

Michael R. Johnson (7070)
Jeffrey W. Shields (2948)
David H. Leigh (9433)
Austin C. Nate (17789)
RAY QUINNEY & NEBEKER P.C.
36 South State Street, 14th Floor
Salt Lake City, Utah 84111
Tel: (801) 532-1500
Email: mjohnson@rqn.com
Email: jshields@rqn.com
Email: dleigh@rqn.com
Email: anate@rqn.com

Eric P. Schriesheim (admitted *pro hac vice*)
ROPES & GRAY LLP
191 North Wacker Drive
Chicago, Illinois 60606
Telephone: (312) 845-1200
Facsimile: (312) 845-5500
E-mail: eric.schriesheim@ropesgray.com

*Proposed Counsel to the Debtor and Debtor
in Possession*

Gregg M. Galardi (admitted *pro hac vice*)
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, New York 10036
Telephone: (212) 596-9000
Facsimile: (212) 596-9090
E-mail: gregg.galardi@ropesgray.com

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF UTAH CENTRAL DIVISION**

In re:

VOBEV, LLC, a Utah limited liability
company,

Debtor-in-Possession.

Bankruptcy Case No. 24-26346 (JTM)

Chapter 11

Honorable Joel T. Marker
[Filed Electronically]

**NOTICE OF FILING OF ASSET PURCHASE AGREEMENT
BY AND BETWEEN ADONIS ACQUISITION HOLDINGS LLC, AS PURCHASER,
AND VOBEB, LLC, AS SELLER**

PLEASE TAKE NOTICE that on December 9, 2024, the above caption 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”) in the United States Bankruptcy Court for the District of Utah.

PLEASE TAKE FURTHER NOTICE that on December 10, 2024, the Debtor filed the *Debtor’s Motion Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code for Entry of an Interim Order (I) Approving the Bidding Procedures, Including the Debtor’s Entry into the Stalking Horse APA, the Sale Timeline, and the Form and Manner of Notice Thereof; (II) Approving the Debtor’s (A) Sale of All or Substantially All of the Debtor’s Assets Free and Clear of All Liens Other Than Assumed Liabilities and (B) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases to the Successful Bidder; and (III) Granting Related Relief* [Docket No. 58] (the “Bidding Procedures Motion”).

PLEASE TAKE FURTHER NOTICE that on December 20, 2024, the Debtor filed the *Notice of Filing of Amended Exhibit A and Modified Sale Timeline to Debtor’s Motion Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code for Entry of an Interim Order (I) Approving the Bidding Procedures, Including the Debtor’s Entry into the Stalking Horse APA, the Sale Timeline, and the Form and Manner of Notice Thereof; (II) Approving the Debtor’s (A) Sale of All or Substantially All of the Debtor’s Asset’s Free and Clear of All Liens Other Than Assumed Liabilities and (B) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases to the Successful Bidder; and (III) Granting Related Relief* [Docket No. 107].

PLEASE TAKE FURTHER NOTICE that pursuant to the Sale Timeline (as defined in the Bidding Procedures Motion), the Debtor, through its undersigned proposed counsel, hereby files the *Asset Purchase Agreement* (the “Stalking Horse APA”), dated as of January 6, 2025, by and Between Adonis Acquisition Holdings LLC, as Purchaser, and Vobev, LLC, as Seller (each,

as defined in the Stalking Horse APA) (the “Executed Stalking Horse APA”), attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit B** is a changed-pages redline of the Executed Stalking Horse APA to the undated, draft form of the *Asset Purchase Agreement* filed pursuant to the *Notice of Filing of Draft and Unsigned Form of Asset Purchase Agreement by and Between Adonis Acquisition Holdings LLC, as Purchaser, and Vobev, LLC, as Seller*, on December 27, 2024 [Docket No. 141].

Dated: January 6, 2025.

Respectfully submitted,

RAY QUINNEY & NEBEKER P.C.

By: /s/ Michael R. Johnson

Michael R. Johnson (7070)

Jeffrey W. Shields (2948)

David H. Leigh (9433)

36 South State Street, 14th Floor

Salt Lake City, Utah 84111

Tel: (801) 532-1500

E-mail: mjohnson@rqn.com

jshields@rqn.com

dleigh@rqn.com

ROPES & GRAY LLP

Gregg M. Galardi (admitted *pro hac vice*)

1211 Avenue of the Americas

New York, New York 10036

Telephone: (212) 596-9000

Facsimile: (212) 596-9090

E-mail: gregg.galardi@ropesgray.com

ROPES & GRAY LLP

Eric P. Schriesheim (admitted *pro hac vice*)

191 North Wacker Drive

Chicago, Illinois 60606

Telephone: (312) 845-1200

Facsimile: (312) 845-5500

E-mail: eric.schriesheim@ropesgray.com

*Proposed Counsel to the Debtor and
Debtor in Possession*

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2025, the foregoing document was filed with the Clerk of the Court in the foregoing Chapter 11 case using the CM/ECF filing system, which sent notice of electronic filing to all electronic filing users in the case.

