Transaction proposed by such Overbid.

5. Additional Procedures

The Debtor, after consultation with the Consultation Parties, may (a) determine which Qualified Bid or Qualified Bids, if any, is the highest or best offer for all or any portion of the Assets, (b) reject at any time before entry of an order of the Court approving the Sale Transaction of the Assets pursuant to a Qualified Bid, any Bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, the Bid Procedures, or the Bid Procedures Order; or (iii) contrary to the best interest of the Debtor, its estate, and its creditors, (c) modify the Bid Procedures in response to the bidding activity at the Auction.

6. Consent to Jurisdiction as Condition to Bidding

All Qualified Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Court and to have waived any right to a jury trial in connection with any disputes relating to the Sale Process, the Auction, the Bid Procedures, and the construction and enforcement of each Qualified Bidder's Contemplated Transaction Documents, as applicable.

7. Closing the Auction

The Auction shall continue until there is only one Qualified Bid for all of the Assets that the Debtor determines, in the exercise of its business judgment and after consultation with the Consultation Parties, is the highest or otherwise best Qualified Bid (such Qualified Bid, the "Successful Bid", and such Qualified Bidder, the "Successful Bidder"), and that further bidding is unlikely to result in a higher or otherwise better Qualified Bid, at which point, the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction. In selecting the Successful Bid, the Debtor, after consultation with the Consultation Parties, may consider all factors relevant to the sale of the Assets, including the Bid Assessment Criteria.

Upon the closing of the Auction, the Debtor, after consultation with the Consultation Parties, shall identify the Successful Bidder and the Successful Bid and the Back-Up Bidder and Back-Up Bid as soon as reasonably practicable which highest or best offer will provide the greatest amount of net value to the Debtor, and advise the Qualified Bidders of such determination. Due to the potential combinations of Assets that may be included in any Bid, the Debtor reserves all rights with respect to the comparison of Qualified Bids and the determination of the Successful Bidder and Back-Up Bidder (as defined herein).

The Qualified Bidder with the second highest or otherwise best Bid at the Auction, as determined by the Debtor, after consultation with the Consultation Parties, shall be required to serve as the back-up bidder (the "Back-Up Bidder"). The identity of the Back-Up Bidder and the amount and material terms of the final Bid of the Back-Up Bidder (the "Back-Up Bid") shall be announced by the Debtor at the conclusion of the Auction at the same time the Debtor announces the Successful Bid. Any Back-Up Bidder shall keep its Back-Up Bid open and irrevocable until the Closing of the Sale Transaction with the Successful Bidder. The Good Faith Deposit of the Back-Up Bidder shall be returned by the Debtor within three (3) days after Closing of the Successful Bid.

Within one (1) business day after the close of the Auction, (i) the Successful Bidder shall supplement the Successful Bidder's Good Faith Deposit such that the Good Faith Deposit shall be equal to an amount that is ten percent (10%) of the Purchase Price of the Successful Bid; and (ii) the Back-Up Bidder shall supplement the Back-Up Bidder's Good Faith Deposit such that the Good Faith Deposit shall be equal to an amount that is ten percent (10%) of the Purchase Price of the Back-Up Bid.

The Debtor shall not consider any Bids or Overbids submitted after the closing of the Auction and any and all such Bids and Overbids shall be deemed untimely.

As stated above, the Successful Bid of the Successful Bidder and the Back-Up Bid of the Back-Up Bidder, respectively, must be irrevocable until Closing.

E. Notice of Acceptance of Successful Bid

Upon determination of the Successful Bid and no later than ***10:00 a.m. (ET) on _____, 2025***, the Debtor will file a notice (the "Notice of Successful Bidder") of the Debtor's intent to effectuate a Sale Transaction for the Assets with the Successful Bidder upon the approval of the Successful Bid by the Court at the Sale Hearing.[7] The Debtor's presentation of a particular Successful Bid to the Court for approval does not constitute the Debtor's acceptance of such Successful Bid. The Debtor will be deemed to have accepted a Successful Bid only when such Successful Bid has been approved by the Court at the Sale Hearing.

F. Free of Any and All Interests

Except as otherwise provided in the purchase agreement of the Successful Bidder and subject to the approval of the Court, all of the Debtor's rights, title, and interest in and to the Assets subject thereto shall be sold free and clear of any Encumbrances to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Encumbrances to attach to the proceeds of the sale of the applicable Assets with the same validity and priority as such Encumbrances were held against the applicable Assets prior to the sale.

G. Commissions

The Debtor shall be under no obligation to pay any commissions, fees, or expenses to any Potential Bidder's agent, advisor, or broker. All commissions, fees, or expenses for any such agents, advisors, or brokers shall be paid by the applicable Potential Bidder at such Potential Bidder's discretion. In no case shall any commissions, fees, or expenses for any Potential Bidder's agent, advisor, or broker be deducted from any proceeds derived from any Sale of the Assets. This paragraph shall not apply to any bid protections that become payable pursuant to the terms of the Stalking Horse Purchase Agreement.

H. Post-Auction Objection Deadline

The deadline to object to the conduct of the Auction and/or the particular terms of any proposed Sale Transaction in a Successful Bid, other than with respect to a Stalking Horse Bid is ***_____, 2025 at 5:00 p.m. (prevailing Eastern Time)*** (the "Post-Auction Objection Deadline"). Any such objection must be filed and served so as to be received by the Notice Parties.

I. Sale Hearing

The Sale Hearing will occur on [P + 58], 2025 at __:00 _.m. (prevailing Eastern Time) before the Hon. _____, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. Any objections to the Sale Transaction(s) requested at the Sale Hearing must be filed and served so as to be received by the Notice Parties or before ***[P + 49], 2025 at 5:00 p.m. (prevailing Eastern Time)***.

[7] With respect to any Sale Transaction, a filed Notice of Successful Bidder shall include, as exhibits, (a) a copy of the purchase agreement and (b) a copy of the proposed Sale Order.

At the Sale Hearing, the Debtor will seek entry of an order (the "Sale Approval Order") authorizing and approving the Sale Transaction to the Successful Bidder. Subject to the terms of any Cash Collateral Order, the Sale Hearing may be adjourned or rescheduled without notice or with limited and shortened notice to parties other than the Consultation Parties, including by (i) an announcement of such adjournment at the Sale Hearing or at the Auction or (ii) the filing of a notice of adjournment with the Court prior to the commencement of the Sale Hearing.

If any Successful Bidder fails to consummate an approved Sale Transaction in accordance with its applicable purchase agreement or such purchase agreement is terminated, the Debtor, after consultation with the Consultation Parties, shall be authorized, but not required, to deem the applicable Back-Up Bid, as disclosed at the Sale Hearing, as the Successful Bid, and the Debtor, after consultation with the Consultation Parties, shall be authorized, but not required, to consummate the sale with the Back-Up Bidder submitting the next highest Bid for any Assets without further order of the Court.

J. Return of Good Faith Deposit

The Good Faith Deposit of any Successful Bidder (or any Back-Up Bidder that becomes a Successful Bidder) shall be applied to the Purchase Price of such Sale Transaction at Closing. Counsel to the Debtor will hold the Good Faith Deposits of the Successful Bidder and the Back-Up Bidder in a segregated account until the Closing of the Sale Transaction with the Successful Bidder. Good Faith Deposits of all other Qualified Bidders shall be held in a segregated account, and thereafter returned to the respective Bidders following the conclusion of the Auction. If a Successful Bidder (including any Back-Up Bidder that has become the Successful Bidder) fails to consummate an approved Sale Transaction because of a breach or failure to perform on the part of such Successful Bidder, the Debtor shall be entitled to retain such Successful Bidder's Good Faith Deposit as part of the Debtor's damages resulting from such Successful Bidder's breach or failure to perform, without prejudice to the Debtor's rights to seek additional damages from the Court as appropriate.

K. Procedures Related to the Assumption and Assignment of Contracts and Leases

As part of a Sale Transaction, the Debtor may assume and assign certain of its executory contracts and unexpired leases (the "Potential Assumed/Assigned Contracts") to the Successful Bidder (*i.e.* the Transferred Contracts). The procedures governing the Debtor's identification of the Potential Assumed/Assigned Contracts and the non-Debtor counterparties' (the "Contract Counterparties") rights and obligations with respect to objecting to such identification, including to the assumability, assignability, or transferability of such Potential Assumed/Assigned Contracts and/or to the amounts the Debtor believes necessary to cure all monetary defaults under such Potential Assumed/Assigned Contracts pursuant to section 365 of the Bankruptcy Code, are governed by the Bid Procedures Order. **All Contract Counterparties should refer to the Bid Procedures Order, which provides for the following relevant dates and deadlines:**

Date[8]	Event
[P + 35], 2025	Deadline to File and Serve Cure Notice

[8] All times are prevailing Eastern time.

Date[8]	Event
[P + 49], 2025 at 5:00 p.m.	Contract Objection Deadline

If a Contract Objection is timely filed by the Contract Objection Deadline and cannot be resolved, to the extent such Contract Objection relates to a Transferred Contract under a Sale Transaction contemplated by these Bid Procedures, a hearing will be held (i) at the Sale Hearing or (ii) on such other date subsequent to the Sale Hearing but before the Closing Date, as the Court may designate prior to, during, or after the Sale Hearing (the "Contract Hearing") before the Bankruptcy Court to consider the objection.

For the avoidance of doubt, if no Contract Objections are filed or received with respect to any Potential Assumed/Assigned Contracts identified on the Cure Schedule in accordance with the Contract and Lease Procedures Order, then the Cure Amounts set forth in the Cure Schedule for such Potential Assumed/Assigned Contract will be binding upon the Contract Counterparty to such Potential Assumed/Assigned Contract for all purposes and will constitute a final determination of the Cure Amounts required to be paid by the Debtor in connection with the assumption and assignment of such Potential Assumed/Assigned Contract.

Upon determination of the Successful Bid(s), **on or before 10:00 a.m. (ET) on [P + 53], 2025**, the Debtor will file a Notice of Successful Bidder with the Court. Any Contract Counterparty to a Transferred Contract seeking additional assurance of future performance than that provided by the Successful Bidder(s) (the "Adequate Assurance Objection") should immediately contact James E. O'Neill (joneill@pszjlaw.com) and the applicable Successful Bidder to attempt to resolve any Adequate Assurance Objection. **All Adequate Assurance Objections must be filed and served on the Notice Parties and the applicable Successful Bidder no later than , 2025 at 5:00 p.m. (prevailing Eastern Time)**. To the extent the parties are unable to consensually resolve the Adequate Assurance Objection prior to Closing, the Court will set a hearing, which may be at the Sale Hearing, on the Adequate Assurance Objection to determine whether terms of the Successful Bid are compliant with section 365 of the Bankruptcy Code in providing adequate assurance of future performance to the Contract Counterparty of the applicable Transferred Contract. The Debtor intends to cooperate with Contract Counterparties to Transferred Contracts to attempt to reconcile any Adequate Assurance Objection.

L. Reservation of Rights

Subject to the terms of the DIP Order, the Debtor reserves its rights, subject to prior consultation with the Consultation Parties, to modify these Bid Procedures in its business judgment in any manner that will best promote the goals of these Bid Procedures or impose at or prior to the Auction, additional customary terms and conditions on a Sale Transaction, including, without limitation but in each case subject to the terms of the DIP Order and the Stalking Horse Purchase Agreement: (a) extending the deadlines set forth in these Bid Procedures; (b) adjourning the Auction at the Auction; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; and (e) rejecting any or all Bids or Qualified Bids (other than the Stalking Horse Bid).

M. Fiduciary Duties

Notwithstanding anything to the contrary contained herein, nothing in the Bid Procedures will prevent the Debtor from exercising its fiduciary duties under applicable law.

N. Conflicts

To the extent that any provision of these Bid Procedures conflicts with or is in any way inconsistent with any provision of the Stalking Horse Purchase Agreement while such agreement remains in full force and effect, the Stalking Horse Purchase Agreement shall govern and control.

II. NOTICE PARTIES

As used herein, the "Notice Parties" are:

i. counsel for the Debtor, (a) Fenwick & West, LLP, 902 Broadway, 18th Floor, New York, NY 10010, Attn: Ethan Skerry (eskerry@fenwick.com), and Brendan Montgomery (bmontgomery@fenwick.com); (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: James E. O'Neill (joneill@pszjlaw.com); and (c) Pachulski Stang Ziehl & Jones LLP, One Sansome Street, Suite 3430, San Francisco, CA 94104, Attn: Debra I. Grassgreen (dgrassgreen@pszjlaw.com) and Maxim Litvak (mlitvak@pszjlaw.com);

ii. counsel to the Stalking Horse Bidder, (a) Morrison & Foerster LLP, 250 West 55th Street, Floor 20, New York, NY 10019, Attn: James A. Newton, Esq. (jnewton@mofo.com) and Miranda K. Russell, Esq. (mrussell@mofo.com); and (b) Potter Anderson & Corroon LLP, Attn: Christopher M. Samis (csamis@potteranderson.com) and Brett M. Haywood (bhaywood@potteranderson.com);

iii. counsel to the Committee, if any; and

iv. the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Jonathan W. Lipshie, Esq. (Jon.Lipshie@usdoj.gov).

EXHIBIT 2

Bid Procedures Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SYNTHEGO CORPORATION,[1]	Case No. 25-10823 (___)
Debtor.	

NOTICE OF PROPOSED SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, FREE AND CLEAR OF ALL ENCUMBRANCES, OTHER THAN ASSUMED LIABILITIES, AND SCHEDULING FINAL SALE HEARING RELATED THERETO

PLEASE TAKE NOTICE OF THE FOLLOWING:

On May 5, 2025, the above-captioned debtor and debtor in possession (the "Debtor") filed a motion (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") seeking entry of (i) an order (the "Bid Procedures Order") (a) approving bid procedures for the sale or sales (the "Sale") of substantially all of the Debtor's assets (the "Assets"), (b) scheduling the Auction and Sale Hearing,[2] (c) approving the proposed termination fee and expense reimbursement in favor of the Stalking Horse Bidder, and (d) granting related relief (clauses (a) through (d), collectively, the "Bid Procedures Relief"), and (ii) an order (the "Sale Order") (a) authorizing the Sale of the Assets free and clear of all Encumbrances (as defined in the Motion), other than assumed liabilities, to the Stalking Horse Bidder or other Successful Bidder submitting the highest or otherwise best bid, (b) authorizing the assumption and assignment of the identified executory contracts and unexpired leases (the "Transferred Contracts"), and (c) granting certain related relief.

I. Bid Procedures and Stalking Horse Bidder

On [●], 2025, the Bankruptcy Court entered the Bid Procedures Order [Docket No. ●], thereby approving the Bid Procedures Relief.

In order for a Potential Bidder to be eligible to participate in the Auction as a Qualified Bidder, **it must comply with the Bid Procedures, and deliver its Bid, so as to be received on or before _____, 2025 at 5:00 p.m. (prevailing Eastern Time) (the "Bid Deadline")**, to: (a) investment banker to the Debtor: Raymond James & Associates, Inc., 320 Park Avenue, New York, NY 10022; Attn: Geoffrey Richards (Geoffrey.Richards@RaymondJames.com) and Simon Wein (Simon.Wein@raymondjames.com); and (b) counsel to the Debtor: (i) Fenwick & West, LLP, 902 Broadway, 18th Floor, New York, NY 10010, Attn: Ethan Skerry

[1] The Debtor's mailing address is 3696 Haven Avenue, Suite A, Redwood City, California, 94063, and the last four digits of the Debtor's federal tax identification number is 9518.

[2] Capitalized terms used but not defined herein shall have the meaning ascribed to it in the Bid Procedures and Bid Procedures Order, as applicable.

(eskerry@fenwick.com), and Brendan Montgomery (bmontgomery@fenwick.com); (ii) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: James E. O'Neill (joneill@pszjlaw.com); and (iii) Pachulski Stang Ziehl & Jones LLP, One Sansome Street, Suite 3430, San Francisco, CA 94104, Attn: Debra I. Grassgreen (dgrassgreen@pszjlaw.com) and Maxim Litvak (mlitvak@pszjlaw.com).

To receive copies of the (i) Sale Motion, any exhibits to the Sale Motion, and/or a confidentiality agreement to become a Potential Bidder (as defined below), or (ii) a copy of the Stalking Horse Purchase Agreement, as applicable, please submit a request by email to: the Debtor's investment banker, Raymond James & Associates, Inc., 320 Park Avenue, New York, NY 10022; Attn: Geoffrey Richards (Geoffrey.Richards@RaymondJames.com) and Simon Wein (Simon.Wein@raymondjames.com). Additionally, the Sale Motion and the exhibits thereto are available from the Debtor's claims and noticing agent's website at https://_____/Synthego/.

In order for Interested Parties to obtain access to the Debtor's data room, each Interested Party must first sign and deliver a confidentiality agreement to the Debtor and provide certain financial data, which financial data must be acceptable to the Debtor after consultation with the Consultation Parties. Please refer to the Bid Procedures for further information concerning submitting a Qualified Bid to participate at the Auction.

II. Sale Hearing and Closing

The Sale Hearing is scheduled for **_____, 2025 at __:00 _.m. (prevailing Eastern Time)** at the United States Bankruptcy Court for the District of Delaware, United States Courthouse, 824 Market Street North, 3rd Floor, Wilmington, DE 19801, before the Honorable _____, United States Bankruptcy Judge. The Sale Hearing is being held to approve the highest or otherwise best offer(s) received for the Assets at the Auction, which, if any, will take place on **_____, 2025, commencing at 10:00 a.m. (prevailing Eastern Time)**, at a location to be determined by the Debtor. The Sale Hearing may be adjourned or rescheduled with prior notice filed on the docket of this Chapter 11 Case or without prior notice by an announcement of the adjourned date at the Sale Hearing.

THE DEADLINE TO OBJECT TO THE DEBTOR'S REQUEST TO APPROVE THE SALE OF THE PURCHASED ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES TO THE SUCCESSFUL BIDDER(S) (EACH, A "SALE OBJECTION") IS _____, 2025 at 5:00 P.M. (PREVAILING EASTERN TIME) (THE "SALE OBJECTION DEADLINE").

Any person or entity wishing to submit a Sale Objection must do so in writing and state with particularity the grounds for such objections or other statements of position. All Sale Objections shall be served so as to be actually received by no later than the Sale Objection Deadline by the following (collectively, the "Notice Parties"):

v. counsel for the Debtor, (a) Fenwick & West, LLP, 902 Broadway, 18th Floor, New York, NY 10010, Attn: Ethan Skerry (eskerry@fenwick.com), and Brendan Montgomery (bmontgomery@fenwick.com); (b) Pachulski Stang Ziehl & Jones LLP,

919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: James E. O'Neill (joneill@pszjlaw.com); and (c) Pachulski Stang Ziehl & Jones LLP, One Sansome Street, Suite 3430, San Francisco, CA 94104, Attn: Debra I. Grassgreen (dgrassgreen@pszjlaw.com) and Maxim Litvak (mlitvak@pszjlaw.com);

vi. counsel to the Stalking Horse Bidder, (a) Morrison & Foerster LLP, 250 West 55th Street, Floor 20, New York, NY 10019, Attn: James A. Newton, Esq. (jnewton@mofo.com) and Miranda K. Russell, Esq. (mrussell@mofo.com); and (b) Potter Anderson & Corroon LLP, Attn: Christopher M. Samis (csamis@potteranderson.com) and Brett M. Haywood (bhaywood@potteranderson.com);

vii. counsel to the Committee, if any; and

viii. the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Jonathan W. Lipshie, Esq. (Jon.Lipshie@usdoj.gov).

The failure of any person or entity to file and serve a Sale Objection on or before the Sale Objection Deadline, as applicable, (i) shall be deemed a consent to the Sale to the Stalking Horse Bidder or other Successful Bidder and the other relief requested in the Motion, and (ii) shall be a bar to the assertion of any objection the sale of the Assets to the Stalking Horse Bidder or other Successful Bidder (including in any such case, without limitation, the transfer of the Assets free and clear of all Encumbrances, other than the assumed liabilities).

III. The Debtor's Contracts and Leases

The Sale Order, if approved, shall authorize the assumption and assignment or transfer of the Transferred Contracts to the Stalking Horse Bidder or other Successful Bidder. In accordance with the Bid Procedures Order, notices setting forth the specific Potential Assumed/Assigned Contracts that may be assumed by the Debtor and assigned to the Stalking Horse Bidder or other Successful Bidder, or sold and transferred to the Stalking Horse Bidder or other Successful Bidder, and the proposed Cure Amounts for such Potential Assumed/Assigned Contracts will be given to all Contract Counterparties to the Potential Assumed/Assigned Contracts. Such counterparties will be given the opportunity to object to the assumption, assumption and assignment, or sale and transfer, of a Potential Assumed/Assigned Contract in connection with the Sale and the proposed Cure Amount.

This notice is subject to the full terms and conditions of the Bid Procedures and the Bid Procedures Order, which shall control in the event of any conflict. The Debtor encourages all persons to review such documents and all other Sale-related documents in their entirety and to consult an attorney if they have questions or want advice.

EXHIBIT 3

Cure Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SYNTHEGO CORPORATION,[1]	Case No. 25-10823 (___)
Debtor.	

NOTICE OF POTENTIAL ASSUMPTION, ASSUMPTION AND ASSIGNMENT, OR TRANSFER OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

PLEASE TAKE NOTICE OF THE FOLLOWING:

On May 5, 2025 (the "Petition Date"), the above-captioned debtor and debtor in possession (the "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtor is operating its business and managing its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.[2]

On May [●], 2025, the United States Bankruptcy Court for the District of Delaware (the "Court") entered an order (the "Bid Procedures Order"[3]) authorizing the Debtor to establish procedures related to, among other things, the assumption, assumption and assignment, and/or transfer of executory contracts and unexpired leases in connection with a sale of substantially all of the Debtor's assets to be approved by the Court (the "Contract and Lease Procedures").

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU ARE A PARTY TO ONE OR MORE OF THE CONTRACTS OR LEASES REFERRED TO HEREIN.

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1 The Debtor's mailing address is 3696 Haven Avenue, Suite A, Redwood City, California, 94063, and the last four digits of the Debtor's federal tax identification number is 9518.

2 Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion for (I) An Order (A) Authorizing Entry Into Asset Purchase Agreement With Respect to the Sale of Substantially All of the Debtor's Assets, (B) Approving Bid Procedures for the Sale of Substantially All of the Debtor's Assets, (C) Scheduling an Auction and Sale Hearing, (D) Approving the Form and Manner of Notice Thereof, (E) Approving Certain Termination Fee and Expense Reimbursement Provisions, and (F) Granting Related Relief; and (II) An Order (A) Approving the Sale of the Debtor's Assets Free and Clear of All Encumbrances, (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief [Docket No. ●] (the "Bid Procedures Motion") or Bid Procedures Order (defined below).

3 Order (A) Authorizing Entry Into Asset Purchase Agreement With Respect to the Sale of Substantially All of the Debtor's Assets, (B) Approving Bid Procedures for the Sale of Substantially All of the Debtor's Assets, (C) Scheduling an Auction and Sale Hearing, (D) Approving the Form and Manner of Notice Thereof, (E) Approving Certain Termination Fee and Expense Reimbursement Provisions, and (F) Granting Related Relief [Docket No. ●] (the "Bid Procedures Order").

POTENTIAL ASSUMED/ASSIGNED CONTRACTS[4]

Attached as Schedule A is a schedule of all Potential Assumed/Assigned Contracts (the "Cure Schedule") that may be assumed, assumed and assigned, and/or transferred, as applicable, by the Debtor in connection with the Sale, listing the counterparties to such contracts (the "Contract Counterparties") and the amount, if any, proposed to be paid to cure any monetary defaults under the Potential Assumed/Assigned Contracts pursuant to section 365 of the Bankruptcy Code (the "Cure Amounts").[5] **The inclusion of a document on the Cure Schedule is not a commitment that such Potential Assumed/Assigned Contract will, in fact, be assumed by the Debtor, assumed by the Debtor and assigned to a third party, or otherwise transferred by the Debtor to a third party, including in connection with the Sale. The identification of any executory contract or unexpired lease as one that, in connection with a Sale, will, in fact, be assumed by the Debtor, assumed by the Debtor and assigned to a third party, or otherwise transferred to a third party are governed by the Bid Procedures Order.**

IF YOU AGREE WITH THE ASSUMPTION, ASSUMPTION AND ASSIGNMENT, OR TRANSFER OF YOUR POTENTIAL ASSUMED/ASSIGNED CONTRACT(S) AND/OR PROPOSED CURE AMOUNTS LISTED IN **SCHEDULE A** WITH RESPECT TO YOUR POTENTIAL ASSUMED/ASSIGNED CONTRACT(S), YOU ARE NOT REQUIRED TO TAKE ANY FURTHER ACTION.

IF YOU DISAGREE WITH THE ASSUMPTION, ASSUMPTION AND ASSIGNMENT, OR TRANSFER OF YOUR POTENTIAL ASSUMED/ASSIGNED CONTRACT(S) AND/OR THE PROPOSED CURE AMOUNTS LISTED IN **SCHEDULE A** WITH RESPECT TO YOUR POTENTIAL ASSUMED/ASSIGNED CONTRACT(S), YOU MUST OBJECT TO THE PROPOSED CURE AMOUNTS NO LATER THAN **_____, 2025 AT 5:00 P.M. (PREVAILING EASTERN TIME)** (the "Contract Objection Deadline").

Objections to a proposed Cure Amount with respect to any Potential Assumed/Assigned Contracts (a "Cure Objection") must be: (i) made in writing and filed on the docket for the Chapter 11 Case no later than the Contract Objection Deadline; (ii) state the basis of such Cure Objection with specificity, including, without limitation, the Cure Amount alleged to be due to such Contract Counterparty, and include complete contact information for such Contract Counterparty (including address, telephone number, and email address); (iii) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and (iv) be served on the following, so as to be actually received by them on or before the Contract Objection Deadline (collectively, the "Notice Parties"):

i. counsel for the Debtor, (a) Fenwick & West, LLP, 902 Broadway, 18th Floor, New York, NY 10010, Attn: Ethan Skerry (eskerry@fenwick.com), and Brendan Montgomery (bmontgomery@fenwick.com); (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705

[4] The presence of any contract or lease on Exhibit A hereto does not constitute an admission that such contract or lease is an executory contract or unexpired lease within the meaning of section 365 of the Bankruptcy Code or that such contract or lease will be assumed and/or assigned by the Debtor.

[5] For avoidance of doubt, the Debtor reserves all rights to remove any executory contract or unexpired lease from the Cure Schedule prior to closing of any Restructuring Transaction(s).

(Courier 19801), Attn: James E. O'Neill (joneill@pszjlaw.com); and (c) Pachulski Stang Ziehl & Jones LLP, One Sansome Street, Suite 3430, San Francisco, CA 94104, Attn: Debra I. Grassgreen (dgrassgreen@pszjlaw.com) and Maxim Litvak (mlitvak@pszjlaw.com);

ii. counsel to the Stalking Horse Bidder, (a) Morrison & Foerster LLP, 250 West 55th Street, Floor 20, New York, NY 10019, Attn: James A. Newton, Esq. (jnewton@mofo.com) and Miranda K. Russell, Esq. (mrussell@mofo.com); and (b) Potter Anderson & Corroon LLP, Attn: Christopher M. Samis (csamis@potteranderson.com) and Brett M. Haywood (bhaywood@potteranderson.com);

iii. counsel to the Committee, if any; and

iv. the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Jonathan W. Lipshie, Esq. (Jon.Lipshie@usdoj.gov).

Any other objections to the assumption, assumption and assignment, or transfer of any of the Potential Assumed/Assigned Contracts (an "Assumption/Assignment Objection") (other than on the basis of the Cure Amount) must: (i) be made in writing and filed on the docket for the Chapter 11 Case no later than **_____, 2025 at 5:00 p.m. (prevailing Eastern Time)** (*i.e.* the Contract Objection Deadline); (ii) state the basis of such Assignment Objection with specificity and include complete contact information for such Contract Counterparty (including address, telephone number, and email address); (iii) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and (iv) be served on the Notice Parties so as to be actually received by such parties on or before the Contract Objection Deadline.

If you file a Cure Objection or Assumption/Assignment Objection satisfying the requirements herein, the Debtor will confer with you in good faith to attempt to resolve any such Cure Objection or Assumption/Assignment Objection without Bankruptcy Court intervention. If the applicable parties determine that the Cure Objection or Assumption/Assignment Objection cannot be resolved without judicial intervention in a timely manner, the Bankruptcy Court shall resolve such objections (i) at the Sale Hearing scheduled for **_____, 2025 at __:00 _.m. (prevailing Eastern Time)** at the United States Bankruptcy Court for the District of Delaware, United States Courthouse, 824 Market Street North, 3rd Floor, Wilmington, DE 19801, before the Honorable _____, United States Bankruptcy Judge, or (ii) on such other date subsequent to a Sale Hearing as the Court may designate prior to, during, or after the Sale Hearing (a "Contract Hearing") before the Bankruptcy Court to consider the objection.

If the Debtor identifies additional executory contracts or unexpired leases that it wishes to add to or remove from the Cure Schedule (each an "Additional Contract"), the Debtor shall, as soon as practicable after making such a determination, send an Additional Cure Notice to the applicable Contract Counterparties to such Additional Contracts. To the extent an executory contract or unexpired lease is not assumed, assumed and assigned, or transferred in connection with a Sale, the Debtor may, in its sole discretion, reject such an executory contract or unexpired lease to the extent permitted by law following the Closing.

Objections from any Contract Counterparty to an Additional Contract (an "Additional Contract Objection") must: (i) be made in writing and filed on the docket by the later of (a) the Contract Objection Deadline and (b) seven (7) calendar days after the Debtor files and serves the Additional Cure Notice (as applicable, the "Additional Contract Objection Deadline"); (ii) state the basis of such objection with specificity, including, without limitation, the Cure Amount alleged by such Contract Counterparty, and include contact information for such Contract Counterparty; (iii) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules; and (iv) be served upon the Notice Parties so as to be actually received by them on or before the Additional Contract Objection Deadline.

If a timely Additional Contract Objection is filed, and cannot be resolved consensually, the Bankruptcy Court shall resolve such Additional Potential Assignment Objection at a hearing to be held (i) on or before seven (7) calendar days from the timely filing of the Additional Potential Assignment Objection; (ii) at the Sale Hearing; or (iii) such other date designated by the Court.

IF YOU FAIL TO TIMELY FILE AND PROPERLY SERVE A CURE OBJECTION OR ASSUMPTION/ASSIGNMENT OBJECTION AS PROVIDED HEREIN (I) YOU WILL BE DEEMED TO HAVE FOREVER WAIVED AND RELEASED ANY RIGHT TO ASSERT A CURE OBJECTION, ASSUMPTION/ASSIGNMENT OBJECTION, OR ADDITIONAL CONTRACT OBJECTION, AS APPLICABLE, AND TO HAVE OTHERWISE CONSENTED TO THE ASSUMPTION, ASSUMPTION AND ASSIGNMENT, OR SALE AND TRANSFER, OF THE DEBTOR'S RIGHT, TITLE, AND INTEREST IN, TO AND UNDER, SUCH POTENTIAL ASSUMED/ASSIGNED CONTRACT OR ADDITIONAL CONTRACT, AS APPLICABLE, ON THE TERMS SET FORTH IN THIS CURE NOTICE AND THE APPLICABLE PURCHASE AGREEMENT, (II) YOU WILL HAVE CONSENTED TO THE ASSUMPTION, ASSUMPTION AND ASSIGNMENT OF, OR SALE AND TRANSFER OF, THE DEBTOR'S RIGHT, TITLE, AND INTEREST IN, TO AND UNDER, ITS POTENTIAL ASSUMED/ASSIGNED CONTRACT, AS THE CASE MAY BE, WITHOUT THE NECESSITY OF OBTAINING ANY FURTHER ORDER OF THE BANKRUPTCY COURT, AND (III) YOU WILL BE BARRED AND ESTOPPED FOREVER FROM ASSERTING OR CLAIMING AGAINST ANY PARTY THAT ANY ADDITIONAL CURE AMOUNTS ARE DUE OR DEFAULTS EXIST, OR CONDITIONS TO ASSUMPTION, ASSUMPTION AND ASSIGNMENT, OR SALE AND TRANSFER, MUST BE SATISFIED, UNDER SUCH POTENTIAL ASSUMED/ASSIGNED CONTRACT.

The Debtor's assumption, assumption and assignment, or sale and transfer, of a Potential Assumed/Assigned Contract is subject to approval by the Bankruptcy Court and consummation of the closing of a Sale. The inclusion of any document on the list of Potential Assumed/Assigned Contracts shall not constitute or be deemed to be a determination or admission by the Debtor that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and all rights with respect thereto are expressly reserved.

The dates set forth in this notice are subject to change, and further notice of such changes may not be provided except through announcements in open court and/or the filing of notices and/or amended agendas. Parties in interest are encouraged to monitor the electronic court docket available at https://_____/synthego.

This Notice is subject to the full terms and conditions of the Bid Procedures Order, which shall control in the event of any conflict. The Debtor encourages parties in interest to review such documents in their entirety and consult an attorney if they have questions or want advice.

SCHEDULE A

Schedule of Potential Assumed/Assigned Contracts

No.	Contract Counterparty	Contract/Lease Title	Date of Contract/Lease	Cure Amount
1.	[X]	[X]	[X]	$[X]

EXHIBIT B

Stalking Horse Purchase Agreement

ASSET PURCHASE AGREEMENT

by and between

PERCEPTIVE CREDIT HOLDINGS III, LP, as Purchaser,

and

SYNTHEGO CORPORATION, as Seller

Dated as of May 5, 2025

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EXHIBITS

Exhibit A — Form of Bid Procedures Order
Exhibit B — Form of Bill of Sale and Assignment and Assumption Agreement

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "**Agreement**"), dated as of May 5, 2025 (the "**Agreement Date**") is entered into by and between Perceptive Credit Holdings III, LP, a Delaware limited partnership ("**Purchaser**") and Synthego Corporation, a Delaware corporation ("**Seller**"). Purchaser and Seller are sometimes collectively referred to herein as the "**Parties**" and individually as a "**Party**". Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in Article 1.

RECITALS

WHEREAS, on or about May 5, 2025 (the "**Petition Date**"), Seller will file a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), thereby commencing a Chapter 11 case (the "**Bankruptcy Case**");

WHEREAS, Seller will be a debtor-in-possession under the Bankruptcy Code and will manage its properties and assets pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, Seller is engaged in the Business and owns, directly or indirectly, all of the Transferred Assets;

WHEREAS, Seller desires to sell (or cause to be sold) to Purchaser, and Purchaser desires to purchase from Seller, all of the Transferred Assets Free and Clear, and Seller desires Purchaser to assume, and Purchaser desires to assume from Seller, all of the Assumed Liabilities, in each case upon the terms and subject to the conditions hereof, pursuant to a Sale Order and Sections 105(a), 363 and 365 of the Bankruptcy Code and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure;

WHEREAS, the transactions contemplated by this Agreement are subject to approval by the Bankruptcy Court and will only be consummated pursuant, among other things, to the Sale Order to be entered in the Bankruptcy Case; and

NOW, **THEREFORE**, in consideration of the premises and the mutual representations, warranties, covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1
DEFINED TERMS

1.1 **Defined Terms**. The following terms shall have the following meanings in this Agreement:

"**Action**" means any legal, governmental or regulatory claim, action, suit, complaint, audit, investigation, inquiry, proceeding, arbitration or litigation (whether civil, criminal or

administrative) commenced, brought, conducted or heard by or before any Governmental Authority.

"**Administrative Expenses**" means, collectively, the expenses (a) incurred by Seller on or after the Petition Date and (b) that are entitled to priority under Section 503 of the Bankruptcy Code.

"**Affiliate**" of any particular Person means any other Person, directly or indirectly, controlling, controlled by, or under common control with, such particular Person. For the purposes of this definition, "control" (including, with correlative meaning, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"**Agreement**" has the meaning set forth in the preamble.

"**Agreement Date**" has the meaning set forth in the preamble.

"**Allocation Schedule**" has the meaning set forth in Section 2.12(a).

"**Alternate Transaction**" has the meaning set forth in Section 9.1(b).

"**Applicable Law**" means, with respect to any Person, any federal, provincial, state, local law, act, statute, Order, ordinance, principle of common law, code, regulation or statute applicable to such Person or such Person's subsidiaries or to any of their respective securities, assets, properties or businesses.

"**Approved Budget**" has the meaning ascribed to the term "Approved Budget" in the DIP Financing Agreement.

"**Asset Tax Return**" means a Tax Return relating to an obligation to pay Taxes that are determined based upon the ownership or operation of the Transferred Assets (but, for the avoidance of doubt, not including any Tax Returns relating to Transfer Taxes).

"**Asset Taxes**" means any Taxes with respect to the ownership or operation of the Transferred Assets other than (a) Taxes based on net or gross income, and (b) Transfer Taxes.

"**Assigned Contracts**" has the meaning set forth in Section 2.1(f).

"**Assumed Employee Plan**" has the meaning set forth in Section 2.1(k).

"**Assumed Liabilities**" has the meaning set forth in Section 2.3.

"**Assumption Notice**" has the meaning set forth in Section 5.3(a).

"**Auction**" has the meaning set forth in Section 5.2(c).

"**Avoidance Actions**" means any and all avoidance, recovery, subordination, or other claims, actions, rights, or remedies that may be brought by or on behalf of Seller or its estate or

other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including, but not limited to, actions or remedies under Sections 510, 542, 543, 544, 545, and 547 through and including 553 of the Bankruptcy Code.

"**Back-Up Bid**" means the second highest or otherwise best bid if the successful bidder fails to consummate its bid in accordance with the Bid Procedures.

"**Back-up Termination Date**" means the first to occur of (a) thirty (30) days after the entry of the Sale Order, (b) consummation of the Transactions with the winning bidder at the Auction, (c) Purchaser's receipt of notice from Seller of the release by Seller of Purchaser's obligations under Section 5.2(c) and (d) August 15, 2025.

"**Bankruptcy Case**" has the meaning set forth in the Recitals.

"**Bankruptcy Code**" has the meaning set forth in the Recitals.

"**Bankruptcy Court**" has the meaning set forth in the Recitals.

"**Bid Direction Letter**" means the Credit Bid Direction Letter, in form and substance mutually agreed by the Parties.

"**Bid Procedures**" means those certain bidding procedures for the Sale of Seller's assets approved by the Bankruptcy Court.

"**Bid Procedures Order**" means an Order of the Bankruptcy Court approving the Bid Procedures substantially in the form attached hereto as Exhibit A.

"**Bill of Sale and Assignment and Assumption Agreement**" means the bill of sale and assignment and assumption agreement, dated as of the Closing Date, by and between Seller and Purchaser, substantially in the form attached hereto as Exhibit B.

"**Books and Records**" means all books, records, files, reports, data, databases, advertising and marketing materials, customer lists, cost and pricing information, business plans, catalogs, customer literature, quality control records and manuals, research and development files and material, regulatory filings, records and credit records of customers (including all data and other information stored on discs, tapes or other media or in the cloud) to the extent used (or held for use) in or to the extent relating to the operation of the Business or the ownership of the Transferred Assets (including information relating to strategic plans and practices, accounting, financial or marketing plans, practices or programs, training practices and programs, salaries, bonuses, incentive plans and other compensation and benefits information and accounting and business methods), but excluding the Excluded Books and Records.

"**Breaches**" has the meaning set forth in Section 3.6(c).

"**Business**" means the business of Seller as currently conducted and as proposed to be conducted, in each case, as of the Agreement Date.

"**Business Day**" means any day other than (a) a Saturday, Sunday or federal holiday or (b) a day on which commercial banks in New York, New York are authorized or required to be closed.

"**Business Employee**" means each individual (i) employed by Seller as of the Agreement Date who provides services to the Business or (ii) hired by Seller between the Agreement Date and the Closing, in accordance with the terms of this Agreement, to provide services to the Business.

"**Business Intellectual Property**" means all Owned Intellectual Property together with all other Intellectual Property Used in the Business.

"**Cash and Cash Equivalents**" means all of Seller's cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held.

"**Closing**" has the meaning set forth in Section 2.7.

"**Closing Date**" has the meaning set forth in Section 2.7.

"**Code**" means the Internal Revenue Code of 1986, as amended, or any successor law, and regulations issued by the IRS pursuant thereto.

"**Company Related Parties**" has the meaning set forth in Section 9.3(d).

"**Competing Bid**" has the meaning set forth in Section 5.1.

"**Confidentiality Agreement**" means that certain Confidentiality Agreement, dated as of April 18, 2025, by and between Seller and Purchaser.

"**Consent**" means any consent, approval, authorization, waiver or license.

"**Contract**" means any agreement, license, sublicense, mortgage, indenture, lease (whether for real or personal property), commitment, contract, subcontract or other legally binding arrangement or understanding, whether oral or written.

"**Cure Costs**" means, with respect to any Assigned Contract, the Liabilities that must be paid or otherwise satisfied to cure all monetary defaults under such Assigned Contracts to the extent required by Sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption and assignment of such Assigned Contract.

"**Designated Contracts**" has the meaning set forth in Section 5.3(b).

"**Designation Deadline**" has the meaning set forth in Section 5.3(b).

"**Determined Cure Costs**" means, in the aggregate, all Cure Costs payable in respect of the Assigned Contracts as determined pursuant to the Sale Order or by separate order of the Bankruptcy Court.

"**DIP Financing Agreement**" means the Senior Secured Debtor-In-Possession Term Loan Credit Agreement and Guaranty, dated as of May 5, 2025, by and among Seller, as the borrower, and the DIP Lenders, as lenders, as amended, supplemented or otherwise modified from time to time.

"**DIP Lenders**" means all Persons who are lenders under the DIP Financing Agreement, each in its capacity as such.

"**DIP Loans**" has the meaning ascribed to the term "Loans" in the DIP Financing Agreement.

"**DIP Obligations**" has the meaning ascribed to the term "Obligations" in the DIP Financing Agreement.

"**DIP Order**" has the meaning ascribed to the term "DIP Order" in the DIP Financing Agreement, including the Interim DIP Order and the Final DIP Order.

"**DIP Superpriority Claims**" has the meaning given to it in the Interim DIP Order as it may be modified by the Final DIP Order.

"**Employee Plan**" means (a) each "employee benefit plan" (as such term is defined in Section 3(3) of ERISA or any similar plan subject to Applicable Law of a jurisdiction outside of the United States), whether or not subject to ERISA, (b) each other compensation or employee benefit plan, contract, policy, program, practice and arrangement, whether written or unwritten, formal or informal, including each pension, retirement, supplemental retirement, profit-sharing, savings and thrift, bonus, stock bonus, stock option or other cash or equity-based incentive or deferred compensation, employment, severance pay, change in control, retention, vacation, sick leave, paid time off, welfare, disability, death, fringe and medical, retiree medical, surgical, hospitalization, accident death and dismemberment, life insurance, dental or other similar plan, contract, policy, program, practice or arrangement (whether written or unwritten), in each case, adopted, sponsored, entered into, maintained, contributed to, or required to be contributed to by Seller for the benefit of any Business Employee.

"**Enforceability Exceptions**" means applicable bankruptcy, insolvency, reorganization, moratorium, receivership and similar Applicable Law affecting the enforcement of creditors' rights generally and general equitable principles.

"**Environmental Laws**" means any Applicable Law relating to pollution (or the cleanup thereof) or protection of the environment or worker health and safety (in respect of exposure to Hazardous Substances), including such Applicable Law relating to the use, treatment, storage, disposal, Release or transportation of Hazardous Substances.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto, and any regulations promulgated thereunder.

"**ERISA Affiliate**" means any Person other than Seller that, together with Seller, is required to be treated as a single employer for purposes of ERISA or the Code (including under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA), at any relevant time.

"**Excluded Assets**" has the meaning set forth in Section 2.2.

"**Excluded Books and Records**" means the following originals and copies of those books and records, documents, data and information (in whatever form maintained) of Seller and the Business: (a) Seller's Organizational Documents and all corporate minute books (and other similar corporate records) and stock records of Seller, (b) any books and records or portions thereof relating exclusively to the Excluded Assets or Excluded Liabilities, (c) any books and records that Seller reasonably believes are necessary to enable it to prepare and/or file Tax Returns and (d) any books, records or other materials that (i) Seller is prohibited by Applicable Law from delivering to Purchaser at Closing or (ii) include attorney-client communications, work product or other privileged materials; provided, that in each case other than clause (d), copies of which books and records, to the extent permitted by Applicable Law, will be made available to Purchaser upon Purchaser's written request.

"**Excluded Cash**" means the cash on hand and cash drawn by Seller under the DIP Financing Agreement in an amount equal to (a) after taking into account any amounts held by Seller or estate professionals, or any funds of Seller held in escrow or reserves with respect to the fees and expenses of Seller's estate professionals, an amount sufficient to satisfy professional fees and expenses of estate professionals through the effective date of an Acceptable Chapter 11 Plan (as defined in the DIP Financing Agreement) (solely to the extent that such Seller's estate professional fees are included in the Approved Budget, which amount shall not be duplicative of any amounts in the Professional Fee Reserve (as defined in the DIP Financing Agreement)), including any success or transaction fees approved by the Bankruptcy Court plus (b) an amount, consistent with the Approved Budget or otherwise agreed upon by Purchaser and Seller, to pay all other estimated Administrative Expenses arising or incurred on or after the Petition Date and that are accrued and unpaid as of the effective date of an Acceptable Chapter 11 Plan, any allowed priority claims, and any other claims for payroll, compensation, accrued paid time off (but only to the extent not assumed by Purchaser and required by Applicable Law), taxes or other liabilities (in each case, through the effective date of an Acceptable Chapter 11 Plan) that if not paid could result in personal liability of any current officer or director of Seller or its subsidiaries (but only to the extent such Administrative Expenses are not Assumed Liabilities), and plus (c) the Wind-Down Amount (which shall be used solely to fund the Wind-Down Expenses); provided, that if cash on hand and cash drawn under the DIP Financing Agreement is not sufficient to fund all cash of the amounts of (a), (b) and (c) in this definition of "Excluded Cash", Purchaser shall fund an amount in cash at Closing equal to the sum of each of (a), (b) and (c) in this definition of "Excluded Cash" to an account or accounts controlled by Seller.