/s/ Michael R. Johnson

Michael R. Johnson

EXHIBIT A

Stalking Horse APA

ASSET PURCHASE AGREEMENT

by and between

ADONIS ACQUISITION HOLDINGS LLC

as Purchaser

and

VOBEV, LLC

as Seller

Dated as of January 6, 2025

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement, dated as of January 6, 2025 (this “**Agreement**”), is made and entered into by and between (i) Adonis Acquisition Holdings LLC, a Delaware limited liability company (“**Purchaser**”), and (ii) Vobev, LLC, a Utah limited liability company (“**Seller**”).

WHEREAS, Seller (in such capacity, the “**Debtor**”) commenced on December 9, 2024 (the “**Petition Date**”) a voluntary case (the “**Bankruptcy Case**”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the District of Utah (the “**Bankruptcy Court**”);

WHEREAS, the Debtor continues to operate its businesses and manage its properties as debtor and debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, in connection with the Bankruptcy Case, Purchaser shall credit bid on a dollar-for-dollar basis the Credit Bid amount pursuant to Section 363 of the Bankruptcy Code; and

WHEREAS, Purchaser desires to purchase and assume from Seller, and Seller desires to sell and transfer to Purchaser, pursuant to Sections 363 and 365 of the Bankruptcy Code, all of the Purchased Assets and Assumed Liabilities on the terms and subject to the conditions set forth in this Agreement (the “**Sale**”).

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I CERTAIN DEFINITIONS

Section 1.1 Certain Definitions. For purposes of this Agreement, the following terms shall have the respective meanings set forth below:

“**Accounts Receivables**” means as of the Closing, all accounts receivables, trade receivables, notes receivables, and other miscellaneous receivables, whether current or overdue, of Seller, including all credit card receivables, funds in transit, deposits and other receivables from customers and other payments, fees, and other amounts due, and allowances due from landlords under (and rent accounts receivables with respect to) any Assigned Lease, and general third party vendor rebates, discounts and credits, but excluding any of the foregoing arising out of the Excluded Assets.

“**Action**” means any notice of violation, complaint, demand, claim, charge, prosecution, indictment, action, suit, arbitration, audit, hearing, litigation, inquiry, investigation or proceeding (whether civil, criminal, administrative, investigative or informal) commenced, brought or asserted by any Person or group of Persons or Governmental Authority or conducted or heard by or before any Governmental Authority or any arbitration tribunal.

“Administrative Expenses” means, collectively, the expenses of Seller that are entitled to priority under Section 503 of the Bankruptcy Code.

“Ad Valorem Taxes” means all real property or personal property Taxes and other ad valorem Taxes levied with respect to the Purchased Assets for any taxable period.

“Affiliate” of any Person means any other Person who either directly or indirectly through one or more intermediaries is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, **“control”** 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 the ownership of securities, partnership interests or by contract, assignment, credit arrangement, as trustee or executor, or otherwise, and the terms **“controls,” “controlling”** and **“controlled by”** shall have correlative meanings. With respect to Purchaser, the term **“Affiliate”** shall also include its managers or members or similar Persons, and any other entity controlled by the same managers or members or similar Persons as Purchaser (as the case may be); *provided that* such term shall not include any portfolio companies or managed accounts.

“Agent” means Ares Capital Corporation, a Maryland corporation, in its capacity as administrative agent under the Pre-Petition Credit Agreement or the DIP Term Sheet, as the case may be.

“Agreement” has the meaning set forth in the Preamble.

“Alcohol Licenses” means any Permit held by Seller related to the production, sale, warehousing, storage, or distribution of alcoholic beverages in connection with the operation of the Business.

“Allocation Schedule” has the meaning set forth in Section 3.2.

“Alternative Restructuring Proposal” means any inquiry, proposal, offer, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, financing proposal, debt investment, equity investment, liquidation, tender offer, recapitalization, plan of reorganization, share exchange, business combination, or similar transaction or series of transactions involving Seller or the Equity Securities or debt or other interests in Seller, in each case, that is inconsistent with or represents an alternative to the transactions contemplated by this Agreement.

“Alternative Transaction” means any transaction (or series of transactions), whether direct or indirect, whereby any Person or group of Persons (other than Purchaser and its Affiliates) acquires (i) beneficial ownership of a majority of the Equity Securities of Seller or (ii) a material portion of the Purchased Assets (but does not mean the sale of assets conducted in the Ordinary Course of Business or with the prior consent of Purchaser), in each case, whether by merger, sale of assets or equity, recapitalization, plan of reorganization or otherwise. Notwithstanding the foregoing, a liquidation or wind-down of Seller’s estate shall not be an Alternative Transaction.

“Applicable Tax Returns” has the meaning set forth in Section 5.15(a).

“Apportioned Obligations” has the meaning set forth in Section 8.3.

“Assigned Contracts” means such Available Contracts designated by Purchaser to be assumed and assigned pursuant to Section 2.5 each of which shall be set forth on Schedule 2.1(f), as finalized in accordance with the terms and conditions of this Agreement. For the avoidance of doubt, any Contract not set forth on Schedule 2.1(f) shall constitute an Excluded Asset.

“Assigned Leases” means each unexpired Lease which is designated by Purchaser to be assumed and assigned pursuant to Section 2.5 each of which shall be set forth on Schedule 2.1(e). For the avoidance of doubt, any Lease with respect to real property or portion thereof leased, licensed or otherwise granted to Seller not set forth on Schedule 2.1(e) shall constitute an Excluded Asset.

“Assignment Agreements” has the meaning set forth in Section 4.2(a)(i).

“Assumed Benefit Plans” means those certain Benefit Plans that are designated by Purchaser in its sole and absolute discretion to be assumed and assigned pursuant to Section 2.5, each of which shall be set forth on Section 2.1(s), as finalized in accordance with the terms and conditions of this Agreement. For the avoidance of doubt, any Benefit Plan not set forth on Section 2.1(s) shall constitute an Excluded Asset or Excluded Employment Liability, as applicable.

“Assumed Liabilities” has the meaning set forth in Section 2.3.

“Auction” has the meaning set forth in the Sale Procedures.

“Available Contract” means any executory Contract (including Inbound IP Agreements) or unexpired Lease, but excluding the Fundamental Documents of Seller. Notwithstanding anything contained in this Agreement to the contrary, for the purposes of the definition “Assigned Contract,” Assigned Leases shall not constitute a Contract.

“Avoidance Actions” means all claims and causes of action arising under Sections 542 through 553 of the Bankruptcy Code or any analogous state law.

“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.

“Bankruptcy-Related Default” means any default or breach of a Contract that is not entitled to cure under Section 365(b)(2) of the Bankruptcy Code, including a default or breach relating to the filing of the Bankruptcy Case or the financial condition of Seller, or any default caused by the failure to pay amounts due under a Contract prior to the Petition Date.

“Benefit Plan” means (i) each “employee benefit plan” (as such term is defined in Section 3(3) of ERISA or any similar plan subject to Laws of a jurisdiction outside of the United States), whether or not subject to ERISA, (ii) each employment, indemnification, consulting, contractor, advisor or other service agreement or arrangement, (iii) each severance, termination,

pension, retirement, supplemental retirement, excess benefit, profit sharing, bonus, incentive, deferred compensation, tax gross-up, employee loan, retention, transaction, change in control and similar plan, program, arrangement, agreement, policy or commitment, (iv) each profits interest unit and each other compensatory unit option, restricted unit, performance unit, unit appreciation, deferred unit, stock purchase, or and each other equity or equity-linked plan, program, arrangement, agreement, policy or commitment, and (v) each savings, life, health, disability, accident, medical, hospitalization, dental, vision, cafeteria, insurance, flex spending, adoption/dependent/employee assistance, tuition, vacation, paid-time-off, other welfare fringe benefit and each other compensation or employee benefit plan, program or arrangement of any kind, in each case whether written or unwritten, qualified or non-qualified, that is maintained, sponsored or contributed to by Seller or any of its ERISA Affiliates, or with respect to which any of the foregoing has any Liability.

“Bid Direction Letter” means the Credit Bid Direction Letter, to be dated on or around the date hereof, by and among the Agent and the other parties thereto, in substantially the form attached hereto as Exhibit C.

“Books and Records” means all books, records, files, advertising materials, customer lists, cost and pricing information, business plans, catalogs, customer literature, quality control records and manuals, research and development files, equipment logs, operating guides and manuals, creative materials, equipment maintenance files, quality control reports and procedures, studies, reports (including environmental reports), 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 in or to the extent relating to the operation of the Business or the ownership of the Purchased 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), Tax Returns and supporting work papers and schedules (including accountants’ work papers).

“Business” means the business of Seller of producing, filling, packing and warehousing aluminum beverage cans.

“Business Day” means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, New York, New York or Salt Lake City, Utah.