"**Excluded Contracts**" has the meaning set forth in Section 2.5.

"**Excluded Insurance Policies**" means (a) all directors and officers or management liability insurance policies (including any tail or runoff policy) and (b) any other insurance policy of Seller that, as to item (b) only, (i) relate solely to the Excluded Assets, (ii) are required to cover

claims or expenses in the Bankruptcy Cases or (iii) are required to be retained by Seller in connection with the wind-down of Seller's bankruptcy estate following the Closing.

"**Excluded Liabilities**" has the meaning set forth in Section 2.4.

"**Expense Reimbursement**" means the reimbursement by Seller of Purchaser's actual and reasonable out-of-pocket third-party expenses (including legal, accounting, and other third-party advisory or service costs) and expenses incurred by Purchaser in connection with the consideration, evaluation and negotiation of this Agreement and the Transactions, as evidenced by invoice(s) provided to Seller, on the terms and subject to the conditions of Section 9.3. The Expense Reimbursement shall not exceed $1,000,000.

"**FDA**" means the U.S. Food and Drug Administration.

"**Final DIP Order**" means an order, in form and substance reasonably acceptable to the Purchaser, entered by the Bankruptcy Court authorizing Seller to, among other things, enter into the DIP Financing Agreement and to incur the DIP Obligations on a final basis.

"**Final Order**" means an Order, judgment or other decree of the Bankruptcy Court or any other Governmental Authority of competent jurisdiction that has not been reversed, vacated, modified or amended, is not stayed and remains in full force and effect; provided, that such Order shall be considered a Final Order only after the time period for third parties seeking appeal has expired without the filing of any appeal or motion for reconsideration.

"**Free and Clear**" means free and clear of all Liens (other than the Permitted Liens and the Assumed Liabilities) to the maximum extent permitted by Section 363(f) of the Bankruptcy Code.

"**GAAP**" means generally accepted accounting principles in the United States as of the Agreement Date.

"**Governmental Authority**" means any domestic or foreign national, provincial, state, multi-state or municipal or other local government, any subdivision, agency, commission or authority thereof, any court (including the Bankruptcy Court), arbitral body or tribunal or any quasi-governmental or private body exercising any regulatory or taxing authority thereunder (including the IRS and the FDA).

"**Hazardous Substances**" means any substances, materials or wastes which are defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances", "pollutants", "contaminants" or other similar term or phrase under any Environmental Law, including any petroleum or refined petroleum products, radioactive materials, friable asbestos or polychlorinated biphenyls.

"**Information Privacy and Security Laws**" means all Applicable Law concerning the privacy, data protection and/or security of Personal Data, including, where applicable (as amended and/or replaced from time to time), HIPAA, and all regulations promulgated thereunder, state data privacy and breach notification laws, state social security number protection laws, any Applicable Law concerning requirements for website and mobile application privacy policies and practices, data or web scraping, call or electronic monitoring or recording or any outbound communications

(including, outbound calling and text messaging, telemarketing, and e-mail marketing), the national laws implementing the Directive on Privacy and Electronic Communications (2002/58/EC) (as amended by Directive 2009/136), the GDPR, the Federal Trade Commission Act, the Gramm Leach Bliley Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transaction Act, the CAN-SPAM Act, the Telephone Consumer Protection Act, Children's Online Privacy Protection Act, state consumer protection laws and the Payment Card Industry Data Security Standard.

"**Intellectual Property**" means any and all intellectual property and proprietary rights in any jurisdiction throughout the world, including rights arising from the following: (i) patents and patent applications, design rights, industrial design registrations and applications therefor, divisions, continuations, continuations-in-part, reissues, substitutes, renewals, registrations, confirmations, reexaminations, *inter partes* reviews, extensions and any provisional applications, and any foreign or international equivalent of any of the foregoing; (ii) trademarks (whether registered, unregistered or applied for), service marks, trade dress, service names, trade names, brand names, product names, slogans, logos, business names, corporate names, and other source or business identifiers, all registrations and applications for registration thereof, and, in each case, together with all of the goodwill associated therewith; (iii) works of authorship, copyrights and all registrations and applications for registration thereof; (iv) trade secrets, inventions, discoveries, developments, improvements, information, data, ideas, concepts, mask works, and know-how; (v) rights in formulae, methods, techniques, processes, assembly procedures, software, software code (in any form, including source code and executable or object code), subroutines, test results, test vectors, user interfaces, protocols, schematics, specifications, drawings, prototypes, molds and models, and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing); and (vi) social media accounts, social media identifiers, internet domain name registrations.

"**Intellectual Property Registrations**" means, as to any Owned Intellectual Property, any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including domain names, registered trademarks and copyrights, issued and reissued patents and pending applications for any of the foregoing.

"**Interim DIP Order**" means an order, in form and substance reasonably acceptable to the Purchaser, entered by the Bankruptcy Court authorizing Seller to, among other things, enter into the DIP Financing Agreement and to incur the DIP Obligations on an interim basis.

"**IRS**" means the United States Internal Revenue Service.

"**Knowledge**" means (a) with regard to Seller, the actual knowledge of each of Craig Christianson and Erica Straw, after reasonable inquiry of their respective direct reports but without further investigation, in each case as of the Agreement Date (or, with respect to a certificate delivered pursuant to this Agreement, as of the date of delivery of such certificate) and (b) with regard to Purchaser the actual knowledge of each of Sandeep Dixit and Sam Chawla, after reasonable inquiry of their respective direct reports but without further investigation, in each case as of the Agreement Date (or, with respect to a certificate delivered pursuant to this Agreement, as of the date of delivery of such certificate).

"**Labor Agreement**" has the meaning set forth in Section 3.12(a)(ix).

"**Leases**" means each lease, license or other agreement for use and occupancy of real or personal property leased, licensed or otherwise granted (other than in fee, as to real property) to Seller.

"**Liabilities**" shall mean debts, liabilities, duties, obligations or commitments of any nature whatsoever, whether direct or indirect, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise, whenever or however arising (including whether arising out of any Contract or in a tort claim based on negligence or strict liability).

"**Lien**" means all forms of lien (including mechanic's, contractor's or other similar liens arising under or relating to the provision of goods or services on or to any Transferred Assets, and liens arising under the Bankruptcy Code), encumbrance, defect or irregularity in title, pledge, mortgage, deed of trust, deed to secure debt, security interest, charge, transfer restriction or similar agreement or encumbrance, including any dedication under any gathering, transportation, treating, processing, fractionating, purchase, sale or similar agreements, or any other rights granted or consensual as or against any Transferred Assets including but not limited to easements, encroachments, rights of first refusal, options, or any other interest or right in property that constitutes a lien or interest within the definition or adjudication of such terms under Section 101(37) of the Bankruptcy Code.

"**Material Adverse Effect**" means any fact, condition, change, violation, inaccuracy, circumstance, effect, event, development, or occurrence that individually or in the aggregate (a) has had, or would be reasonably likely to have, a material adverse change in or material adverse effect on the business, financial condition or results of operations of the Transferred Assets, the Assumed Liabilities or the Business, taken as a whole, or (b) prevents, materially delays or materially impairs, or would reasonably be expected to prevent, materially delay or materially impair, Seller's ability to effect the consummation of the Transactions; provided, however, that in the case of clause (a), in no event shall any fact, condition, change, violation, inaccuracy, circumstance, effect, event, development, or occurrence that results from or arises out of the following be deemed to constitute, or be taken into account, in determining whether there has been, or would be, a Material Adverse Effect: (i) any change in, or effects arising from or relating to, general business or economic conditions affecting any industry in which the Business operates; (ii) any change in, or effects arising from or relating to, the United States or foreign economies, or securities, banking or financial markets in general, or other general business, banking, financial or economic conditions; (iii) any change from, or effects arising from or relating to, the occurrence, escalation or material worsening of any act of God or other calamity, natural disaster, pandemic or disease, outbreak, hostility, act of war, sabotage, cyber-attack or terrorism or military action; (iv) any action taken by Purchaser or its Affiliates with respect to the Transactions or with respect to the Business; (v) any action taken, or failed to be taken, by Seller at the written request of or with the written consent of Purchaser or otherwise in compliance with the terms of this Agreement; (vi) any change in, or effects arising from or relating to changes in, Applicable Law or accounting rules (including GAAP) or any interpretation thereof; (vii) the failure of the Business to meet any of its projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics or the inputs into such items (whether or not shared with Purchaser or its Affiliates or

representatives); provided, that this clause (vii) shall not prevent a determination that any fact, condition, change, violation, inaccuracy, circumstance, effect event, or occurrence underlying such failure to meet projections, forecasts or predictions has resulted in a "Material Adverse Effect" (to the extent such fact, condition, change, violation, inaccuracy, circumstance, effect, event, or occurrence is not otherwise excluded from this definition of "Material Adverse Effect"); (viii) national or international political, labor or social conditions; (ix) the public announcement of, entry into or pendency of, actions required or contemplated by or performance of obligations under, this Agreement and the Transactions or the identity of the parties to this Agreement, including any termination of, reduction in or similar adverse impact on relationships, contractual or otherwise, with any customers, suppliers, financing sources, licensors, licensees, distributors, partners, employees or others having relationships with the Business; (x) any effect arising or resulting from or related to the filing of the Bankruptcy Case; (xi) any action required to be taken under any Applicable Law or Order or any existing Contract by which Seller (or any of its properties) are bound; (xii) seasonal changes in the results of operations of Seller; (xiii) any epidemic, pandemic, outbreak of disease or other public health emergency (including COVID-19) or any escalation or worsening of any such conditions; or (xiv) any objections made in the Bankruptcy Court to this Agreement, the Transactions, the Sale Order or Seller's reorganization efforts, any orders of the Bankruptcy Court and any actions or omissions of Seller in compliance with any order of the Bankruptcy Court and the assumption or rejection of any Assigned Contract; provided, however, that any such change, event, occurrence, development, change of fact or circumstance contemplated in the preceding clauses (i), (ii), (iii), (vi), (viii) or (xiii) may be taken into account in determining whether there has been or is a Material Adverse Effect to the extent such matter adversely affects the Transferred Assets, the Assumed Liabilities or the Business in a substantially disproportionate manner as compared to other similarly situated companies operating in the same industries as the Business (and if so, to the extent so disproportionately affected).

"**Material Contracts**" has the meaning set forth in Section 3.12(a).

"**Non-Transferred Asset**" has the meaning set forth in Section 2.6(a).

"**Offer Employee**" has the meaning set forth in Section 6.5(a).

"**Order**" means any award, order, writ, stipulation, subpoena, decision, injunction, judgment (whether permanent or temporary), decree, ruling, verdict or similar determination entered, issued, made or rendered by any Governmental Authority.

"**Organizational Documents**" means (a) the articles or certificates of incorporation and the by-laws of a corporation, (b) the partnership agreement and any statement of partnership of a general partnership, (c) the limited partnership agreement and the certificate of limited partnership of a limited partnership, (d) the operating or limited liability company agreement and the certificate of formation of a limited liability company, (e) any charter, joint venture agreement or similar document adopted or filed in connection with the creation, formation or organization of a Person not described in clauses (a) through (d), and (f) any amendment to or equivalent of any of the foregoing.

"**Outside Date**" has the meaning set forth in Section 9.1(j).

"**Owned Intellectual Property**" means the Intellectual Property owned by Seller that is Used in the Business.

"**Party**" or "**Parties**" has the meaning set forth in the preamble.

"**Patent Assignment Agreement**" means the patent assignment agreement assigning the patents to Purchaser, in a form reasonably acceptable to Purchaser and Seller and executed and delivered at Closing.

"**Permit**" means all permits, authorizations, certificates, franchises, consents and other approvals from any Governmental Authority (including all applications, renewal applications or documents filed, or fees paid, in connection therewith).

"**Permitted Liens**" means (a) Liens for Taxes, assessments or other governmental charges not yet due and payable or being contested in good faith by appropriate proceedings and for which adequate reserves have been taken in accordance with GAAP; (b) mechanics', carriers', workers', repairers' and other similar Liens arising or incurred in the ordinary course of business and for which adequate reserves have been taken in accordance with GAAP and which would not, individually or in the aggregate, have a material impact on the Business; (c) zoning, entitlement and building regulations and land use restrictions; (d) Liens arising under leases of property or equipment in favor of the owner thereof; (e) pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security; (f) deposits to secure the performance of bids, Contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; (g) non-exclusive licenses of Intellectual Property granted in the ordinary course of business; (h) Liens arising under or created by this Agreement or any of the Related Documents; and (i) Liens set forth on Schedule 1.1(a).

"**Person**" means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, estate, trust, association, organization, labor union or any other entity or Governmental Authority.

"**Personal Data**" means, as applicable, (a) any and all information about or related to an individual that either contains data elements that identify the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, including without limitation Protected Health Information as defined under HIPAA and "personal data" as defined under GDPR, (b) any and all information about or related to an individual that any Information Privacy and Security Laws would require any Person to be notified if such information is lost, misused, wrongly accessed, wrongly disclosed, wrongly acquired or compromised, (c) any and all other information about or related to an individual, the receipt, access, acquisition, collection, compilation, use, storage, processing, transmission, safeguarding, security, disposal, destruction, disclosure, sale, licensing, rental, transfer or other processing of which is regulated by any Information Privacy and Security Law, including, without limitation, personal healthcare information. Personal Data includes (t) information in any form, including paper, electronic and other forms, (u) any information that enables a Person to contact the individual (such as information contained in a cookie or an electronic device fingerprint), (v)

personal identifiers such as name, address, Social Security Number, date of birth, driver's license number or state identification number, Taxpayer Identification Number and passport number, (w) financial information, including credit or debit card numbers, account numbers, access codes, consumer report information, insurance policy number, (x) demographic information, (y) unique biometric data, such as fingerprint, retina or iris image, voice print or other unique physical representation and (z) individual medical or health information (including information of patients, customers, employees, workers, contractors, and third parties who have provided information to Seller, and including information relating to services provided by or to third parties). This definition of Personal Data also applies to information defined or described by Seller as "personal information," "personally identifiable information," "PII" or any similar term in any of their documents, privacy policies or other public-facing statements.

"**Petition Date**" has the meaning set forth in the Recitals.

"**Pre-Petition Financing Agreement**" means the Credit Agreement, dated January 24, 2022, by and among (a) Perceptive Credit Holdings III, LP, (b) Seller, (c) the other guarantors party thereto, and (d) the lenders from time to time party thereto, as amended, restated, supplemented or otherwise modified from time to time.

"**Pre-Petition Loans**" has the meaning ascribed to the term "Loan" in the Pre-Petition Financing Agreement.

"**Pre-Petition Obligations**" has the meaning ascribed to the term "Obligations" in the Pre-Petition Financing Agreement.

"**Purchase Price**" has the meaning set forth in Section 2.9(a).

"**Purchaser**" has the meaning set forth in the preamble.

"**Purchaser Controlled Defense**" has the meaning set forth in Section 7.3(f).

"**Related Claims**" means all claims or causes of action (whether in contract or tort, in law or in equity, or granted by statute or otherwise) that may be based upon, arise out of or relate to this Agreement, the Related Documents and any other document or instrument delivered pursuant to this Agreement or the Related Documents, or the negotiation, execution, termination, validity, interpretation, construction, enforcement, performance or nonperformance of this Agreement or the Related Documents or otherwise arising from the Transactions or the relationship between the Parties (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with, or as an inducement to enter into, this Agreement or the Related Documents).

"**Related Documents**" means the Bill of Sale and Assignment and Assumption Agreement, the Patent Assignment Agreement and any other agreements, documents, instruments or other Contracts to be executed and delivered in connection with this Agreement or the Transactions; provided, however, that the Bill of Sale and Assignment and Assumption Agreement and the Patent Assignment Agreement shall not be a Related Document solely for purposes of applying the provisions in Article 10 to the extent, and only to the extent, that any such document expressly conflicts with Article 10.

"**Release**" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any Hazardous Substances.

"**Required DIP Lenders**" has the meaning ascribed to the term "Majority Lenders" in the DIP Financing Agreement.

"**Sale Motion**" means the motion of Seller seeking entry of the Sale Order approving the terms herein, to be filed on or about May 5, 2025, in the Bankruptcy Case.

"**Sale Order**" means an Order of the Bankruptcy Court issued pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, in form and substance mutually agreed by the Parties.

"**Schedules**" has the meaning set forth in Article 3.

"**Seller**" has the meaning set forth in the preamble.

"**Seller 401(k) Plan**" has the meaning set forth in Section 6.5(h).

"**Seller Controlled Defense**" has the meaning set forth in Section 7.3(f).

"**Seller Tax Claim**" has the meaning set forth in Section 7.4(e).

"**Service Provider**" means a director, officer, employee or individual independent contractor.

"**Solvent**" when used with respect to any Person, means that, as of any date of determination, (a) the fair salable value (determined on a going concern basis) of its assets and property will, as of such date, exceed the amounts required to pay its debts as they become absolute and mature, as of such date, (b) such Person will have adequate capital to carry on its business and (c) such Person will be able to pay its debts as they become absolute and mature, in the ordinary course of business, taking into account the timing of and amounts of cash to be received by it and the timing of and amounts of cash to be payable on or in respect of its indebtedness.

"**Tax**" means any tax (including any income tax, franchise tax, branch profits tax, capital gains tax, value-added tax, sales tax, use tax, property tax, transfer tax, payroll tax, social security tax or withholding tax), and any related fine, penalty, interest, or addition to tax with respect thereto, imposed, assessed or collected by or under the authority of any Governmental Authority.

"**Tax Return**" means any return (including any information return), report, statement, schedule, notice, form, or other document or information (whether in tangible, electronic or other form), including any amendments, schedules attachments, supplements, appendices and exhibits thereto, filed with or submitted to, or required to be filed with or submitted to, any Governmental Authority in connection with the determination, assessment, collection, or payment, of any Tax.

"**Taxing Authority**" means any Governmental Authority responsible for the administration or the imposition of any Tax.

"**Termination Fee**" means a fee equal to 1.5% of the Credit Bid.

"**Trademark Assignment Agreement**" means the trademark assignment agreement assigning the trademarks to Purchaser, in a form reasonably acceptable to Purchaser and Seller and executed and delivered at Closing.

"**Transactions**" means the transactions contemplated by this Agreement and the Related Documents.

"**Transfer Taxes**" has the meaning set forth in Section 2.10.

"**Transferred Assets**" has the meaning set forth in Section 2.1.

"**Transferred Employee**" has the meaning set forth in Section 6.5(a).

"**Used in the Business**" has the meaning set forth in Section 2.1.

"**Welfare Claims**" has the meaning set forth in Section 6.5(d).

"**Wind-Down Activities**" means the confirmation and implementation of a liquidating chapter 11 plan and orderly wind-down of Seller's bankruptcy estate following the Closing.

"**Wind-Down Amount**" means an amount equal to $700,000; provided that such amounts shall only be used to pay Wind-Down Expenses.

"**Wind-Down Expenses**" means the expenses required to implement an Acceptable Chapter 11 Plan and conduct an orderly wind-down of Seller's bankruptcy estate following the effective date of such Acceptable Chapter 11 Plan which are funded by the Wind-Down Amount; provided that $200,000 of the Wind-Down Amount may be utilized as a reserve for the payment of allowed general unsecured claims under a confirmed chapter 11 plan; provided further that, for the avoidance of doubt, Purchaser shall not be liable for any expenses in excess of the Wind-Down Amount.

1.2 **Other Definitional and Interpretive Matters**.

(a) Unless otherwise expressly provided, for purposes of this Agreement and the Related Documents, the following rules of interpretation shall apply:

(i) Calculation of Time Period. All references to a day or days shall be deemed to refer to a calendar day or days, as applicable, unless otherwise specifically provided. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(ii) Dollars. Any reference to $ shall mean U.S. dollars, which is the currency used for all purposes in this Agreement and the Related Documents. The specification of any dollar amount in the representations and warranties or otherwise in this

Agreement, the Related Documents or the Schedules is not intended and shall not be deemed to be an admission or acknowledgement of the materiality of such amounts or items, nor shall the same be used in any dispute or controversy between the Parties to determine whether any obligation, item or matter (whether or not described herein or included in any schedule) is or is not material for purposes of this Agreement, the Related Documents or the Schedules.

(iii) Exhibits/Schedules. The Exhibits and Schedules to this Agreement are an integral part of this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any matter or item disclosed on one Schedule shall be deemed to have been disclosed on each other Schedule. Disclosure of any item on any Schedule shall not constitute an admission or indication that any such item is required to be disclosed, or that such item or matter is material or has resulted in or will result in a Material Adverse Effect or that the included items or actions are not in the ordinary course of business. No disclosure on a Schedule relating to a possible breach or violation of any Contract, Applicable Law or Order shall be construed as an admission or indication that a breach or violation exists or has actually occurred. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(iv) Gender and Number. Any reference to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(v) Headings. The provision of a table of contents, the division of this Agreement or Related Documents into articles, sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement or Related Document, as applicable. Unless otherwise specified, all references in this Agreement to any "Section" or other subdivision are to the corresponding section or subdivision of this Agreement, and all references in a Related Document to any "Section" or other subdivision are to the corresponding section or subdivision of such Related Document.

(vi) Herein. The words such as "herein," "hereinafter," "hereof" and "hereunder" that are used in this Agreement refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. Uses of such words in the Related Documents shall refer to such Related Document as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(vii) Or. The word "or" shall be construed in the inclusive sense of "and/or" unless otherwise specified.

(viii) Including. The word "including" or any variation thereof means (unless the context of its usage otherwise requires) "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(ix) Successors. A reference to any party to this Agreement, any Related Document or any other agreement or document shall include such party's successors and permitted assigns.

(x) Legislation. A reference to any legislation or to any provision of any legislation shall include any amendment thereto, and any modification or re-enactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

(xi) Reflected On or Set Forth In. An item arising with respect to a specific representation or warranty shall be deemed to be "reflected on" or "set forth in" a balance sheet or financial statement, to the extent any such phrase appears in such representation or warranty, if (a) there is a reserve, accrual or other similar item underlying a number on such balance sheet or financial statement that relates to the subject matter of such representation, (b) such item is otherwise specifically set forth on the balance sheet or financial statement or (c) such item is set forth in the notes to the balance sheet or financial statement.

(xii) Made Available. Any reference in this Agreement to "made available" means a document or other item of information that was provided or made available to Purchaser or its representatives in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, the Transactions.

(b) All representations and warranties set forth in this Agreement or the Related Documents are contractual in nature only and subject to the sole and exclusive remedies set forth herein. No Person is asserting the truth of any representation and warranty set forth in this Agreement or the Related Documents; rather, the Parties have agreed that should any representations and warranties of any party prove untrue, the other parties shall have the specific rights and remedies herein specified as the exclusive remedy therefor, but that no other rights, remedies or causes of action (whether in law or in equity or whether in contract or in tort or otherwise) are permitted to any party hereto as a result of the untruth of any such representation and warranty. The phrase "to Seller's Knowledge" and phrases of similar import or effect are used herein to qualify and limit the scope of any representation or warranty in which they appear and are not affirmations of any Person's "superior knowledge" that the representation or warranty in which they are used is true.

(c) The Parties have participated jointly in the negotiation and drafting of this Agreement and the Related Documents and, in the event an ambiguity or question of intent or interpretation arises, this Agreement and the Related Documents shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement and the Related Documents. The Parties agree that changes from earlier drafts to the final version of this Agreement do not necessarily imply that the party agreeing to such change is agreeing to a change in meaning (as the party agreeing to such change may believe the change is stylistic and non-substantive); consequently, no presumption should exist by virtue of a change from a prior draft.

ARTICLE 2
THE PURCHASE AND SALE; CLOSING

2.1 **Purchase and Sale**. Upon the terms and subject to the conditions set forth in this Agreement and the Sale Order, at the Closing, Purchaser shall (or shall cause its designated Affiliate or Affiliates to) purchase, assume and accept from Seller, and Seller shall sell, transfer, assign, convey and deliver (or shall cause the sale, transfer, assignment, conveyance and delivery) to Purchaser, Free and Clear (except for Permitted Liens), all of the rights, title and interests in, to and under the assets and interests used in (in whole or in part), necessary for, exploited in connection with or otherwise related to the Business ("**Used in the Business**") as the same shall exist on the Closing Date (collectively, the "**Transferred Assets**"), including all of the rights, title and interests in, to and under the following:

(a) all Cash and Cash Equivalents, except Excluded Cash;

(b) all accounts receivable, notes, negotiable instruments and chattel paper owned or held, together with any unpaid interest or fees accrued thereon or other amounts due with respect thereto, and other amounts receivable from any Person before the Closing;

(c) all supplies and other inventories;

(d) to the extent transferable pursuant to Applicable Law, all current and prior insurance policies of Seller and any claims thereunder to the extent such policies relate to the operation of the Business or to any Assumed Liabilities, other than the Excluded Insurance Policies;

(e) to the extent transferable, all Permits (including any applications that are in process) Used in the Business;

(f) all Contracts to which Seller is a party and which are Used in the Business, including (i) any confidentiality, non-disclosure and restrictive covenants agreements executed by any Person for the benefit of Seller to the extent relating to the Business, Transferred Assets or Assumed Liabilities and (ii) those listed on Schedule 2.1(f), excluding Contracts that expire or are terminated prior to the Closing and all Designated Contracts that Purchaser elects to exclude pursuant to Section 5.3(b) (collectively, the "**Assigned Contracts**");

(g) all Books and Records, other than the Excluded Books and Records; provided, that Purchaser will provide Seller and any court-appointed trustee, plan agent or other fiduciary charged with implementing a liquidating chapter 11 plan and winding up the affairs of Seller with reasonable access to such Books and Records for the purposes of conducting the Wind-Down Activities;

(h) all Business Intellectual Property, including as set forth on Schedule 2.1(h);

(i) all equipment, and other tangible personal property, including without limitation office furniture and fixtures, computers, security systems, telephone and internet equipment and maintenance equipment and supplies, Used in the Business and owned by Seller, including those listed on Schedule 2.1(i);

(j) all rights of Seller under non-disclosure or confidentiality, invention assignment, work made for hire, non-compete, or non-solicitation agreements with current or former Service Providers of Seller;

(k) all Employee Plans other than Excluded Employee Plans (the "**Assumed Employee Plans**"), together with any funding arrangements relating thereto (including but not limited to all assets, trusts, insurance policies and administration service contracts related thereto) and all rights and obligations thereunder to the extent relating to Transferred Employees;

(l) all Avoidance Actions and all of Seller's other rights, claims or causes of action against (i) any Transferred Employees, (ii) any counterparties to Assigned Contracts or (iii) other third parties relating to the assets, properties, business or operations of Seller with respect to the Business, the Transferred Assets and the Assumed Liabilities (including all guaranties, warranties, indemnities and similar rights in favor of Seller or any its Affiliates to the extent solely related to the Transferred Assets or the Assumed Liabilities), in each case, whether arising by way of counterclaim or otherwise, and whether arising out of transactions occurring prior to, on or after the Closing Date, except for such rights, claims and causes of related to the Excluded Assets or Excluded Liabilities; provided that any Avoidance Actions acquired under this provision shall be extinguished and not be pursued by Purchaser;

(m) any Seller's claims for 'employee retention credits' ("**ERC**") under the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. No. 116-36, "**CARES Act**");

(n) any goodwill associated with any of the Transferred Assets; and

(o) all prepaid expenses, claims, deposits, prepayments, refunds, causes of action, demands, actions, suits, choses in action, rights of recovery, rights under guarantees, warranties, indemnities and all similar rights against third parties, rights of setoff and rights of recoupment, in each case, to the extent exclusively used in or held for use for the Transferred Assets listed in clauses (a) through (m) above or the Assumed Liabilities.

2.2 **Excluded Assets**. Notwithstanding the provisions of Section 2.1 or anything to the contrary herein, any and all assets, rights and properties of Seller that are not specifically identified in Section 2.1 as Transferred Assets and, specifically, the following assets, rights and properties of Seller (collectively, the "**Excluded Assets**"), shall be retained by Seller, and Purchaser and its designees shall acquire no right, title or interest in the Excluded Assets in connection with the Transaction:

(a) all Excluded Cash;

(b) all bank accounts of Seller, including such bank account designated on Schedule 2.2(b), which shall be used for Wind-Down Activities or to hold professional fees or other deposits;

(c) all Excluded Books and Records;

(d) all Excluded Insurance Policies and, in each case, all rights and benefits of any nature of Seller with respect thereto except to the extent the proceeds of any directors and officers insurance policy that is an Excluded Insurance Policy relates to any Assumed Liability;

(e) all Permits (including applications therefor and any trade or import/export Permits) that (i) are not Transferred Assets under Section 2.1 or (ii) are not transferable to Purchaser under Applicable Law;

(f) all Excluded Contracts to which Seller is a party;

(g) any interest of Seller under this Agreement or the Related Documents, including, without limitation, the right to receive the Purchase Price and to enforce Seller's rights and remedies thereunder, and any interest of Seller under any agreement providing for the sale of an Excluded Asset;

(h) all Employee Plans set forth on Schedule 2.2(h) (the "**Excluded Employee Plans**"), together with any funding arrangements relating thereto (including but not limited to all assets, trusts, insurance policies and administration service contracts related thereto) and all rights and obligations thereunder;

(i) any net operating losses, Tax assets, Tax attributes, rights of Seller to Tax refunds (but not including Seller's claims for ERC under the CARES Act) or credits for overpayment of Taxes in lieu of a refund attributable to any taxable period (or portion thereof) ending on or before the Closing Date, and Tax Returns, related work papers, Tax information and Tax records of Seller;

(j) any assets not otherwise designated as Transferred Assets or from time to time designated by the Parties as Excluded Assets;

(k) except for the Avoidance Actions, all of Seller's rights, claims or causes of action against (i) any current or former directors, officers, or insiders of Seller (other than any Transferred Employee), and (ii) any Person relating to the assets, properties, business or operations of Seller (including all guaranties, warranties, indemnities and similar rights in favor of Seller or any of its Affiliates) to the extent arising under the Bankruptcy Code or solely relating to any of the Excluded Assets or Excluded Liabilities, in each case, whether arising by way of counterclaim or otherwise, and whether arising out of transactions occurring prior to, on or after the Closing Date;

(l) all of Seller's right, title and interest to any of the assets set forth on Schedule 2.2(l); and

(m) all prepaid expenses, claims, deposits, prepayments, refunds, causes of action, demands, actions, suits, rights of recovery, rights under guarantees, warranties, indemnities and all similar rights against third parties, rights of setoff and rights of recoupment, in each case, to the extent exclusively related to or exclusively used in or held for use for the Excluded Assets listed in clauses (a) through (l) above.

2.3 **Assumption of Liabilities**. On the terms and subject to the conditions set forth in this Agreement, Purchaser shall (or shall cause its designated Affiliate or Affiliates to), effective as of the Closing, assume and agree to pay, discharge and perform in accordance with their terms the following Liabilities of Seller (collectively, the "**Assumed Liabilities**"):

(a) all Liabilities arising out of the ownership or operation of the Transferred Assets by Purchaser solely to the extent such Liabilities arise on or after and relate to the period following the Closing;

(b) subject to Section 2.4, all Liabilities arising under the Assigned Contracts solely to the extent such Liabilities arise on or after and relate to the period following the Closing;

(c) all Determined Cure Costs; and

(d) (i) all Liabilities, solely to the extent incurred after the Closing Date, relating to the employment or performance of services, or termination of employment or services, of any Transferred Employee by Purchaser or its Affiliates, (ii) any Liabilities under each Assumed Employee Plan and (iii) any Liabilities specifically assumed by Purchaser pursuant to Section 6.5; and

(e) all Transfer Taxes for which Purchaser is liable pursuant to this Agreement.

2.4 **Excluded Liabilities**. Notwithstanding Section 2.3, Purchaser is assuming only the Assumed Liabilities of Seller and will not assume or be liable for any Liabilities that are not Assumed Liabilities, and Seller shall retain and shall be responsible for all Liabilities that are not Assumed Liabilities, including all Liabilities related to Excluded Assets or any other Liabilities of the Business (all such Liabilities not being assumed herein referred to as the "**Excluded Liabilities**"), including the following:

(a) any Liability to the extent arising from any Excluded Asset;

(b) except as set forth in Section 8.2 with respect to Transfer Taxes (i) all Tax Liabilities of Seller or its Affiliates for any taxable period, and (ii) all Tax Liabilities relating to the Transferred Assets or Business attributable to a Pre-Closing Tax Period;

(c) all Liabilities, to the extent incurred on or prior to the Closing Date, (i) relating to the application of employment or service of, employment or performance of services, or termination of employment or services, of any person (including any current or former Service Provider); (ii) relating to accrued or earned but unpaid payroll (including salary, wages and commissions), bonuses, incentive compensation, any unfunded deferred compensation obligations, accrued but unused vacation, sick leave, parental leave, and long service leave, (iii) relating to all severance or termination agreements and obligations, and (iv) under each Employee Plan of or with respect to any current or former Service Provider relating to such Service Provider's service with Seller, plus the employer portion of any payroll, social security, unemployment or similar Taxes associated with the foregoing, in case of each of clauses (i) through (iv), other than Liabilities arising under the Assumed Employee Plans;

(c) all Liabilities arising out of, relating to or with respect to any Excluded Employee Plan, if any;

(d) all Liabilities arising in connection with any violation of any Applicable Law (by Seller) relating to the period prior to the Closing;

(e) all Liabilities arising under Environmental Law relating to, resulting from, caused by or arising out of the ownership, operation or control of the Business, to the extent accruing, arising out of or relating to events, occurrences, acts or omissions occurring or existing prior to the Closing Date; and

(f) all Actions against Seller, any of its assets, the Business and any of its past or present operations or activities (except to the extent (and only to such extent that) such actions relate to an Assumed Liability).

2.5 **Excluded Contracts**. Pursuant to Section 5.3(b), Purchaser shall be entitled, in its sole discretion, by written notice to Seller up to three (3) Business Days prior to the Closing Date, to elect not to purchase or assume one or more Assigned Contract, in which case, notwithstanding anything in this Agreement or any Related Document to the contrary, such Assigned Contract shall be considered an excluded contract ("**Excluded Contract**") (and shall constitute an Excluded Asset and not be included in the Transferred Assets) for all purposes of this Agreement and Purchaser shall not have any obligation to satisfy or pay any Cure Costs or other Liabilities with respect to such Excluded Contract. Each assignable Assigned Contract that Purchaser does not elect to remove from the list of Assigned Contracts pursuant to Section 5.3(b) shall be an Assigned Contract.

2.6 **Nontransferable Assets and Liabilities; Retention of Rights**.

(a) Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Transferred Asset or any claim, right or benefit arising thereunder or resulting therefrom if an attempted assignment or transfer thereof, without the Consent of a third party (including any Governmental Authority) (after giving effect to the Sale Order or any other applicable order of the Bankruptcy Court that effects such transfer without any required Consents), would constitute a breach or other contravention thereof or a violation of Applicable Law (each, a "**Non-Transferred Asset**").

(b) If, on the Closing Date, any third-party Consent is not obtained for a Non-Transferred Asset, or if an attempted transfer or assignment thereof would be ineffective or a violation of Applicable Law, then, until any requisite consent is obtained therefor and the same is transferred and assigned to Purchaser or its designee, each such Non-Transferred Asset shall be held by Seller as agent for the Purchaser, and Seller shall, to the extent permitted by Applicable Law, provide to Purchaser the benefits and Purchaser shall assume the obligations and bear the economic burdens associated with such Non-Transferred Asset. Seller and Purchaser shall use commercially reasonable efforts to enter into agreements (including subcontracting, sublicensing or subleasing, if permitted) by which (i) Seller shall, at Seller's expense (to the extent amounts are available from the Wind-Down Amount to fund such expense), without interruption of the Business, provide Purchaser with the economic and operational equivalent of obtaining the

requisite third-party Consent and assigning the applicable Non-Transferred Asset to Purchaser (including, with the prior written consent of Purchaser, enforcing for the benefit of Purchaser, and at Purchaser's sole expense, all claims or rights arising thereunder) and (ii) Purchaser shall perform, at its sole expense, the obligations and assume the economic burdens of Seller to be performed after the Closing with respect to such Non-Transferred Asset.

(c) Notwithstanding anything to the contrary in this Agreement or any Related Document, Seller retains, on behalf of itself and its Affiliates, licensees, sublicensees, licensors and distributors, a limited, non-exclusive right to use and the right of reference in, to and under the Transferred Assets (other than the Assigned Contracts and the Owned Intellectual Property set forth on Schedule 2.1(i)), in each case, as may be necessary or useful to exercise its or its Affiliates' respective rights or perform its or its Affiliates' respective obligations under this Agreement or any Related Document.

2.7 **Closing**. The closing of the Transactions (the "**Closing**") will take place remotely by electronic exchange of documents on the date (the "**Closing Date**") that is the second (2^{nd}) Business Day after the date on which all of the conditions set forth in Article 8 (excluding conditions that, by their terms, are to be satisfied at the Closing, but subject to the satisfaction or waiver of all such conditions at the Closing), have been satisfied or waived by the party hereto entitled the benefit of the same, unless another time or date is agreed to in writing by the Parties. Except as otherwise set forth herein, all proceedings to be taken and all documents to be executed and delivered by all parties hereto at the Closing will be deemed to have been taken and executed simultaneously and no proceedings will be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered.

2.8 **Closing Deliveries of the Parties**. At or prior to the Closing:

(a) Purchaser and Seller shall execute and deliver the Bill of Sale and Assignment and Assumption Agreement and other customary transfer documents necessary to transfer to Purchaser (or its Affiliate) all right, title and interest of Seller to or in the Transferred Assets, in form and substance reasonably acceptable to Purchaser and Seller;

(b) Purchaser and Seller shall execute and deliver (i) the Patent Assignment Agreement and (ii) the Trademark Assignment Agreement, in each case, in a form reasonably acceptable to Purchaser and Seller;

(c) Purchaser shall deliver, or cause to be delivered or released, to Seller or the applicable Person each of the following:

(i) a certificate, dated as of the Closing Date, executed by or on behalf of Purchaser as to the satisfaction of the conditions set forth in Section 8.3(a) and Section 8.3(b);

(ii) the Bid Direction Letter; and

(iii) the Excluded Cash, to the extent any amount is required to be funded at Closing in accordance with the proviso to the definition of "Excluded Cash", to the account or accounts designated in writing by Seller.

(d) Seller shall deliver, or cause to be delivered or released, to Purchaser or the applicable Person each of the following:

(i) all right, title and interest in and to the Transferred Assets;

(ii) certificates of service evidencing that all notices of the assumption and assignment of the Assigned Contracts and of the assumption of the Assumed Liabilities have been given in accordance with the terms of this Agreement and the Bid Procedures Order;

(iii) a certificate (in form and substance reasonably satisfactory to Seller and Purchaser), dated as of the Closing Date, executed by or on behalf of Seller as to the satisfaction of the conditions set forth in Section 8.2(a) and Section 8.2(b);

(iv) a certificate (in form and substance reasonably satisfactory to Seller and Purchaser), dated as of the Closing Date, executed by or on behalf of Seller and certifying that attached thereto are true, correct and complete copies of all resolutions adopted by the board of directors of Seller authorizing the execution, delivery and performance of this Agreement and the consummation of the Transactions and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the Transactions;

(v) all documentation required to effectuate the assumption of the Assumed Employee Plans (if any) by Purchaser;

(vi) certificates, dated as of the Closing Date, of Seller's non-foreign status, in accordance with Treasury Regulation § 1.1445-2(b); and

(vii) such other instruments as are reasonably requested by Purchaser and otherwise necessary to consummate the transactions contemplated by this Agreement and reasonably acceptable to Seller.

2.9 **Purchase Price; Assumed Liabilities**.

(a) At the Closing, upon the terms and subject to the conditions set forth herein, the aggregate consideration for the sale, transfer, conveyance, assignment and delivery of the Transferred Assets will consist of (i) a credit bid pursuant to Section 363(k) of the Bankruptcy Code (the "**Credit Bid**"), on a dollar-for-dollar basis, of (A) the full amount of the DIP Obligations outstanding as of the Closing, plus (B) an amount of the Pre-Petition Obligations equal to (1) the full amount of the Pre-Petition Obligations outstanding as of the Closing less (2) $1,000,000; (ii) the assumption of the Assumed Liabilities; (iii) any amount that is required to be funded at Closing in accordance with the proviso to the definition of "Excluded Cash"; and (iv) a full and final waiver and relinquishment of any and all rights, liens or claim in all other Excluded Cash (the sum of clauses (i) through (iv), collectively, the "**Purchase Price**").

(b) At the Closing, on the terms and subject to the conditions set forth in this Agreement, Purchaser will assume and become responsible for the Assumed Liabilities. Purchaser

agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all Assumed Liabilities in a timely manner in accordance with the terms hereof.

2.10 **Transfer Taxes**. It is the intention of the Purchaser and Seller that the Transactions be exempt from all transfer, documentary, sales, use, excise, stock transfer, value-added, stamp, recording, registration and other similar taxes, levies and fees (including any penalties, fines and interest), together with any conveyance fees, recording charges and other similar fees and charges, incurred in connection with this Agreement and the Transactions (collectively, "**Transfer Taxes**") pursuant to Section 1146(a) of the Bankruptcy Code. Purchaser and Seller shall cooperate in good faith to minimize, to the extent permissible under Applicable Law, the amount of any Transfer Taxes due with respect to the Transactions. In the event any Transfer Taxes are required to be paid with respect to the Transactions, such Transfer Taxes shall be borne and paid one hundred percent (100%) by Purchaser. Purchaser shall file all necessary Tax Returns and other documentation with respect to such Transfer Taxes.

2.11 **Withholding Taxes**. Purchaser and any of their respective Affiliates shall be entitled to deduct and withhold (or cause to be deducted and withheld) from any payments made pursuant to this Agreement such amounts as they determine are required to be deducted or withheld under the Code or any provision of applicable state, local or non-U.S. Law. To the extent that amounts are so deducted or withheld and paid over to the appropriate Taxing Authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction or withholding was made.

2.12 **Allocation of Purchase Price**.

(a) Within ninety (90) days following the Closing, Purchaser shall deliver to Seller a schedule allocating the Purchase Price (and all other amounts treated as consideration for U.S. federal income tax purposes) among the Transferred Assets (the "**Allocation Schedule**"). Purchaser and Seller shall negotiate in good faith to resolve disputed items, if any, in the Allocation Schedule as promptly as practicable. If Purchaser and Seller are unable to reach agreement with respect to the Allocation Schedule within thirty (30) days after the delivery of the Allocation Schedule by Purchaser to Seller, the Parties shall be entitled to use their own Purchase Price allocations for Tax reporting purposes.

(b) To the extent Purchaser and Seller agree on the Allocation Schedule pursuant to Section 2.12(a), Purchaser and Seller shall (i) timely file all Tax Returns required to be filed in connection with the Allocation Schedule, and (ii) prepare and file all Tax Returns and determine all Taxes in a manner consistent with the Allocation Schedule, except as may be required by Applicable Law and except as may be necessary to reflect adjustments to the Allocation Schedule resulting from post-Closing payments or events. Purchaser, on the one hand, and Seller, on the other hand, shall notify the other if it receives notice that any Governmental Authority proposes any allocation different from Allocation Schedule.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF SELLER

Except as disclosed in a document herewith delivered by Seller to Purchaser (the "**Schedules**"), Seller hereby represents and warrants to Purchaser as of the Agreement Date and as of the Closing Date (or, as to those representations and warranties that address matters as of particular dates, as of such dates), as follows:

3.1 **Organization, Good Standing and Other Matters**. Seller is duly organized, validly existing and in good standing under the Applicable Law of its jurisdiction of organization and has, subject to the necessary authority of the Bankruptcy Court, the requisite corporate power and authority to operate the Business and necessary to own, lease or operate the properties and assets owned, leased or operated by it to carry on the Business as now being conducted, except where the failure to be so duly organized, validly existing and in good standing, or to have such power and authority, would not, individually or in the aggregate, have a Material Adverse Effect. Seller is duly qualified to do business as a foreign company in each jurisdiction in which the nature of the Business as currently conducted by it or the property owned or leased by it makes such qualification necessary, except where the failure to be so qualified would not, individually or in the aggregate, have a Material Adverse Effect.

3.2 **Authority and Enforceability**. Subject to Bankruptcy Court approval, Seller has all requisite power and authority to execute and deliver this Agreement and each of the Related Documents to which it is (or at Closing, will be) a party and to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance of this Agreement and each of the Related Documents to which Seller is (or at Closing, will be) a party thereto, and the consummation by Seller of the Transactions, has been duly authorized and approved by all necessary corporate action on the part of Seller and are subject to the approval of the Bankruptcy Court. This Agreement has been, and each Related Document will be, at or prior to the Closing, duly executed and delivered by Seller and, assuming the due execution and delivery by the other parties hereto or thereto, and subject to the approval of the Bankruptcy Court, constitutes a valid and binding obligation of Seller, enforceable against it in accordance with its respective terms, except to the extent that such enforceability may be subject to, and limited by, the Enforceability Exceptions.

3.3 **No Conflict; Required Filings and Consents**.

(a) Except as otherwise set forth on Schedule 3.3(a), the execution and delivery of this Agreement by Seller does not and the execution and delivery of the Related Documents by Seller will not, and the consummation of the Transactions hereby and thereby will not (i) violate the provisions of the Organizational Documents of Seller, (ii) subject to the entry of the Sale Order, violate any Applicable Law or Order to which Seller is subject or by which its properties or assets are bound, (iii) subject to the entry of the Sale Order, violate, conflict with, constitute a breach or a default under (or event which, with the giving of notice or lapse of time, or both, would become a default) or give rise to any right of termination, amendment, revocation, suspension, payment, cancellation or acceleration of (A) any Assigned Contract or Assumed Liability, or (B) any right or obligation or to a loss of any benefit relating to any Transferred Asset to which Seller is entitled under any provision of any Assigned Contract binding upon Seller or (iv) result in the creation or

imposition of any Lien on any Transferred Asset, except for Permitted Liens and Assumed Liabilities; excluding from the foregoing clauses (ii), (iii) or (iv) any Consents, approvals, notices and filings the absence of which, and violations, breaches, defaults, rights of acceleration, cancellation or termination, and Liens, the existence of which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) No Consent of any Governmental Authority is required by or with respect to Seller in connection with the execution and delivery of this Agreement by Seller, or the consummation of the Transactions, except for (i) the Consents set forth in Schedule 3.3(b) of the Schedules, (ii) the entry of the Sale Order by the Bankruptcy Court, (iii) compliance with any applicable requirements of the Exchange Act or Securities Act and (iv) other Consents of Governmental Authorities that if not obtained or made would not (individually or in the aggregate) reasonably be expected to be materially adverse to the Business, taken as a whole.

3.4 **Litigation**. As of the Agreement Date, there is no Action pending or, to Seller's Knowledge, formally threatened in writing, against Seller before any Governmental Authority that would have a Material Adverse Effect or affect the Transferred Assets in any material respect after the entry of the Sale Order, if determined adversely and after taking into effect applicable insurance coverage.

3.5 **Intellectual Property**.

(a) Schedule 3.5(a) sets forth a true, correct and complete list of all material Owned Intellectual Property. Seller exclusively owns all Owned Intellectual Property. Except as set forth on Schedule 3.5(a), Seller is not party to, or bound by, (i) any license, royalty agreement, or other agreement relating to the use of any Business Intellectual Property (other than non-exclusive licenses granted for commercially available, unmodified, off-the-shelf software licensed for aggregate annual fees of less than $25,000), or (ii) any agreement pursuant to which Seller settled any action, litigation, suit or other judicial or administrative proceeding, claim, assertion, or threat with respect to Intellectual Property, including settlement agreements, coexistence agreements, and consent agreements.

(b) Other than with respect to Excluded Contracts or Assigned Contracts that Purchaser does not ultimately assume, no current or former Affiliate, partner, director, stockholder, officer, member, manager, employee, consultant or contractor of Seller will, after giving effect to the Transactions, own, license or retain any Business Intellectual Property. No interference, opposition, reissue, reexamination, or other proceeding is or has been pending or, to the Knowledge of Seller, threatened, in which the scope, validity, or enforceability of any Owned Intellectual Property is being, has been challenged.

(c) All Intellectual Property Registrations remain pending or in full force and effect and have not expired or been abandoned or cancelled. No interference, opposition, reissue, reexamination, or other proceeding is or has been pending or, to the Knowledge of Seller, threatened, in which the scope, validity, or enforceability of any Owned Intellectual Property is being or has been challenged.

(d) To the Knowledge of Seller, (i) the conduct of the Business does not infringe, misappropriate or otherwise violate in any Person's Intellectual Property and (ii) no Person is currently infringing, misappropriating or otherwise violating any Owned Intellectual Property.

(e) Other than the Owned Intellectual Property or any Intellectual Property licensed to Seller pursuant to an Assigned Contract, to Seller's Knowledge, no Intellectual Property is Used in the Business.

(f) To Seller's Knowledge, Seller has taken commercially reasonable steps to safeguard and maintain the confidentiality of all trade secrets that constitute Owned Intellectual Property, including by using good faith efforts to require all Persons having access thereto to execute written non-disclosure agreements.

3.6 **Privacy and Data Security**.

(a) Seller is, and to Seller's Knowledge has been during the last three (3) years, in compliance in all material respects with all applicable Information Privacy and Security Laws with respect to the Business. With respect to the Business, Seller maintains policies and procedures regarding data security and privacy and maintain administrative, technical, organizational and physical security safeguards that are required in compliance with all applicable Information Privacy and Security Laws.

(b) To Seller's Knowledge, during the last three (3) years, and solely to the extent required under applicable Information Privacy and Security Laws, Seller has had in place written data processing agreements with any key vendors acting as processors in material compliance with applicable Information Privacy and Security Laws in the case of processors.

(c) With respect to the Business, to the Knowledge of Seller, during the last three (3) years, there have been no material Personal Data breaches or material cybersecurity incidents (collectively, "**Breaches**") subject to any Information Privacy and Security Laws. With respect to the Business, to the Knowledge of Seller, Seller has not experienced a loss, or an unauthorized disclosure, use, or breach of data protection, privacy or security, of any data that required notice to any Person (including any Governmental Authorities or parties to any Contract) under any applicable Information Privacy and Security Laws within the last three (3) years. There is no pending Action by any Person (including any Governmental Authority or parties to any Contract) relating to Seller's information privacy or data security practices with respect to the Business, and to the Knowledge of Seller, no Person has threatened any such Action or made any complaint, investigation, or inquiry relating to such practices within the last (3) years. To Seller's Knowledge, Seller has not received any notice, request or other communication from any supervisory authority (as defined in the GDPR), or has been subject to any investigation or proceedings (whether of a criminal, civil or administrative nature) by any competent legal or regulatory authority, in each case relating to its processing of Personal Data with respect to the Business within the last (3) years.

3.7 **Permits**. Seller is in possession of all Permits necessary for Seller to own, lease and use the Transferred Assets as currently owned, leased or used and to carry on and operate the

Business, except where the failure to possess such Permit, individually or in the aggregate, has not had, and would not reasonably be expected to be material to the Business, taken as a whole. Schedule 3.7 sets forth a true, correct and complete list of all material Permits used by Seller with respect to the Transferred Assets and the Assumed Liabilities. To the Knowledge of Seller, there is no fact or circumstance relating to the Permits or Seller that would cause a Governmental Authority to deny or refrain from issuing any Permit approval.

3.8 **Compliance with Laws**. Seller is in compliance with Applicable Law with respect to the Transferred Assets and the Assumed Liabilities, except where any non-compliance, individually or in the aggregate, has not had, and would not reasonably be expected to have, a Material Adverse Effect. Seller has not received any written notice from any Governmental Authority relating to violations or alleged violations of, failure to comply with or defaults under, any Applicable Law, Order or Permit, in each case, with respect to the Transferred Assets and the Assumed Liabilities, except where any non-compliance or default, individually or in the aggregate, has not had, and would not reasonably be expected to have, a Material Adverse Effect.

3.9 **Real Property; Personal Property**.

(a) Seller does not own any real property.

(b) Schedule 3.9(b) sets forth each parcel of real property leased by Seller and each Lease with respect thereto (the "**Leased Real Estate**"), including all material written amendments or modifications to such Leases currently in effect. Seller has delivered to Purchaser correct and complete copies of all such Leases, including all material written amendments or modifications thereto currently in effect**.**

3.10 **Assets; Sufficiency of and Title to the Transferred Assets**. Other than the Excluded Assets, to the Knowledge of Seller, Seller has good and valid title to, or has good and valid leasehold interests in or otherwise has the valid right to possess and use, all tangible personal property that is included in the Transferred Assets, free and clear of all Liens other than Permitted Liens. Such owned and leased tangible personal property is in good working order, reasonable wear and tear excepted. The Transferred Assets (a) constitute all of the assets, tangible and intangible, of any nature whatsoever, necessary to operate the Business and (b) include all of the operating assets of Seller with respect to the Business, in the case of clause (b) except for the Excluded Assets and any assets disposed of in the ordinary course of business prior to the Closing.

3.11 **Taxes**. As of the Agreement Date, Seller has timely filed all income and other material Tax Returns with the appropriate Taxing Authority that it was required to file under applicable Law that are related to the Transferred Assets, and all such Tax Returns are true, correct, and complete in all material respects. Seller has timely paid all Taxes related to the Transferred Assets that are due and payable, except for Taxes that arise prior to the Petition Date or are being contested in good faith through appropriate proceedings and for which it maintains adequate reserves. No audits or administrative or judicial proceedings are currently being conducted or have been threatened in writing with respect to a material amount of Taxes of Seller. There are no Tax liens on any of the Transferred Assets, other than statutory liens for Taxes not yet due and payable.

3.12 **Material Contracts**.

(a) Schedule 3.12(a) sets forth a true, correct and complete list of the following types of Contracts (each a "**Material Contract**") in effect as of the Agreement Date that are related to the Transferred Assets or the Business generally and to which Seller is a party or is bound:

(i) any joint venture, partnership, limited liability company or other similar Contract, other than the Organizational Documents of Seller;

(ii) any Contract involving the sale or transfer of any portion of Seller's assets that is or was material to the Business or the business of Seller as previously conducted;

(iii) any Lease relating to the Leased Real Estate;

(iv) any Contract with the ten (10) largest (A) customers of the Business, taken as a whole by revenue for the year ended December 31, 2024, and (B) vendors of the Business, taken as a whole by cost for the year ended December 31, 2024;

(v) any Contract that imposes on Seller or any of its Affiliates (including Purchaser and its Affiliates following the Closing) (other than those contained in confidentiality agreements or similar Contracts) (A) any restriction on soliciting customers or employees or any non-competition restrictions, (B) any restriction on entering into any line of business, or from freely providing services or supplying products to any customer or potential customer, or in any part of the world, (C) a "most favored nation" pricing provision or exclusive marketing or distribution rights relating to any products or territory or minimum purchase obligations or exclusive purchase obligations with respect to any goods or services binding Seller or its Affiliates in favor of the counterparty, (D) any right of first refusal or right of first offer or similar right or limitations on the ability of Seller (or any of its subsidiaries) to own, operate, sell, transfer, pledge or otherwise dispose of any material amount of its assets or business granted to the counterparty to any Contract, or (E) other than restrictions that will cease to be effective on and after the Closing, any restriction on either the payment of dividends or distributions or the incurrence of Liens on the property or assets of Seller (or any of its subsidiaries);

(vi) any Contract (or series of related Contracts) involving payment obligations by or to Seller in excess of $500,000 in any annual period;

(vii) any Contracts with any current Service Provider that provides for annual base compensation in excess of $250,000 or provide for any severance Liabilities;

(viii) any Contract to which Seller is a party (A) pursuant to which Seller is granted a right to use or ownership of any third-party Intellectual Property that is or was material to the Business, other than non-exclusive licenses for off-the-shelf software or software that is subject to click-through or shrink wrap agreements entered into by Seller in the ordinary course of business, or (B) pursuant to which Seller grants a third party the right to use or ownership of any Intellectual Property that is or was material to the Business, other than any Contract with any end user of Seller's products or services which is entered into in the ordinary course of business or any marketing agreement which contains an incidental trademark license to use Seller's Trademarks in the scope of providing such

services, in each case, with an indication of whether such Contract is exclusive or non-exclusive;

(ix) any Contract that is a settlement, conciliation or similar agreement with any Governmental Authority or pursuant to which Seller will have any material outstanding obligation after the date of this Agreement that relates to the Business;

(x) any Contract with any Affiliate or current or former officer or director of Seller (other than employment- or services-related Contracts); and

(xi) any collective bargaining agreement or other Contract with any labor unions, labor organizations, works council or other employee representative (each a "**Labor Agreement**").

(b) With respect to each Contract set forth on Schedule 3.12(a), (i) such Contract is in full force and effect and constitutes the legal, valid and binding obligation of Seller and, to the Knowledge of Seller, the counterparty thereto, enforceable against Seller and, to the Knowledge of Seller, the counterparty thereto in accordance with its terms and conditions, subject to the Enforceability Exceptions and (ii) neither Seller nor, to the Knowledge of Seller, the counterparty thereto is in material breach or default thereof that would permit or give rise to a right of termination, modification or acceleration thereunder, and (iii) neither Seller nor, to the Knowledge of Seller, any counterparty thereto, has commenced any Action against any other party to such Contract or given or received any written notice of any breach or default under such Contract that has not been withdrawn or dismissed, except, in the cases of clauses (i), (ii) and (iii), for breaches or defaults (A) caused by or resulting from the Bankruptcy Case or (B) which are not, and would not reasonably be expected to be, individually or in the aggregate, material to the Business, taken as a whole.

3.13 **Employee Benefits**.

(a) Schedule 3.13 sets forth a true, correct and complete list of all material Employee Plans. With respect to each material Employee Plan, Seller has made available to Purchaser true, correct and complete copies of (i) the current plan document, including any amendments thereto, (ii) the most recent summary plan description (including any material modification), (iii) any material written communication to or from any Governmental Authority, (iv) the most recently filed IRS Form 5500, (v) the most recent actuarial report, financial statement and trustee report and (vi) the most recent determination or opinion letter from the IRS.

(b) Each Employee Plan has been operated and administered in all material respects in accordance with its terms and Applicable Law and administrative or governmental rules and regulations, including ERISA and the Code. There are no Actions (other than routine claims for benefits) pending, or to the Knowledge of Seller, threatened, with respect to any Employee Plan or any fiduciary or sponsor of an Employee Plan with respect to their duties under such Employee Plan or the assets of any trust under any such Employee Plan. There are no pending or, to the Knowledge of Seller, threatened audits, investigations or Actions by any Governmental Authority involving any Employee Plan. Seller and each of its ERISA Affiliates has made or will accrue prior to the Closing Date all payments and contributions (including insurance premiums)

due and payable as of the Closing Date to each Employee Plan as required to be made under the terms of such Employee Plan.

(c) Each Employee Plan intended to be "qualified" within the meaning of Section 401(a) of the Code has received a favorable determination or opinion letter as to such qualification from the IRS.

(d) Neither Seller nor any of its ERISA Affiliates maintains, sponsors or contributes to (or has been obligated to contribute to) or has in the past sponsored, maintained or had any obligation to contribute, to any plan that is or was: (i) subject to Title IV of ERISA; (ii) a "multiemployer plan" (as such term is defined in Section 3(37) of ERISA); (iii) a multiple employer plan within the meaning of Section 4063 or Section 4064 of ERISA; or (iv) a "multiple employer welfare arrangement," as defined in Section 3(40) of ERISA, nor have they incurred any Liability, including withdrawal Liability, with respect to any such Company Employee Plan. No liability under Title IV of ERISA has been or is reasonably expected to be incurred by the Seller or any of its ERISA Affiliates.

(e) No Employee Plan provides any post-employment health or welfare benefits to any Business Employee except to the extent required to be provided under COBRA.

(f) Neither the execution nor delivery of this Agreement nor the consummation of the Transactions, whether alone or together with any other event, will (i) entitle any Business Employee to any material payment or benefit; (ii) increase the amount or value of any compensation, benefit or other obligation payable or required to be provided to any Business Employee; (iii) accelerate the time of payment or vesting, or increase the amount of compensation due any Business Employee or accelerate the time of any funding (whether to a trust or otherwise) of compensation or benefits under any Employee Plan or (iv) result in the payment of any amounts that would not be deductible for federal income tax purposes by reason of Section 280G of the Code or would be subject to excise tax under Section 4999 of the Code. No Employee Plan provides for the reimbursement of any penalty or excise tax under Section 409A or 4999 of the Code.

3.14 **Labor Matters**.

(a) Schedule 3.14(a) sets forth a true, complete and correct list of all Business Employees, including, for each such Business Employee: (i) name or employee identification number, (ii) job position or title, (iii) location of employment, (iv) base annual salary or wage rate (as applicable), (v) exempt or non-exempt status, (vi) incentive cash compensation (as applicable), (vii) full-time or part-time status, (viii) employing entity, (ix) active or inactive status, (x) visa status (if applicable), and (xi) and accrued unused vacation amounts.

(b) Seller is neither party to, nor bound by, any Labor Agreement. No Business Employees are represented by any labor union, trade union, works council, labor organization or other employee representative body with respect to their employment with Seller. There are no material pending or, to the Knowledge of Seller, threatened Actions concerning labor matters with respect to the Business.

(c) During the past three (3) years, there have been no actual unfair labor practice charges, material labor grievances, material labor arbitrations, work stoppages, slowdowns, strikes, lockouts, picketing, handbilling or other material labor disputes, or to the Knowledge of Seller, threatened against Seller with respect to, or otherwise affecting, the Business.

(d) With respect to the Business, no labor union, trade union, works, council, labor organization, other employee-representative body, or group of employees of Seller has made a demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or, to the Knowledge of the Seller, threatened to be brought or filed with the National Labor Relations Board or any other labor relations tribunal or authority and there have not been any such proceedings within the past three (3) years. To the Knowledge of Seller, in the past three (3) years, there have been no labor union organizing activities with respect to any Business Employees.

(e) With respect to the Business and Business Employees, Seller is in compliance in all material respects with all Applicable Law respecting labor, employment and employment practices. In the last three (3) years, to the Knowledge of Seller, no allegations of sexual harassment, or other discrimination, retaliation or policy violation allegations have been made against any individual who is an officer or director of Seller as of the Agreement Date.

(f) Except as would not result in material liability for the Business: (i) Seller has fully and timely paid all wages, salaries, wage premiums, commissions, bonuses, severance and termination payments, fees, and other compensation that have come due and payable to its current or former Service Providers under Applicable Law, Contract or company policy; and (ii) each individual who is providing or within the past three (3) years has provided services for Seller and is or was classified and treated as an independent contractor, consultant, leased employee, or other non-employee service provider is and has been properly classified and treated as such for all applicable purposes.

(g) To the Knowledge of Seller, with respect to the Business, no Business Employee is in any respect in violation of any term of any employment agreement, nondisclosure agreement, non-competition agreement, common law nondisclosure obligation, fiduciary duty, nonsolicitation agreement, restrictive covenant or similar obligation: (i) owed to Seller or (ii) owed to any third party with respect to the right of any such Business Employee to be performing services for the Business or (B) restricting the use of trade secrets or proprietary information in connection with the Business.

3.15 **Environmental Matters**.

(a) Seller is in compliance with all Environmental Laws with respect to the Transferred Assets and the Leased Real Property, except in any such case where the failure to be in compliance would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Knowledge of Seller, Seller has not received any written notice or report regarding any material violation of Environmental Laws or any material Liabilities relating to the Transferred Assets or the Leased Real Property arising under Environmental Laws, other than any such notice or report that has now been resolved. There are no material Orders issued to Seller outstanding, or any Proceedings pending or, to the Knowledge of Seller,

threatened, relating to compliance with or Liability under any Environmental Laws affecting the Transferred Assets or any Leased Real Property.

(b) Seller has made available to Purchaser (i) all material Permits held by Seller issued pursuant to any Environmental Laws for the Business or the operations of the Transferred Assets, (ii) all material documents held by Seller with respect to any outstanding Orders or any pending or threatened Proceedings involving the Business or the Transferred Assets under or relating to any Environmental Laws and (iii) all material environmental reports, studies, analyses, investigations, audits and reviews in Seller's possession with respect to the Transferred Assets and the Leased Real Property.

3.16 **Absence of Material Developments**. Since the Petition Date, there has occurred no fact, event, condition, change or circumstance which has had or would reasonably be expected to have a Material Adverse Effect.

3.17 **Brokers and Finders**. Except for Raymond James & Associates, Inc., Seller has not, directly or indirectly, entered into any agreement with any Person that would obligate Seller to pay any commission, brokerage fee or "finder's fee" in connection with the Transactions.

3.18 **No Other Representations or Warranties**. Except for the representations and warranties contained in this Article 3, neither Seller nor any other Person on behalf of Seller makes any other express or implied representation or warranty with respect to itself, the Business, the Transferred Assets or the Assumed Liabilities, or with respect to any other information provided to Purchaser or its representatives, and Seller disclaims any other representations or warranties, whether made by or on behalf of Seller or any other Person. Seller will not, and no other Persons will, have or be subject to any Liability to Purchaser or any other Person resulting from the distribution to Purchaser, or Purchaser's use of, any such information, including any information, documents, projections, forecasts or other material made available to Purchaser or its representatives in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, the Transactions, or in respect of any other matter or thing whatsoever (electronic or otherwise) or otherwise in expectation of the Transactions.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as of the Agreement Date and as of the Closing Date (or, as to those representations and warranties that address matters as of particular dates, as of such dates), as follows:

4.1 **Organization, Good Standing and Other Matters**. Purchaser is duly organized, validly existing and in good standing under the Applicable Law of its jurisdiction of organization and has all requisite corporate power or other entity power and authority to own its properties and to carry on its business as now being conducted. Purchaser is duly qualified or licensed to conduct its business as currently conducted and is in good standing in each jurisdiction in which the location of the property owned, leased or operated by it or the nature of its business makes such qualification necessary, except where the failure to be so qualified or licensed would not,

individually or in the aggregate, materially impair or delay Purchaser's ability to consummate the Transactions.

4.2 **Authority and Enforceability**. Purchaser has all requisite corporate power or other entity power and authority to execute and deliver this Agreement and each of the Related Documents to which it is (or at Closing, will be) a party and to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance of this Agreement and each of the Related Documents to which it is (or at Closing, will be) a party, and the consummation of the Transactions, have been duly authorized and approved by its board of directors (or equivalent governing body) and no other action on the part of Purchaser or its limited partners is necessary to authorize the execution, delivery and performance of this Agreement and the Related Documents by Purchaser and the consummation of the Transactions. This Agreement has been, and each Related Document will be at or prior to Closing, duly executed and delivered by Purchaser and, assuming the due execution and delivery by the other parties hereto or thereto, constitutes a valid and binding obligation of Purchaser enforceable against it in accordance with its respective terms, except to the extent that such enforceability may be subject to, and limited by, the Enforceability Exceptions.

4.3 **No Conflict: Required Filings and Consents**. Except (a) such filings as may be required in connection with the Transfer Taxes described in Section 2.10 and (b) as set forth on Schedule 4.3, the execution and delivery of this Agreement and of the Related Documents and the consummation of the Transactions by Purchaser will not (i) violate the provisions of its Organizational Documents, (ii) violate any Applicable Law or Order to which it is subject or by which any of its properties or assets are bound or (iii) require it to obtain any Consent, or give any notice to, or make any filing with, any Governmental Authority on or prior to the Closing Date; excluding from the foregoing clauses (ii) and (iii) Consents, approvals, notices and filings the absence of which, and violations, breaches, defaults, rights of acceleration, cancellation or termination, and Liens, the existence of which would not, individually or in the aggregate, (A) have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or (B) otherwise prevent, hinder or delay the consummation of the Transactions.

4.4 **Financing**. Purchaser has, and at the Closing will have, (a) sufficient internal funds (without giving effect to any unfunded financing regardless of whether any such financing is committed) available to make any payments required hereunder and pay any expenses incurred or required to be paid by Purchaser in connection with the Transactions and (b) the resources and capabilities (financial or otherwise) to perform its obligations hereunder and under the Related Documents. Purchaser has not incurred any obligation, commitment, restriction or Liability of any kind, which would materially impair or adversely affect such resources and capabilities.

4.5 **Solvency**. Purchaser is not entering into this Agreement with the intent to hinder, delay or defraud either present or future creditors. Immediately after giving effect to all of the Transactions**,** including the making of the payments contemplated by Section 2.9, and assuming satisfaction of the conditions to Purchaser's obligation to consummate the Transactions as set forth herein, the accuracy of the representations and warranties of Purchaser set forth herein and the performance by Purchaser of its obligations hereunder in all material respects, Purchaser will be Solvent.

4.6 **Litigation**. There is no Action pending or, to Purchaser's Knowledge, formally threatened in writing against Purchaser or involving any of its properties or assets that would be reasonably be expected to (a) have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or (b) otherwise prevent, hinder or delay the consummation of the Transactions.

4.7 **Brokers and Finders**. None of Purchaser or its Affiliates have, directly or indirectly, entered into any agreement with any Person that would obligate Seller to pay any commission, brokerage fee or "finder's fee" in connection with the Transactions.

4.8 **Investigation and Agreement by Purchaser; Non-Reliance of Purchaser; No Other Representations and Warranties**.

(a) Purchaser acknowledges that it and its representatives have received access to such books and records, facilities, equipment, contracts and other assets of the Business which it and its representatives have desired or requested to review. Purchaser acknowledges and agrees that (i) it has made its own inquiry and investigation into, and, based thereon, has formed an independent judgment concerning Seller, the Business, the Transferred Assets and the Assumed Liabilities and (ii) the Business, the Transferred Assets and the Assumed Liabilities are being transferred and acquired on a "where is" and, as to condition, "as is" and "with all faults" basis.

(b) Except for the specific representations and warranties expressly made by Seller in Article 3 as further limited by the specifically bargained-for exclusive remedies as set forth in Article 9 of this Agreement, Purchaser acknowledges and agrees that (i) Seller is not making and has not made any representation or warranty, expressed or implied, at law or in equity, in respect of the Business, the Transferred Assets, the Assumed Liabilities, or any of its operations, prospects or condition (financial or otherwise), including with respect to merchantability or fitness for any particular purpose of any assets, the nature or extent of any Liabilities, the prospects of the Business, the effectiveness or the success of any operations, or the accuracy or completeness of any confidential information memoranda, documents, projections, material or other information (financial or otherwise) regarding the Business furnished to Purchaser or its representatives or made available to Purchaser and its representatives in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, the Transactions, or in respect of any other matter or thing whatsoever, and (ii) no officer, director, manager, stockholder, agent, Affiliate, advisor, representative or employee of Seller has any authority, express or implied, to make any representations, warranties or agreements not specifically set forth in Article 3 and subject to the limited remedies herein provided.

(c) Other than the specific representations and warranties expressly set forth in Article 3 as further limited by the specifically bargained-for exclusive remedies as set forth in Article 9 of this Agreement, Purchaser specifically disclaims that it is relying upon or has relied upon any such other representations or warranties that may have been made by any Person, and acknowledges and agrees that Seller and Seller's Affiliates have specifically disclaimed and do hereby specifically disclaim, and shall not have or be subject to any Liability for reliance on any such other representation or warranty made by any Person. Purchaser specifically waives any obligation or duty by Seller or Seller's Affiliates to make any disclosures of fact not required to be disclosed pursuant to the specific representations and warranties expressly set forth in Article 3

and disclaims reliance on any information not specifically required to be provided or disclosed pursuant to the specific representations and warranties set forth in Article 3.

(d) Purchaser is acquiring the Business, the Transferred Assets and the Assumed Liabilities subject only to the specific representations and warranties expressly set forth in Article 3 as further limited by the specifically bargained-for exclusive remedies as set forth in Article 9 of this Agreement.

4.9 **No Other Representations or Warranties.** Except for the representations and warranties contained in this Article 4, neither Purchaser nor any other Person on behalf of Purchaser makes any other express or implied representation or warranty with respect to Purchaser or with respect to any other information provided to Seller or its representatives, and Purchaser disclaims any other representations or warranties, whether made by Purchaser or any other Person.

ARTICLE 5
BANKRUPTCY COURT MATTERS

5.1 **Competing Transaction**. This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or better competing bids in respect of all or any part of the Transferred Assets (whether in combination with other assets of Seller or otherwise) in accordance with the terms of the Bid Procedures Order (each, a "**Competing Bid**"). From the Agreement Date (and any prior time) and until the Closing, Seller is permitted to, and to cause its representatives to, initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Purchaser and its Affiliates and representatives) in connection with any reorganization, sale or other disposition of the Transferred Assets. In addition, Seller shall have the authority to respond to any inquiries or offers to reorganize, purchase all or any part of the Transferred Assets (whether in combination with other assets of Seller or otherwise) and perform any and all other acts related thereto which are required under the Bankruptcy Code, the Bid Procedures Order or other Applicable Law, including supplying information relating to the Business and the assets of Seller to prospective plan sponsors or purchasers.

5.2 **Bankruptcy Court Filings**.

(a) Subject to its right to pursue a Competing Bid in accordance with the Bid Procedures Order, Seller shall diligently pursue the entry by the Bankruptcy Court of the Sale Order, which Sale Order shall provide for the transfer of the Transferred Assets and the Assumed Liabilities to Purchaser free from all successor or transferee Liability to the fullest extent permitted by Section 363 of the Bankruptcy Code. Seller shall comply (or obtain an Order from the Bankruptcy Court waiving compliance) with all requirements under the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules for the Bankruptcy Court in obtaining the entry of the Sale Order. Purchaser agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Order, including by furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code.

(b) From and after the Agreement Date and until the Closing Date, to the extent reasonably practicable, Seller shall deliver to Purchaser drafts of any material pleadings, motions, notices, statements, schedules, applications, reports and other papers to be filed or submitted in connection with this Agreement for Purchaser's prior review and comment at least two (2) business days prior to the filing or submission thereof, and such filings shall be acceptable to Purchaser to the extent they relate to the Transferred Assets, the Assumed Liabilities, or any of Purchaser's obligations hereunder. Each of Seller and Purchaser shall appear formally or informally in the Bankruptcy Court if reasonably requested by the other party or required by the Bankruptcy Court in connection with the Transactions and keep the other party reasonably apprised of the status of material matters related to this Agreement, including, upon reasonable request promptly furnishing the other party with copies of notices or other communications received by such party from the Bankruptcy Court or any third party or any Governmental Authority with respect to the transactions contemplated by this Agreement.

(c) Seller and Purchaser agree that, in the event that Purchaser is not the winning bidder at an auction undertaken pursuant to the Bid Procedures Order (the "**Auction**"), and (i) Purchaser submits the Back-Up Bid at the Auction or (ii) the terms of this Agreement are deemed to constitute a Back-Up Bid, then Purchaser shall be obligated to promptly consummate the Transactions upon the terms and conditions as set forth herein, including the payment of the Purchase Price as the same may be increased by Purchaser at the Auction; provided that, Seller gives written notice to Purchaser on or before the Back-up Termination Date, stating that Seller (A) failed to consummate the sale of the Transferred Assets with the winning bidder, and (B) terminated the purchase agreement with the winning bidder.

5.3 **Assumption of Assigned Contracts**.

(a) On or before the date that is five (5) Business Days following the date on which the Bid Procedures Order is entered by the Bankruptcy Court, Seller shall file (or cause to be filed) a notice of potential assumption (the "**Assumption Notice**") with the Bankruptcy Court and serve such notice on each counterparty to an Assigned Contract listed thereon. The Assumption Notice shall identify all Assigned Contracts that Seller and Purchaser believe may be assumed and assigned in connection with the sale of the Transferred Assets and set forth a good faith estimate of the amount of Cure Costs applicable to each such Assigned Contract (and if no Cure Cost is estimated to be applicable with respect to any particular Assigned Contract, the amount of such Cure Cost designated for such Assigned Contract shall be "$0.00"). In accordance with the Bid Procedures Order, Seller reserves the right to supplement such list of Assigned Contracts and provide additional notice of assumption, and to remove an Assigned Contract from the list of Assigned Contracts, up to five (5) Business Days prior to the hearing by the Bankruptcy Court with respect to the Sale Motion; provided, however, that Seller may only remove an Assigned Contract from such list of Assigned Contracts with Purchaser's prior written consent; provided further, that Purchaser may instruct Seller to add Contracts to such list of Assigned Contracts and provide additional notice of assumption prior to Closing in the event Seller or Purchaser discovers a Contract that was not included on such list of Assigned Contracts prior to the hearing by the Bankruptcy Court with respect to the Sale Motion.

(b) On or before the date that is three (3) Business Days before the Closing Date or as soon as reasonably practicable prior to the Closing Date with respect to any Contracts added

to the Assumption Notice within three (3) Business Days prior to the Closing Date (the "**Designation Deadline**"), Purchaser shall provide to Seller a list of those Assigned Contracts that it elects to have assumed and assigned to Purchaser on the Closing Date (the "**Designated Contracts**"). Purchaser shall be entitled to remove certain Assigned Contracts from the list of Designated Contracts at any time prior to the Designation Deadline by providing Seller written notice of such removal. In the event that Purchaser removes any of such Assigned Contracts from such list, Seller will provide the relevant counterparty written notice that the applicable Assigned Contract is no longer identified as a Designated Contract. For the avoidance of doubt, only those executory Assigned Contracts that remain identified as Designated Contracts as of the Closing Date will constitute Assigned Contracts and will be assumed by Seller and assigned to Purchaser pursuant to the Sale Order. Seller shall file such motions or pleadings as may be appropriate or necessary to assume and assign the Assigned Contracts and to determine the amount of the Cure Costs; provided, that nothing herein shall preclude Seller from filing one or more motions to reject any Contracts that are not Assigned Contracts; provided, that to the extent reasonably practicable, Seller shall deliver to Purchaser drafts of any such motion for Purchaser's prior review and comment at least two (2) business days prior to the filing or submission thereof.

(c) Notwithstanding any provision in this Agreement to the contrary, a Contract shall not be a Designated Contract hereunder and shall not be assigned to, or assumed by, Purchaser to the extent that such Contract is (i) deemed rejected under Section 365 of the Bankruptcy Code, (ii) the subject of an objection to assignment or assumption or requires the consent of any Governmental Authority or other third party (other than, and in addition to, the Bankruptcy Court) in order to permit the assumption and assignment by Seller to Purchaser of such Contract pursuant to Section 365 of the Bankruptcy Code, and such objection has not been resolved or such consent has not been obtained prior to the thirtieth day following the Closing Date (as such period may be extended by mutual agreement of Seller and Purchaser), or (iii) is terminated by any party thereto other than Seller, or terminates or expires by its terms, on or prior to such time as it is to be assumed by Purchaser as a Designated Contract hereunder and is not continued or otherwise extended upon assumption. In no event shall the failure to assign to Purchaser any Contract in accordance with subsections (i) through (iii) above reduce the Purchase Price payable to Seller or constitute a failure to satisfy the conditions precedent of Seller under Section 8.3.

(d) Subject to the terms of Section 2.5, Section 2.8, Section 5.3(a) and Section 5.3(b), Purchaser, with the assistance of Seller, shall make provision for the payment of the Determined Cure Costs in cash at Closing in accordance with the Sale Order.

(e) Notwithstanding any provision in this Agreement to the contrary, from and after the date of the Assumption Notice through the Closing Date, Seller will not reject or take any action (or fail to take any action that would result in rejection by operation of Applicable Law) to reject, withdraw, repudiate, disclaim or assign to an entity other than Purchaser any Assigned Contract unless (i) Purchaser has provided its prior written consent or (ii) Purchaser has removed such Assigned Contract from the list of Designated Contracts.

ARTICLE 6
PRE-CLOSING COVENANTS

6.1 **Conduct of Business**. Except (i) as set forth on Schedule 6.1, (ii) as may be approved by Purchaser (which approval will not be unreasonably withheld, delayed or conditioned), or (iii) as is otherwise required by this Agreement, Applicable Law or by order of the Bankruptcy Court, from the Agreement Date through the earlier of the Closing Date or the termination of this Agreement in accordance with its terms:

(a) Seller shall carry on the Business in all material respects in the ordinary course of business as it has been conducted since the Petition Date, including using commercially reasonable efforts to (i) preserve and maintain, in all material respects, its relationships with its customers, suppliers, distributors, partners, lessors, licensors, licensees, agents, officers, employees, contractors and other Persons with which they have business relationships relating to the Business; (ii) preserve and maintain in all material respects the Transferred Assets, ordinary wear and tear excepted; (iii) defend and protect the Transferred Assets from infringement or usurpation; (iv) maintain the Books and Records in all material respects in the ordinary course of business; and (v) comply in all material respects with all Applicable Law related to the ownership and use of the Transferred Assets; and

(b) Seller shall not, and shall cause its Affiliates not to:

(i) sell, license, abandon or otherwise dispose of any Transferred Assets other than, in each case, in the ordinary course of business or for the purpose of disposing of obsolete or worthless assets;

(ii) acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of any business or any corporation, partnership or other business organization or otherwise acquire any assets (except inventory), that as of the Closing would constitute Transferred Assets, except for the acquisition of assets in the ordinary course of business;

(iii) voluntarily pursue or seek, or fail to oppose any third party in pursuing or seeking, a conversion of the Bankruptcy Cases to cases under Chapter 7 of the Bankruptcy Code, the appointment of a trustee under Chapter 11 or Chapter 7 of the Bankruptcy Code and/or the appointment of an examiner with expanded powers;

(iv) enter into any transaction relating to the acquisition of fixed assets that will constitute Transferred Assets in excess of $50,000;

(v) amend or otherwise modify its Organizational Documents;

(vi) except in the ordinary course of business, enter into, amend, waive, terminate or otherwise modify any Contract that would be a Material Contract of the kind described in any of clauses (i) – (xiii) of Section 3.12(a);

(vii) enter into any Contract under which Purchaser would after the Closing be restricted in any material respect with respect to distribution, licensing,

marketing, purchasing or development of products or services if such Contract were an Assigned Contract;

(viii) create, incur or assume any Liens on any of the Transferred Assets (whether now owned or hereafter acquired) (other than any Permitted Liens);

(ix) authorize, or make any commitment with respect to, any single capital expenditure or series of related capital expenditures that is in excess of $50,000 or capital expenditures that are, in the aggregate, in excess of $250,000 for the Business taken as a whole;

(x) other than with respect to the loans made pursuant to the DIP Financing Agreement, incur any indebtedness for borrowed money;

(xi) take any action in breach of the Bid Procedures or the Sale Order;

(xii) other than as required by Applicable Law or pursuant to the terms of any Employee Plan, (A) enter into, establish, adopt, materially amend or terminate any Employee Plan (or any arrangement that would be an Employee Plan if in effect on the date of this Agreement), (B) grant, announce or effectuate any increase or modification in the salaries, bonuses or other compensation and benefits payable or to become payable to any Service Provider, (C) promote, hire, engage, furlough, temporarily layoff or terminate the employment or engagement of (other than for cause) any Service Provider, (D) transfer or reassign out of the Business the employment or engagement of any Service Provider, or (E) transfer or reassign any other employee of Seller such that he or she would be a Business Employee;

(xiii) (i) negotiate, modify, extend or enter into any Labor Agreement or (ii) recognize or certify any labor union, labor organization, works council or group of employees as the bargaining representative for any Business Employees;

(xiv) implement or announce any employee layoffs, plant closings, reductions in force, furloughs, temporary layoffs, salary or wage reductions, work schedule changes or other such actions that could implicate the WARN Act;

(xv) waive or release any noncompetition, nonsolicitation, nondisclosure, noninterference, nondisparagement, or other restrictive covenant obligation of any current or former Service Provider;

(xvi) amend, waive or otherwise modify in any material respect or terminate any Assigned Contract or modify, waive, release or assign any material rights or claims thereunder, in each case whether in connection with any extension, renewal or replacement of such Assigned Contract, or otherwise;

(xvii) (A) reject or terminate any Material Contract or seek Bankruptcy Court approval to do so, or (B) fail to oppose any action by a third party to terminate (including any action by a third party to obtain Bankruptcy Court approval to terminate) any Material Contract;

(xviii) with respect to any Transferred Asset, (A) agree to allow any form of relief from the automatic stay in the Bankruptcy Cases (other than pursuant to the Sale Order, the Interim DIP Order or the Final DIP Order); or (B) fail to oppose any action by a third party to obtain relief from the automatic stay in the Bankruptcy Cases;

(xix) grant or acquire, or dispose of or permit to lapse, any rights to any material Intellectual Property included in the Transferred Assets, or disclose or agree to disclose to any Person, other than representatives of Purchaser, any material trade secret included in the Transferred Assets; in each case except in the ordinary course of business;

(xx) (A) compromise, settle or agree to settle, or consent to judgment in, any one or more Actions, or (B) institute any Action concerning any material Intellectual Property included in the Transferred Assets;

(xxi) make, revoke or change any material election relating to Taxes of the Business or Transferred Assets that would reasonably be expected to have an adverse effect on Purchaser or any of its Affiliates, for any taxable period, or portion thereof, beginning after the Closing Date;

(xxii) change its present accounting methods or principles in any material respect, except as required by GAAP or Applicable Law;

(xxiii) agree to take any of the foregoing actions.

6.2 **Access to Information; Confidentiality**.

(a) From the Agreement Date until the earlier of the Closing Date and the termination of this Agreement, Seller shall grant Purchaser and its representatives (at Purchaser's sole cost and expense) reasonable access, during normal business hours and upon reasonable notice (and in the event of a facility visit request, at least forty-eight (48) hours prior notice), to the personnel, facilities, book and records of Seller related to the Business or the Transferred Assets that are in the possession or under the control of Seller; provided, however, that (i) all requests for access shall be directed such person(s) as Seller may designate in writing from time to time, (ii) such activities do not unreasonably interfere with the ongoing business or operations of Seller, (iii) Seller shall have the right to have one or more of its representatives present at all times during any visits, examinations, discussions or contacts contemplated by this Section 6.2(a), (iv) Purchaser shall have no right to perform invasive or subsurface investigations or conduct any sampling or analysis of environmental media of the nature commonly referred to as a "Phase II Environmental Investigation," such as any soil or groundwater testing, (v) such access or related activities would not cause a violation of any agreement to which Seller is a party, (vi) no Personal Data shall be disclosed or used other than in compliance with Applicable Law and (vii) nothing herein shall require Seller or its representatives to furnish to Purchaser or provide Purchaser with access to information that is, in the reasonable opinion of Seller's counsel, subject to an attorney-client or an attorney work-product privilege.

(b) Any information provided to or obtained by Purchaser or its representatives, including pursuant to this Section 6.2 is subject to the terms of, and the restrictions contained in, the Confidentiality Agreement. Purchaser agrees to be bound by and comply with the provisions

set forth in the Confidentiality Agreement as if such provisions were set forth herein, and such provisions are hereby incorporated herein by reference. Effective upon (and only upon) the Closing, the Confidentiality Agreement shall automatically terminate and none of the parties thereto shall have any further Liability or obligation thereunder except with respect to any confidential information provided to or obtained by Purchaser or its representatives concerning Seller, which information shall remain subject to the terms and conditions of the Confidentiality Agreement after the Closing Date. If this Agreement is terminated prior to Closing for any reason, the terms of the Confidentiality Agreement shall remain in full force and effect.

6.3 **Efforts to Consummate.** Except as otherwise provided in this Agreement, each of the Parties agrees to use its commercially reasonable efforts to cause the Closing to occur as soon as possible after the Agreement Date, including satisfying the conditions precedent set forth in Article 8 applicable to such party including (a) defending against any Actions, judicial or administrative, challenging this Agreement or the consummation of the Transactions, (b) seeking to have any preliminary injunction, temporary restraining order, stay or other legal restraint or prohibition entered or imposed by any court or other Governmental Authority that is not yet final and nonappealable vacated or reversed, and (c) executing any additional instruments reasonably requested by another Party (without cost or expense to the executing party) necessary to carry out the Transactions and to fully carry out the purposes of this Agreement; provided, however, that, for purposes of "commercially reasonable efforts" standard as required by this Section 6.3 or Section 6.4, neither Seller nor its Affiliates or representatives shall be required to offer or grant any accommodation or concession (financial or otherwise) to any third party or to otherwise expend any money or suffer any detriment, to expend any money to remedy any breach of any representation or warranty hereunder, to commence any Action, to waive or surrender any right, to modify any agreement (including any Assigned Contract) or to provide financing to Purchaser for the consummation of the Transactions.

6.4 **Notices and Consents.** Reasonably promptly following the execution of this Agreement, Seller will give, or cause to be given, applicable notices to third parties and thereafter will use reasonable best efforts to obtain the third-party consents set forth on Schedule 6.4.

6.5 **Employee Matters**.

(a) No later than ten (10) days prior to the Closing Date, Purchaser shall deliver to Seller a list of Business Employees to whom Purchaser does not intend to offer (or cause its applicable Affiliate to offer) at-will employment effective as of the Closing Date in Purchaser's sole and absolute discretion on terms and conditions consistent with this Section 6.5 ("**Excluded Employees**"), and Purchaser shall make an offer of employment effective as of the effective date on terms and conditions consistent with this Section 6.5 (which offers may, in Purchaser's sole discretion, be made in the form of an "opt-out" transfer letter to the extent permitted under Applicable Law) to each Business Employee who is not an Excluded Employee. Each such Business Employee shall be an "**Offer Employee**." Each Business Employee who is offered and accepts (or does not opt out of, as applicable) such offers of employment with Purchaser (or its applicable Affiliate) based on the initial terms and conditions set by Purchaser (in its sole and absolute discretion) and further actually commences employment with Purchaser (or its applicable Affiliate) as of the Closing Date will become a "**Transferred Employee**," with such employment with Purchaser (or its applicable Affiliate) to commence at 10:01 AM (New York, New York time)

on the Closing Date. Seller shall terminate, or shall cause to be terminated, effective as of immediately prior to 10:01 AM (New York, New York time) on the Closing Date, the employment of all Transferred Employees. Seller will reasonably cooperate with any reasonable request by Purchaser in order to facilitate the offers of employment and delivery of such offers.

(b) Neither Purchaser nor any of its Affiliates shall have any Liability for any pay, benefits, or similar claims of any (i) employee or other service provider who is not a Transferred Employee or (ii) other than as expressly set forth herein, Transferred Employees earned or accrued prior to the Closing Date, which Liabilities shall remain the sole responsibility of Seller and its Affiliates, as applicable. As soon as reasonably practicable following Purchaser's request, and in any event no later than five (5) Business Days prior to the Closing Date, Seller shall provide Purchaser with a written schedule of each "employment loss" (as defined in the WARN Act) experienced by a Service Provider of Seller during the ninety (90)-day period prior to the Closing Date (including the location of employment of such employee, and the reason for the employment loss) and such other information as Purchaser may reasonably request to determine whether any actions taken by Seller prior to, upon, or after the Closing Date, or any actions taken by Purchaser or its Affiliates upon or after the Closing Date, is reasonably likely to require the delivery of notice or payment in lieu of notice (under the WARN Act or otherwise) to any individuals (it being understood that any notices or filings required under the WARN Act with respect to any "employment loss" with Seller or its Affiliates shall remain the sole obligation of Seller). Seller and Purchaser intend that the consummation of the Transactions shall not alone constitute a severance or termination of employment of any Service Provider prior to or upon the Closing for purposes of any severance or termination benefit plan, program, policy, agreement or arrangement of Seller, and that Transferred Employees shall have continuous and uninterrupted employment immediately before and immediately after the Closing.

(c) Seller and Purchaser hereby agree to follow the standard procedure relating to employment Tax reporting as provided in Section 4 of Rev. Proc. 2004-53, I.R.B. 2004-35. Accordingly, Seller shall have employment Tax reporting responsibilities for the wages and other compensation paid by or on behalf of Seller to employees and Purchaser shall have employment tax reporting responsibilities for the wages and other compensation paid by or on behalf of Purchaser (or its applicable Affiliate) to Transferred Employees.

(d) Seller shall be liable for all insurance claims, including workers' compensation, short- and long-term disability, medical, prescription drug, dental, vision, life insurance, accidental death and dismemberment ("**Welfare Claims**") incurred (i) at any time by their Service Providers and their eligible dependents who are not Transferred Employees, or (ii) prior to the Closing Date by the Transferred Employees and their eligible dependents. With respect to Welfare Claims incurred on or after the Closing Date by the Transferred Employees and their eligible dependents, Purchaser shall be solely responsible. For these purposes, a Welfare Claim shall be deemed to be incurred: (A) in the case of workers' compensation and short-term disability benefits, at the time of the injury, sickness, or other event giving rise to the claim for such benefits; (B) in the case of medical, prescription, drug, dental, or vision benefits, at the time the professional services, equipment, or prescription drugs covered by the applicable plan are obtained; (C) in the case of life insurance benefits, upon death; and (D) in the case of accidental death and dismemberment benefits, at the time of the accident. In the case of workers' compensation claims arising out of injuries with an identifiable date of occurrence sustained prior to the Closing Date,

including injuries sustained on or after the Closing Date that are aggravations, exacerbations, or re-injuries of medical conditions or diagnoses resulting from injuries that were sustained before the Closing Date or arising out of injuries or occupational diseases without an identifiable date of occurrence or exposure, originating from within Seller's facilities and which are alleged to have been sustained or contracted on or prior to the Closing Date, such workers' compensation claims shall be deemed to be incurred prior to the Closing Date.

(e) Seller shall be solely responsible for compliance with the requirements of Section 4980B of the IRC and Part 6 of Subtitle I of ERISA, including provision of continuation coverage (within the meaning of COBRA), with respect to all Service Providers, and their respective eligible spouses and dependents, for whom a "qualifying event" (within the meaning of COBRA) occurs at any time on or prior to the Closing Date (including qualifying events that occur in connection with the Transactions). Purchaser shall be responsible for compliance with such health care continuation requirements with respect to all Transferred Employees and their respective eligible spouses and dependents for whom a "qualifying event" (within the meaning of COBRA) occurs after the Closing Date.

(f) To the extent that a Transferred Employee is entitled under Applicable Law to be paid for any vacation days accrued or earned but not yet taken by such Transferred Employee as of the Closing Date, notwithstanding anything to the contrary contained herein, Purchaser shall assume such obligation to honor such accrued vacation days or paid time off from and after the Closing Date.

(g) The Parties shall reasonably cooperate in good faith to assign to Purchaser (or its designee) all Assumed Employee Plans, including all related pre-payments, deposits, and refunds thereunder and any assets, trusts, or insurance policies maintained pursuant thereto or in connection therewith, in each case, effective as of the Closing. If Purchaser's (or its designee's) assumption of one or more Assumed Employee Plans is not practicable, the Parties shall reasonably cooperate in good faith to permit the transfer of the applicable assets of the applicable Employee Plan(s) related to the Transferred Employees and that are intended to be Assumed Employee Plans to the corresponding Purchaser employee benefit plan(s) in accordance with the intent of this Agreement. The Parties shall cooperate in good faith to enter into such amendments to this Agreement as are necessary to effectuate the actions contemplated pursuant to this Section 6.5(g).

(h) If requested by Purchaser in a writing delivered to Seller following the date hereof and no later than thirty (30) days following the Agreement Date, Seller shall adopt resolutions to terminate, effective as of no later than the day before the Closing Date, any Employee Plan that is a defined contribution plan that includes a qualified cash or deferred arrangement within the meaning of Section 401(k) of the IRC (a "**Seller 401(k) Plan**"). Seller shall provide Purchaser with a copy of the resolutions and any plan amendments, notices, and other documents prepared to effectuate the termination of Seller 401(k) Plans in advance and give Purchaser a reasonable opportunity to comment on such documents in advance (which comments shall be considered in good faith), and prior to the Closing Date, Seller shall provide Purchaser with the final documentation evidencing that Seller 401(k) Plans have been terminated effective as of no later than the day before the Closing Date.

(i) Following the Agreement Date, Seller and Purchaser shall reasonably cooperate in all matters reasonably necessary to effect the transactions contemplated by this Section 6.5, including (i) exchanging information and data relating to workers' compensation, employee benefits, and employee benefit plan coverages and any information that is reasonably necessary to affect their respective Tax withholding, accounting, and reporting obligations under Applicable Law, (ii) obtaining any governmental approvals required hereunder, (iii) responding to reasonable questions posed by employees, labor unions, employee representatives, or any other Persons, (iv) providing offers of employment to the employees selected by Purchaser in accordance with Section 6.5(a), and (v) transferring to Purchaser, no later than the Closing Date, all employee records, including all current employment eligibility verification form and related records, documents, and papers, of the Transferred Employees.

(j) The Parties shall reasonably cooperate in good faith with respect to any communications to employees and other service providers regarding the Transactions. Seller will provide Purchaser with a reasonable opportunity to review and comment on any communications intended for the employees and other service providers that it desires or has to send to Service Providers prior to the Closing Date. Purchaser will provide Seller with a reasonable opportunity to review and comment on any communications intended for the Service Providers (including regarding its offers of employment) that it desires or has to send to Service Providers prior to the Closing Date or to terminate the services of any service provider of Seller or any of its Affiliates.

(k) During the period prior to the Closing, Seller shall use reasonable best efforts to make individual natural person contractors related to the Business and engaged by Seller available to Purchaser or any of its Affiliates for the purpose of allowing Purchaser or its applicable Affiliate to interview each such contractor and determine the nature and extent of each such person's continuation with Purchaser or any of its Affiliates, if any. Seller shall provide to Purchaser contact information for third-party service providers providing contingent personnel to the Business and reasonably cooperate in identifying and transferring such contingent work force to the extent requested by Purchaser.

(l) Seller shall use reasonable best efforts to ensure that any Business Employee to whom Purchaser intends to make an offer of employment who requires a visa or other work permit in order to work as an employee of Purchaser or any of its Affiliates and provide services to the Business in his or her current position may continue to work in such position as an employee immediately following the Closing Date. In the event such Business Employee does not have the requisite work permit in place as of the Closing, the Seller Parties shall (notwithstanding anything in this Agreement to the contrary) continue to employ such Business Employee as of and following the Closing, and make such Business Employee's services available to the Business until such work permit is obtained and such Business Employee is legally permitted to commence employment with Purchaser or its applicable Affiliate.

(m) The Parties acknowledge and agree that all provisions contained in this Section 6.5 are included for the sole benefit of the Parties, and that nothing in this Agreement, whether express or implied, shall create any third-party beneficiary or other rights (i) in any other Person, including any employee, former employee, or other service provider of Seller (including the Business Employees or Transferred Employees), any participant in any employee benefit plan maintained by any of the Parties, or any dependent or beneficiary thereof, or (ii) to continued

employment or engagement with any of the Parties or any of their respective Affiliates for any specific period. Nothing contained in this Section 6.5 is intended to be or shall be considered to be an amendment or adoption of any Employee Plan or any other plan, program, Contract, arrangement, or policy of the Parties or any of their respective Affiliates. In addition, nothing contained in this Section 6.5 shall interfere with the Parties' or any of their respective Affiliates' right to amend, modify, or terminate any Employee Plan in accordance with its provisions or to terminate the employment or engagement of any Service Providers of Seller (including the Business Employees) or, following the Closing, of the Transferred Employees, subject to compliance with Section 6.5(b).

6.6 **Free and Clear**. Except as otherwise expressly set forth in this Agreement, the proposed Sale Order shall be drafted to provide, without limitation, that, (a) on the Closing Date and concurrently with the Closing, all then existing or thereafter arising obligations, Liabilities and Liens, against or created by Seller, any of its Affiliates, or the bankruptcy estate, to the fullest extent permitted by Section 363 of the Bankruptcy Code, shall be fully released from and with respect to the Transferred Assets and (b) Purchaser is not a successor to Seller or the bankruptcy estate by reason of any theory of law or equity, and Purchaser shall not assume or in any way be responsible for any Liability of Seller, any of its Affiliates and/or the bankruptcy estate, except as expressly provided in this Agreement. On the Closing Date, pursuant to the Sale Order, the Transferred Assets shall be transferred to Purchaser free and clear of all obligations, Liabilities and Liens (other than Permitted Liens) to the fullest extent permitted by Section 363 of the Bankruptcy Code.

6.7 **Update of Schedules**. From time to time prior to the Closing, Seller may supplement or amend the Schedules with respect to any matter hereafter arising or discovered which if existing or known by Seller at the Agreement Date would have been required to be set forth or described in such Schedules and also with respect to events or conditions arising after the Agreement Date and prior to Closing. Any such supplemental or amended disclosure shall not be deemed to have cured any such breach of representation or warranty for purposes of determining whether or not the conditions set forth in Section 8.2(a) have been satisfied.

ARTICLE 7
POST-CLOSING COVENANTS

7.1 **Access to Information; Books and Records**.

(a) From and after the Closing, and without prejudice to the obligations of Purchaser pursuant to Section 7.4(g), Purchaser and its Affiliates shall (i) afford Seller and its representatives (at Seller's sole cost and expense) reasonable access, during normal business hours, upon reasonable advance notice (and in the event of a facility visit request, at least forty-eight (48) hours prior notice) and under reasonable circumstances, to the books and records of Purchaser and the Business shall permit Seller and its representatives to examine and copy such books and records to the extent reasonably requested by such party and (ii) cause their representatives to furnish all information reasonably requested by Seller or its representatives in connection with the administration of the Bankruptcy Case, any claims or interests asserted by parties in interest against Seller in the Bankruptcy Case, financial or regulatory reporting whether in the Bankruptcy Case or otherwise, audit, third party litigation, preparing or filing of any Tax Return or the defense of

any Tax claim or assessment or any other business purpose; provided, however, that (i) all requests for access shall be directed to such person(s) as Purchaser may designate in writing from time to time, (ii) such activities do not unreasonably interfere with the ongoing business or operations of Purchaser, (iii) Purchaser shall have the right to have one or more of its representatives present at all times during any visits, examinations, discussions or contacts contemplated by this Section 7.1(a), (iv) such access or related activities would not cause a violation of any agreement to which Purchaser is a party, and (v) no Personal Data shall be disclosed or used other than in compliance with Applicable Law; provided, further, that nothing in this Section 7.1 shall require Purchaser or its Affiliates to furnish to Seller or its representatives any material that is (i) subject to an attorney-client or solicitor-client privilege or an attorney or solicitor work-product privilege or which may not be disclosed pursuant to Applicable Law or (ii) or not related to the Transferred Assets or the Business. For a period of six (6) years following the Closing Date, or such longer period as may be required by Applicable Law or necessitated by applicable statutes of limitations, Purchaser shall, and shall cause its Affiliates to, maintain all such books and records in the jurisdiction in which such books and records were located prior to the Closing Date and shall not destroy, alter or otherwise dispose of any such books and records.

(b) From and after the Closing, Seller and its Affiliates shall (i) afford Purchaser and its representatives (at Purchaser's sole cost and expense) reasonable access, during normal business hours, upon reasonable advance notice and under reasonable circumstances, to the books and records and personnel of Seller and its Affiliates and shall permit Purchaser and its representatives to examine and copy such books and records to the extent reasonably requested by such party and (ii) cause their representatives to furnish all information owned or controlled by Seller of its Affiliates that is reasonably accessible and reasonably requested by Purchaser or its representatives in connection with financial or regulatory reporting, audit, third party litigation, preparing or filing of any Tax Return or the defense of any Tax claim or assessment or any other business purpose; provided, however, that nothing in this Section 7.1 shall require Seller or its Affiliates to furnish to Purchaser or its representatives any material that is subject to an attorney-client or solicitor-client privilege or an attorney or solicitor work-product privilege or which may not be disclosed pursuant to Applicable Law.

7.2 **Seller Confidentiality**. Seller acknowledges that from and after the Closing, all non-public information relating to the Transferred Assets and the Assumed Liabilities will be valuable and proprietary to Purchaser and its Affiliates. Following the Closing, Seller shall, and shall cause its Affiliates and direct its representatives to, maintain as confidential and not use or disclose, any confidential, proprietary or non-public information or materials (i) relating to the Business (excluding to the extent solely relating to the Excluded Assets, and in such case solely to such extent), the Transferred Assets, or the Assumed Liabilities or (ii) provided by Purchaser or any of its representatives to Seller. In the event Seller or any of its Affiliates or representatives is required by Applicable Law to disclose any such information or materials, Seller shall to the extent practicable and not prohibited by Applicable Law, promptly notify Purchaser in writing of such required disclosure, which notification shall include a reasonable description of the nature of the legal requirement and the extent of the required disclosure, and such Person shall reasonably cooperate with Purchaser, to obtain a protective order and otherwise preserve the confidentiality of such information or materials consistent with Applicable Law. At any time that such protective order or remedy has not been obtained, Seller or its Affiliate or representative may disclose only that portion of such information or materials which such Person is required by Applicable Law to

disclose. Information and materials subject to the confidentiality obligations in this Section 7.2 do not include any information or materials which (A) at the time of disclosure is or thereafter becomes generally available to or known by the public (other than as a result of the disclosure of such information or materials by Seller or its Affiliates or representatives in breach of this Section 7.2) or (B) becomes available to Seller or its Affiliates and representatives on a non-confidential basis from a Person (other than Purchaser or any of its Affiliates) who is not bound by a confidentiality agreement with Purchaser or any of its Affiliates.

7.3 **Post-Closing Receipt and Possession of Assets**.

(a) After the Closing Date, Seller shall transfer promptly to Purchaser from time to time (but in any event on a monthly basis) any payments constituting Transferred Assets received by Seller. After the Closing Date, Purchaser shall transfer promptly to Seller, from time to time (but in any event on a monthly basis), any payments constituting Excluded Assets, received by Purchaser after the Closing.

(b) In the event that, after the Closing Date, Purchaser receives or otherwise is in possession of any Excluded Asset, Purchaser shall promptly notify Seller of its receipt or possession of such other Excluded Asset and transfer, at Purchaser's expense, such Excluded Asset to Seller. In the event that, after the Closing Date, Seller receives or otherwise is in possession of any other Transferred Asset, Seller shall promptly notify Purchaser of its receipt or possession of such other Transferred Asset and transfer, at Purchaser's expense (unless Seller was required to transfer such Transferred Asset to Purchaser at Closing, in which case, and without limitation of any other remedies available to Purchaser, such transfer will be at Seller's expense), such Transferred Asset to Purchaser.

7.4 **Tax Matters**.

(a) Seller shall be responsible for preparing or causing to be prepared all Asset Tax Returns for itself for taxable periods ending on or before the Closing Date (each, a "**Pre-Closing Tax Period**") that are required to be filed after the Closing. After the Closing, Purchaser will assist and cooperate with Seller in preparing such Asset Tax Returns and timely filing or causing such Asset Tax Returns to be timely filed.

(b) Purchaser shall prepare and timely file or cause to be prepared and timely filed (taking into account all extensions properly obtained) all Tax Returns that are required to be filed for any taxable period that begins on or before the Closing Date and ends after the Closing Date (a "**Straddle Period**") and shall timely pay (subject to Purchaser's right to reimbursement of Seller Taxes), or cause to be timely paid, the amount of any Taxes due thereon. Purchaser shall prepare such Tax Returns in a manner consistent with past practice to the extent relevant and consistent with Applicable Law and shall provide Seller with completed drafts of such Tax Returns for Seller's review and reasonable comment at least thirty (30) days prior to the due date for filing thereof, taking into account extensions (or, if such due date is within thirty (30) days following the Closing Date, as promptly as practicable following the Closing Date) and shall make such revisions to such Tax Returns as are reasonably requested by Seller, provided such requests are consistent with the prior practice of Seller (to the extent relevant) and comply with Applicable Law.

(c) Seller shall be liable for any Asset Taxes with respect to a Pre-Closing Tax Period and the portion of any Straddle Period ending on the Closing Date ("**Seller Taxes**"). For purposes of this Agreement, in the case of any Straddle Period, (a) the amount of any Asset Taxes based on or measured by income or receipts, sales or use, employment, or withholding allocated to the portion of such Straddle Period ending on the Closing Date shall be determined based on an interim closing of the books as of the end of the day on the Closing Date and (b) any other Asset Taxes shall be allocated to the portion of such Straddle Period ending on the Closing Date by prorating the amount of such Tax for the entire premium or taxable period per diem.

(d) Purchaser and its Affiliates shall not make or change any Tax election, amend, refile or otherwise modify (or grant an extension of any statute of limitation with respect to) any Tax Return, or take any other action that could cause or result in an increase in any Tax Liability or reduce any Tax Benefit in respect of any Pre-Closing Tax Period or Straddle Period relating to Seller or the Business without the prior written consent of Seller.

(e) Purchaser shall promptly notify Seller in writing upon receipt by Purchaser or any of its Affiliates of notice of any pending or threatened federal, state, local or foreign Tax audits, proceedings or assessments relating to Pre-Closing Tax Period, Straddle Period or otherwise relating to a Tax for which Seller may be liable or any Tax refund which is an Excluded Asset (a "**Seller Tax Claim**").

(f) Seller shall have the sole right to control the defense or resolution of any Seller Tax Claim that relates solely to a Pre-Closing Tax Period (a "**Seller Controlled Defense**"), and to employ counsel of its choice at Seller's expense; provided, however, that Purchaser and its representatives shall be permitted, at their expense, to observe and participate in any defense or resolution of such Seller Controlled Defense. The Purchaser shall have the sole right to control the defense or resolution of any Seller Tax Claim that is not a Seller Controlled Defense (a "**Purchaser Controlled Defense**"), and to employ counsel of its choice at the Purchaser's expense; provided, however, that Seller and its representatives shall be permitted, at their expense, to observe and participate in any defense or resolution of such Purchaser Controlled Defense. Neither Purchaser nor any of its Affiliates shall be entitled to settle, either administratively or after the commencement of litigation, any Seller Tax Claim without the prior written consent of Seller, which shall not be unreasonably conditioned, denied or delayed. Notwithstanding anything to the contrary contained herein, without the prior written consent of Purchaser, which shall not be unreasonably conditioned, denied or delayed, Seller shall not agree or consent to compromise or settle, either administratively or after the commencement of litigation, any issue or claim in a Tax audit or administrative or court proceeding it controls hereunder to the extent that any such compromise, settlement, consent or agreement may affect the Tax Liability of Purchaser or any of its Affiliates for which Seller is not responsible hereunder. The provisions of this Section 7.4(f) shall control over any contrary provisions of Section 10.1.

(g) After the Closing, each of Seller and Purchaser shall (and Purchaser shall cause its Affiliates to):

(i) timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns or other reports with respect to, Transfer Taxes;

(ii) cooperate fully in preparing for and defending any audits or proceedings of or disputes with Governmental Authorities regarding any Tax Returns required to be filed by, or Taxes related to the Transferred Assets due from, Seller for any Pre-Closing Tax Period or Straddle Period;

(iii) maintain and preserve until the expiration of the applicable statutes of limitations, and make available to the other parties as reasonably requested and to any Governmental Authority as reasonably required, all information, records and documents relating to Taxes related to the Transferred Assets for any Pre-Closing Tax Period or Straddle Period, and make employees available to the other parties as reasonably requested during business hours to supplement or explain such information, records and documents; and

(iv) furnish the other parties with copies of all correspondence received from any Governmental Authority in connection with any Tax audit, proceeding, assessment or information request relating to Taxes related to the Transferred Assets for a Pre-Closing Tax Period or Straddle Period, and furnish the other parties with copies of all records and documents relating to Taxes related to the Transferred Assets for a Pre-Closing Tax Period or Straddle Period that are proposed to be destroyed (and not otherwise in the possession of such other party).

(h) Purchaser shall pay, or cause to be paid, to Seller the amount of any refunds of Taxes related to the Transferred Assets from a Pre-Closing Tax Period or the portion of a Straddle Period ending on the Closing Date or that are Excluded Assets to Seller within five (5) days of receipt of the refund in cash (or through offset against other cash Taxes payable). Seller shall pay to the Purchaser the amount of any refunds or credits of Taxes that are Transferred Assets (including but not limited to Seller's claims for ERC under the CARES Act).

ARTICLE 8
CONDITIONS PRECEDENT

8.1 **Conditions to Each Party's Obligation**. The respective obligations of the Parties to effect the Transactions are subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by Seller and Purchaser), at or prior to the Closing, of the following conditions:

(a) No Injunctions or Restraints. No Order or Applicable Law preventing the consummation of the Transactions shall be in effect.

(b) No DIP Financing Agreement Default. No Default or Event of Default (as each is defined in the DIP Financing Agreement) under the DIP Financing Agreement shall have occurred and be continuing.

(c) Entry of Orders. The Bankruptcy Court shall have entered the Bid Procedures Order and the Sale Order in a form reasonably acceptable to Purchaser.

8.2 **Conditions to Obligation of Purchaser**. The obligations of Purchaser to effect the Transactions is subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by Purchaser), at or prior to the Closing, of the following conditions:

(a) Representations and Warranties. Each of the representations and warranties of Seller set forth in Article 3 shall be true and correct in all respects (without giving effect to any qualifications or limitations as to "materiality", "Material Adverse Effect" or words of similar import set forth therein) as of the Closing as though made at and as of such time (other than such representations and warranties as are made as of an earlier date, which shall be so true and correct as of such date), except where the failure of such representations and warranties to be so true and correct would not have, individually or in the aggregate, a Material Adverse Effect.

(b) Performance of Covenants and Obligations. Seller shall have performed or complied in all material respects with all obligations and covenants required to have been performed or complied with by it under this Agreement at or prior to the Closing.

(c) Closing Deliverables. Seller shall have delivered to Purchaser the closing deliveries required to be delivered by Seller pursuant to Section 2.8(a), Section 2.8(b) and Section 2.8(d).

(d) Assigned Contract Consents and Notices. Seller shall have obtained consents for the assignment of, and sent notices as required by, the Assigned Contracts set forth on Schedule 8.2(d), in each case, in a form reasonably acceptable to Purchaser.

(e) No Material Adverse Effect. There shall not have occurred a Material Adverse Effect that is continuing.

8.3 **Conditions to Obligations of Seller**. The obligation of Seller to effect the Transactions is subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by Seller), at or prior to the Closing, of the following conditions:

(a) Representations and Warranties. Each of the representations and warranties of Purchaser set forth in Article 4 shall be true and correct in all material respects (without giving effect to any qualifications or limitations as to "materiality" or words of similar import set forth therein) as of the Closing as though made at and as of such time (other than such representations and warranties as are made as of an earlier date, which shall be so true and correct as of such date).

(b) Performance of Covenants and Obligations of Purchaser. Purchaser shall have performed or complied in all material respects with all obligations and covenants required to have been performed or complied with by it under this Agreement at or prior to the Closing.

(c) Closing Deliverables. Purchaser shall have delivered to Seller the closing deliveries required to be delivered by Purchaser pursuant to Section 2.8(a), Section 2.8(b) and Section 2.8(c).

8.4 **Waiver of Condition; Frustration of Conditions**. All conditions to the Closing shall be deemed to have been satisfied or waived from and after the Closing. Neither Purchaser nor Seller may rely on the failure of any condition set forth in this Article 8, as applicable, to be satisfied if such failure was caused by such party's failure to use, as required by this Agreement, its reasonable best efforts to consummate the Transactions.

8.5 **Deliver of a Notice of Readiness to Close**. At any time after the Seller's satisfaction of its conditions to Closing in accordance with the terms of Section 8.1 and Section 8.3 of this Agreement, the Seller may deliver a notice to the Purchaser (a "**Notice of Readiness to Close**"). The Purchaser shall have five (5) Business Days from delivery of a Notice of Readiness to Close to satisfy its conditions to Closing in accordance with the terms of Section 8.1 and Section 8.2 of this Agreement and consummate the Transactions. If Purchaser does not satisfy its conditions to Closing and consummate the Transaction within five (5) Business Days, Purchaser shall be entitled to specific performance in accordance with Section 10.14.

ARTICLE 9
TERMINATION

9.1 **Events of Termination**. Notwithstanding anything to the contrary, this Agreement may be terminated, and the Transactions may be abandoned at any time prior to the Closing:

(a) by mutual written consent of Purchaser and Seller;

(b) (i) automatically, upon the consummation of a sale, transfer or other disposition (or series of sales, transfers or other dispositions), whether direct or indirect, of all or substantially all of the Transferred Assets to a Person other than Purchaser (each, an "**Alternate Transaction**"), (ii) if, at close of the Auction, Purchaser's bid has not been selected as either the winning bid or the Back-Up Bid or (iii) if, at the close of the Auction, Purchaser's bid was selected as the Back-Up Bid, upon the consummation of a Competing Bid or Alternate Transaction;

(c) by Purchaser or Seller by written notice to Purchaser or Seller from the other, if the Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;

(d) by Purchaser, by written notice from Purchaser to Seller, if Seller (i) withdraws the motion for the Sale Order, or publicly announces its intention to withdraw such motion, (ii) moves to voluntarily dismiss the Bankruptcy Cases, (iii) moves for conversion of the Bankruptcy Cases to Chapter 7 of the Bankruptcy Code, or (iv) moves for appointment of an examiner with expanded powers pursuant to Section 1104 of the Bankruptcy Code or a trustee in the Bankruptcy Cases;

(e) by Purchaser, upon a termination of the DIP Financing Agreement or upon a modification of any DIP Order in any material respect without the consent of the requisite DIP Lenders;

(f) by Purchaser, if for any reason Purchaser is not permitted by the Bankruptcy Court, pursuant to Bankruptcy Code Section 363(k), to credit bid the DIP Loans and/or the Pre-Petition Loans;

(g) by Purchaser, by written notice from Purchaser to Seller, if there has been a breach or inaccuracy of a covenant, representation or warranty made by Seller in this Agreement, such that the conditions in Section 8.1 or Section 8.2 are not capable of being satisfied and which breach is incapable of being cured or, if capable of being cured, has not been cured by Seller prior to the earlier of (i) twenty (20) Business Days after receipt of written notice from Purchaser

requesting such breach be cured or (ii) the Outside Date; provided, however, that the right to terminate this Agreement pursuant to this Section 9.1(d) shall not be available to Purchaser if the failure of Purchaser to fulfill any of its obligations under this Agreement has been the primary cause of, or resulted in, such breach, or if the conditions in Section 8.1 or Section 8.3 are not capable of being satisfied because there is then a breach or inaccuracy of a covenant, representation or warranty made by Purchaser in this Agreement;

(h) by Seller, by written notice from Seller to Purchaser, if there has been a breach or inaccuracy of a covenant, representation or warranty made by Purchaser in this Agreement, such that the conditions in Section 8.1 or Section 8.3 are not capable of being satisfied and which breach is incapable of being cured or, if capable of being cured, has not been cured by Purchaser prior to the earlier of (i) twenty (20) Business Days after receipt of written notice from Seller requesting such breach be cured or (ii) the Outside Date; provided, however, that the right to terminate this Agreement pursuant to this Section 9.1(h) shall not be available to Seller if the failure of Seller to fulfill any of its obligations under this Agreement has been the primary cause of, or resulted in, such breach, or if the conditions in Section 8.1 or Section 8.2 are not capable of being satisfied because there is then a breach or inaccuracy of a covenant, representation or warranty made by the Seller in this Agreement;

(i) by Purchaser or Seller, by written notice from Purchaser or Seller to the other, if any Governmental Authority of competent jurisdiction shall have issued an Order, enacted any Applicable Law or taken any other action restraining, enjoining or otherwise prohibiting the consummation of the Transactions and, in the case of Orders and other actions, such Order or other action shall have become Final Orders; provided, however, that the right to terminate this Agreement pursuant to this Section 9.1(i) shall not be available to the party seeking to terminate if any action of such party or any failure of such party to act has contributed to such Order or other action and such action or failure constitutes a breach of this Agreement;

(j) by Purchaser or Seller, by written notice from Purchaser or Seller to the other, if the Closing has not occurred on or prior to July 18, 2025 (the "**Outside Date**"); provided, that the Parties may jointly agree to extend the Outside Date; provided, further, however, that the party exercising the right to terminate this Agreement pursuant to this Section 9.1(j) shall not have been responsible for such failure of the Closing to occur through a breach or inaccuracy of a covenant, representation or warranty contained in this Agreement; or

(k) by Purchaser, if (i) the Bid Procedures Order shall not have been entered by the Bankruptcy Court by 11:59 p.m. (New York Time) on the date that is thirty (30) days after the Petition Date (ii) the Sale Order shall not have been entered by the Bankruptcy Court by 11:59 p.m. (New York Time) on the date that is fifty-eight (58) days after the Petition Date, or (iii) following the entry of the Sale Order, the Sale Order shall (A) fail to be in full force and effect, (B) have been reversed, (C) have been stayed and such stay shall continue to be in effect for more than fourteen (14) days or (D) have been modified or amended in any manner adverse to Purchaser without the prior written consent of Purchaser.

9.2 **Effect of Termination**.

(a) In the event that this Agreement shall be terminated pursuant to Section 9.1, (a) all further obligations of the Parties under this Agreement shall terminate without further Liability or obligation to the other parties hereto; provided, however, that, notwithstanding the foregoing, (a) the Liabilities and obligations under (i) the Confidentiality Agreement, and (ii) Section 6.2(b), this Section 9.2, Section 9.3 and Article 10 shall continue in full force and effect and (b) nothing herein shall relieve any party hereto from Liability from fraud or any willful breach of this Agreement or any Related Document.

(b) Notwithstanding anything to the contrary in this Agreement, in the event of valid termination of this Agreement pursuant to Section 9.1 and except in the case of any fraud or willful breach by Seller, (i) Seller's Liability hereunder for any and all breaches of this Agreement prior to such termination of this Agreement shall be capped at an amount equal to the Termination Fee and Expense Reimbursement, and (ii) no such termination shall relieve Purchaser from any Liability hereunder for any and all breaches of this Agreement prior to such termination of this Agreement (including if this Agreement is terminated by Seller pursuant to Section 9.1(e)) and Seller shall be entitled to all remedies available at law or in equity.

9.3 **Termination Fee and Expense Reimbursement**.

(a) Subject to limitations set forth in the Bid Procedures Order, in consideration of Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Transferred Assets, and to compensate Purchaser as a stalking-horse bidder, Seller shall pay in cash to Purchaser, by wire transfer of immediately available funds to the account specified by Purchaser to Seller in writing, an amount equal to the Termination Fee in the event that this Agreement is terminated pursuant to Section 9.1(b) in which case the Termination Fee shall be due and payable simultaneously with any termination of this Agreement ; provided that Purchaser shall not be entitled to the fee described in this Section 9.3(a) to the extent Purchaser is in material breach of this Agreement at the time this Agreement is terminated. The Termination Fee shall be payable solely from the proceeds of an Alternative Transaction. Seller's obligation to pay the Termination Fee pursuant to this Section 9.3(a) shall survive termination of this Agreement and shall constitute an administrative expense of Seller.

(b) Subject to limitations set forth in the Bid Procedures Order, in consideration of Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Transferred Assets, if (i) this Agreement is terminated in accordance with the terms set forth in Section 9.1(b) or (ii)(A) this Agreement is terminated in accordance with the terms set forth in Section 9.1(d), Section 9.1(e), Section 9.1(g), Section 9.1(j) or Section 9.1(k) and (B) Seller consummates an Alternative Transaction within six (6) months of such termination, then in either case, Seller shall pay to Purchaser in cash not later than two (2) Business Days following receipt of documentation supporting the request for reimbursement of costs, fees and expenses, the Expense Reimbursement, in an amount not to exceed $1,000,000, by wire transfer of immediately available funds to an account specified by Purchaser to Seller in writing; provided that, Purchaser shall not be entitled to the fee described in this Section 9.3(b) to the extent Purchaser is in material

breach of this Agreement at the time this Agreement is terminated. The Expense Reimbursement shall be payable solely from the proceeds of an Alternative Transaction. Seller's obligation to pay the Expense Reimbursement pursuant to the terms of this Section 9.3(a) shall be subordinate and junior in all respects to the DIP Superpriority Claims, the DIP Obligations, any and all Liens securing the DIP Obligations.

(c) Seller agrees and acknowledges that Purchaser's due diligence, efforts, negotiation, and execution of this Agreement have involved substantial investment of management time and have required significant commitment of financial, legal, and other resources by Purchaser, and that such due diligence, efforts, negotiation, and execution have provided value to Seller and, in Seller's reasonable business judgment, is necessary for the preservation of the value of Seller's estate. Seller further agrees and acknowledges that the Termination Fee and the Expense Reimbursement are not a penalty, but rather represent liquidated damages that are reasonable in relation to Purchaser's efforts, Purchaser's lost opportunities from pursuing the Transactions, and the magnitude of the Transactions. The provision of the Termination Fee and the Expense Reimbursement is an integral part of this Agreement, without which Purchaser would not have entered into this Agreement. Subject to the requirements of Section 9.3(a) and Section 9.3(b), (i) the obligations of Seller to pay the Termination Fee and Expense Reimbursement as provided herein shall be entitled to administrative expense status pursuant to Section 503(b)(1) of the Bankruptcy Code, and (ii) Seller shall seek to have such obligations be entitled to superpriority administrative expense status pursuant to Sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code, senior to all other general administrative expense claims and superpriority administrative expense claims granted such status pursuant to Sections 503(b)(1) and 507(a)(2) (but subordinate and junior in all respects to the Carve-Out (as defined in the DIP Order) and the DIP Superpriority Claims), in the Bankruptcy Case.

(d) Notwithstanding anything to the contrary in this Agreement, other than in the case of fraud or willful breach of this Agreement or any Related Document by Seller, if this Agreement is terminated under circumstances in which the Expense Reimbursement and/or the Termination Fee is payable and Purchaser is paid the Expense Reimbursement and/or Termination Fee pursuant to this Section 9.3, the Expense Reimbursement and/or Termination Fee shall be the sole and exclusive remedy (whether at law, in equity, in contract, in tort or otherwise) of the Purchaser against Seller and any of their current or former respective former, current or future holders of equity, controlling Persons, directors, officers, employees, Affiliates, representatives, agents or any their respective assignees or successors (collectively, "**Company Related Parties**") for any loss or damage suffered as a result of the failure of the transactions contemplated by this Agreement to be consummated or for a breach of, or failure to perform under, this Agreement or any certificate or other document delivered in connection herewith or otherwise, and upon payment of such amounts, none of the Company Related Parties shall have any further liability or obligation relating to or arising out of, or in relation to, this Agreement or the transactions contemplated hereby.

ARTICLE 10
GENERAL PROVISIONS

10.1 **Survival of Representations, Warranties and Covenants.** All covenants and agreements contained in this Agreement that by their term are to be performed in whole or in part,

or which prohibit actions, subsequent to Closing shall, solely to the extent such covenants and agreements are to be performed, or prohibit actions, subsequent to Closing, survive the Closing in accordance with their terms until fully performed or satisfied. All other covenants and agreements contained herein, and all representations and warranties contained herein or in any certificated deliveries hereunder shall not survive Closing and shall therefore terminate, including any Action for damages in respect of any breach or inaccuracy thereof. Notwithstanding the foregoing, the provisions of Section 6.2, Section 9.2, Section 9.3 and this Article 10 shall survive the Closing. Except in the case of fraud or willful breach, Purchaser's sole and exclusive remedy (a) for a breach of any representation or warranty made by Seller herein or in any document delivered pursuant hereto or (b) for a breach of any covenant made by Seller herein or in any document delivered pursuant hereto and required to be performed by Seller on or prior to the Closing, shall, in either case, be limited to (i) Purchaser's right to terminate this Agreement to the extent permitted pursuant to Section 9.1, in which case Seller shall have not any liability except to the extent expressly provided in Section 9.2 or (ii) Purchaser's right to seek a court to order equitable relief pursuant to Section 10.13.

10.2 **Entire Agreement**. This Agreement, including the Exhibits and Schedules hereto, the Confidentiality Agreement and the Related Documents, contain the entire understanding of the Parties with respect to the subject matter contained herein and therein. This Agreement supersedes all prior and contemporaneous agreements, arrangements, contracts, discussions, negotiations, undertakings and understandings (including any letters of intent or term sheets), whether written or oral, among the Parties with respect to such subject matter (other than, for the avoidance of doubt, the Confidentiality Agreement and the Related Documents) or any prior course of dealings. The Parties have voluntarily agreed to define their rights, Liabilities and obligations respecting the Transactions exclusively in contract pursuant to the express terms and conditions of this Agreement, the Confidentiality Agreement and the Related Documents, and the Parties expressly disclaim that they are owed any duties or entitled to any remedies not expressly set forth in this Agreement, the Confidentiality Agreement and the Related Documents. Furthermore, the Parties each hereby acknowledge that this Agreement, the Confidentiality Agreement and the Related Documents embody the justifiable expectations of sophisticated parties derived from arm's-length negotiations, and all parties to this Agreement, the Confidentiality Agreement and the Related Documents specifically acknowledge that no party has any special relationship with another party that would justify any expectation beyond that of an ordinary purchaser and an ordinary seller in an arm's-length transaction. The sole and exclusive remedies for any Related Claims shall be those remedies available at law or in equity for breach of contract only (as such contractual remedies have been further limited or excluded pursuant to the express terms of this Agreement); and the Parties hereby agree that neither party hereto shall have any remedies or cause of action (whether in contract or in tort or otherwise) of any statements, communications, disclosures, failures to disclose, representations or warranties not set forth in this Agreement. Notwithstanding the foregoing, nothing contained in this agreement shall limit the rights of Purchaser or any of its Affiliates under the DIP Financing Agreement or Pre-Petition Financing Agreement.

10.3 **Amendment; No Waiver**. This Agreement and the Related Documents may be amended, supplemented or changed, and any provision hereof or thereof can be waived, only by a written instrument making specific reference to this Agreement (and, if applicable, the Related Documents) executed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. The waiver by any party of a breach of any provision

of this Agreement or the Related Documents shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

10.4 **Severability; Specific Versus General Provisions**. Whenever possible, each provision of this Agreement and the Related Documents shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any term or other provision of this Agreement or the Related Documents is invalid, illegal, or incapable of being enforced by any Applicable Law or public policy, all other terms or provisions of this Agreement and the Related Documents shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, in whole or in part, such term or provision is hereby deemed modified to give effect to the original written intent of the Parties to the greatest extent consistent with being valid and enforceable under Applicable Law. No Party shall assert, and each Party shall cause its Affiliates or related parties not to assert, that this Agreement or any part hereof is invalid, illegal or unenforceable. Notwithstanding anything to the contrary, to the extent that a representation, warranty, covenant or agreement of a Party contained in this Agreement or the Schedules (each, a "**Provision**") addresses a particular issue with specificity (a "**Specific Provision**"), and no breach by such Party exists under such Specific Provision, such Party shall not be deemed to be in breach of any other Provision (with respect to such issue) that addresses such issue with less specificity than the Specific Provision, and if such Specific Provision is qualified or limited by the Knowledge of such Party, or in any other manner, no other Provision shall supersede or limit such qualification in any manner.

10.5 **Expenses and Obligations**. Except as otherwise provided in this Agreement, all costs and expenses incurred by the Parties in connection with the Transactions, including the costs, expenses and disbursements of counsel and accountants, shall be borne solely and entirely by the party that has incurred such expenses.

10.6 **Notices**. All notices, consents, waivers, and other communications under this Agreement or the Related Documents must be in writing and will be deemed to have been duly given (a) if personally delivered, on the date of delivery, (b) if delivered by express courier service of national standing for next day delivery (with charges prepaid), on the Business Day following the date of delivery to such courier service, (c) if delivered by electronic mail (unless the sender receives an automated message that the email has not been delivered) on the date of transmission if on a Business Day before 5:00 p.m. local time of the business address of the recipient party (otherwise on the next succeeding Business Day) and (d) if deposited in the United States mail, first-class postage prepaid, on the date of delivery, in each case to the appropriate addresses or email addresses set forth below (or to such other addresses as a party may designate by notice to the other parties in accordance with this Section 10.6):

If to Purchaser:

Perceptive Credit Holdings III, LP
c/o Perceptive Advisors LLC
51 Astor Place, 10th Floor
New York, NY 10003
Attention: Sandeep Dixit
Email: Sandeep@perceptivelife.com

with a copy to (which will not constitute notice):

Morrison & Foerster LLP
250 West 55th Street
New York, NY 10019
Attention: Mark S. Wojciechowski; Jim Krenn; James A. Newton
Email: mwojciechowski@mofo.com; jkrenn@mofo.com; jnewton@mofo.com

If to Seller:

Synthego Corporation
3696 Haven Avenue, Suite A
Redwood City, CA 94063
Attention: Legal Department
Email: stephanie.adamany@synthego.com

with a copy to (which will not constitute notice):

Fenwick & West LLP
902 Broadway, 18th Floor
New York, NY 10010
Attention: Ethan Skerry; Brendan Montgomery
Email: eskerry@fenwick.com; bmontgomery@fenwick.com

and

Pachulski Stang Ziehl & Jones LLP
One Sansome Street, Suite 3430
San Francisco, CA 94104
Attention: Debra Grassgreen; Maxim Litvak
Email: dgrassgreen@pszjlaw.com; mlitvak@pszjlaw.com

10.7 **Counterparts**. This Agreement may be executed in two or more counterparts (any of which may be delivered by electronic transmission), each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by electronic transmission in .PDF format, or other agreed format shall be sufficient to bind the Parties to the terms and conditions of this Agreement. Minor variations in the form of the signature page, including footers from earlier

versions of this Agreement or any Related Document, shall be disregarded in determining the party's intent or the effectiveness of such signature.

10.8 **Governing Law.** This Agreement, the Related Documents and all Related Claims shall be governed by the internal laws of the State of Delaware (including its statute of limitations), without giving effect to any choice or conflict of law principles or rules that would cause the application of the Applicable Law of any other jurisdiction.

10.9 **Submission to Jurisdiction; Consent to Service of Process**.

(a) Without limiting any party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to interpret and/or enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any Related Document, any breach or default hereunder or thereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 10.6; provided, however, that if the Bankruptcy Case has closed, the Parties agree to irrevocably submit to the exclusive jurisdiction of the of the Court of Chancery of the State of Delaware or, to the extent the Court of Chancery of the State of Delaware does not have subject matter jurisdiction, the federal courts of the United States of America and the courts of the State of Delaware, in each case, located within the City of Wilmington in the State of Delaware over all Related Claims, and each party hereto hereby irrevocably agrees that all Related Claims may be heard and determined in such courts. The Parties hereby irrevocably and unconditionally waive, to the fullest extent permitted by Applicable Law, any objection which they may now or hereafter have to the laying of venue of any such Related Claim brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law.

(b) Each of the Parties hereby consents to process being served by any party to this Agreement in any Related Claim by the delivery of a copy thereof in accordance with the provisions of Section 10.6 (other than by email) along with a notification that service of process is being served in conformance with this Section 10.9(b). Nothing in this Agreement will affect the right of any party to serve process in any other manner permitted by Applicable Law.

10.10 **Waiver of Jury Trial**. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT, THE RELATED DOCUMENTS OR ANY RELATED CLAIMS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING OR RELATED CLAIM BROUGHT BY OR AGAINST IT, DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE RELATED DOCUMENTS OR ANY RELATED CLAIMS.

10.11 **Rights Cumulative**. All rights and remedies of each of the parties under this Agreement and the Related Documents will be cumulative, and the exercise of one or more rights or remedies will not preclude the exercise of any other right or remedy available under this Agreement, the Related Documents or Applicable Law.

10.12 **Public Announcements**. Except to the extent required by any Applicable Law or Action (including the Bankruptcy Case), Seller shall not, and shall cause its Affiliates and representatives not to, directly or indirectly, issue any press release or public announcement of any kind without the prior written consent of Purchaser; provided, however, that Seller and its Affiliates may make announcements from time to time to their respective employees, customers, suppliers, and other business relations and otherwise as Seller may reasonably determine is necessary to comply with Applicable Law or the requirements of this Agreement or any other agreement to which Seller or any such Affiliate is a party. Purchaser and Seller shall cooperate in good faith to prepare a joint press release to be issued on the Closing Date, the terms of which shall be mutually agreed upon by the Parties.

10.13 **Assignment**. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors by operation of law and permitted assigns of the Parties. No assignment of this Agreement or any of the rights, interests or obligations under this Agreement may be made by any party hereto at any time, whether or not by operation of law, without the prior written consent of Seller and Purchaser, and any attempted assignment without the required consent shall be void; provided, however, that (a) Purchaser may assign (i) any of its rights or delegate any of its duties under this Agreement to any of its Affiliates, and (ii) its rights, but not its duties, under this Agreement to any of its financing sources and (b) Seller may assign any of its rights or delegate any of its duties under this Agreement to any successor thereto, including any liquidating trustee or other agent; provided, further, however, that, in each case, such assignment shall not release Purchaser from its obligations under this Agreement and Seller shall have no obligation to pursue remedies against any assignee of Purchaser before proceeding against Purchaser for any breach of Purchaser's obligations hereunder.

10.14 **Specific Enforcement; Remedies**. The Parties agree that irreparable damage (for which monetary relief, even if available, would not be an adequate remedy) would occur in the event that any of the provisions of this Agreement were not performed by the Purchaser hereto in accordance with their specific terms or were otherwise breached. It is accordingly agreed that (i) Seller shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction without proof of damages or otherwise and that this shall include the right of Seller to cause Purchaser to fully perform the terms of this Agreement to the fullest extent permissible pursuant to this Agreement and Applicable Law and to thereafter cause this Agreement and the Transactions to be consummated on the terms and subject to the conditions thereto set forth in this Agreement, and (ii) the right of specific performance and other equitable relief is an integral part of the Transactions and without that right Seller would not have entered into this Agreement.

10.15 **Third-Party Beneficiaries**. Except as expressly set forth herein, nothing in this Agreement, express or implied, is intended to confer upon any Person other than the Parties any rights or remedies of any nature whatsoever under or by reason of this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

PURCHASER:

PERCEPTIVE CREDIT HOLDINGS III, LP

By: PERCEPTIVE CREDIT OPPORTUNITIES GP, LLC, its general partner

By _____
Name: Sandeep Dixit
Title: Chief Credit Officer

By _____
Name: Sam Chawla
Title: Portfolio Manager

SELLER:

SYNTHEGO CORPORATION

By:_____
Name: Allen Soong
Title: Chief Restructuring Officer