“CARES Act” means the Coronavirus Aid, Relief, and Economic Security Act, which was enacted on March 27, 2020 (as it may be amended or modified).

“Cash Shortfall” has the meaning set forth in **Error! Reference source not found.**

“Claim” has the meaning set forth in Section 101(5) of the Bankruptcy Code.

“Closing” has the meaning set forth in Section 4.1.

“Closing Date” has the meaning set forth in Section 4.1.

“Collective Bargaining Agreements” means any collective bargaining agreements related to the Business between Seller (or any Affiliate thereof) and any labor union or other collective

bargaining or other representative of current Employees of Seller or any Affiliate thereof, and including local agreements, amendments, supplements, letters and memoranda of understanding of any kind.

“COBRA” means the continuation coverage provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, as codified in IRC Section 4980B and ERISA Sections 601 et seq., as amended from time to time, and the regulations and other guidance promulgated thereunder and any other similar provisions of state or local Law.

“Conditions” means, with respect to Seller, (i) any Orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code, (ii) limitations on operations imposed by the Bankruptcy Court or the Bankruptcy Code or agreements governing Seller’s debtor-in-possession financing or use of cash collateral, (iii) obligations or limitations arising under or related to the DIP Facility or the DIP Term Sheet, (iv) Seller’s duty to seek and obtain the highest or otherwise best price for its assets as required by the Bankruptcy Code, or (v) limitations arising out of or related to the financial distress of Seller and the Bankruptcy Case, including limitations on personnel, funds and other resources.

“Consent” means any consent, approval, order, License, Permit, waiver, authorization, registration, declaration filing, exemption, notice, application, or certification, made with or granted by any Person.

“Contract” means any agreement, contract, instrument, commitment, lease (including all Leases), guaranty, indenture, License, or other arrangement or understanding (and all amendments, side letters, modifications and supplements thereto) between parties or by one party in favor of another party, whether written or oral. Notwithstanding anything contained in this Agreement to the contrary, for the purposes of the definition “Assigned Contract,” Assigned Leases shall not constitute a Contract.

“Controlled Group Liability” means any and all liabilities under (i) Title IV of ERISA, (ii) Section 302 of ERISA, and (iii) Sections 412 and 4971 of the IRC.

“Copyrights” means (i) all copyrights and works of authorship (whether registered or unregistered), all registrations thereof; and all applications in connection therewith, including all registrations, and applications in the United States Copyright Office or in any similar office or agency of any other Governmental Authority, and (ii) all extensions or renewals thereof. “Copyrights” expressly excludes copyrights in commercially available computer software licensed under a shrink wrap, click wrap or other similar commercial license.

“COVID-19 Relief Law” means the CARES Act and any similar or successor legislation, together with any memoranda or executive orders relating to COVID-19.

“Credit Bid” has the meaning set forth in Section 3.1.

“Cure Amounts Motion” has the meaning set forth in Section 2.5(b).

“Cure Costs” means all amounts that must be paid and all obligations that otherwise must be paid or satisfied, pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code to cure any

defaults under any Assigned Lease or Assigned Contract in connection with the assumption thereof by, and/or assignment thereof to, Purchaser.

“Cure Costs Cap” means Cure Costs in an aggregate amount not to exceed \$2,500,000 unless otherwise agreed in writing by Seller and Purchaser.

“Dataroom” has the meaning set forth in Section 1.4.

“Debtor” has the meaning set forth in the Recitals.

“DIP Agent” means Ares Capital Corporation, a Maryland Corporation.

“DIP Budget” means the budget attached as Exhibit B to the Interim DIP Order, as such may be amended or modified from time to time in accordance with the DIP Term Sheet and the DIP Order.

“DIP Facility” means the senior secured postpetition financing facility authorized and approved by the Bankruptcy Court pursuant to the DIP Order.

“DIP Lenders” means all Persons who are lenders under the DIP Term Sheet, each in its capacity as such.

“DIP Obligations” has the meaning ascribed to such term in the DIP Order.

“DIP Order” means the Interim DIP Order or the Final DIP Order, as then applicable.

“DIP Term Sheet” means the Senior Secured Superpriority DIP Financing Term Sheet, by and among (i) the Seller, (ii) the DIP Agent and (iii) the DIP Lenders, a copy of which is attached as Exhibit A to the DIP Order.

“Employee Retention Credit” means any employee retention credit provided for by the CARES Act (including as amended by the Consolidated Appropriations Act, 2021, and the American Rescue Plan Act of 2021) and any similar credit under state or local Law.

“Employees” has the meaning set forth in Section 5.8.

“End Date” has the meaning set forth in Section 10.1(b).

“Environmental Claim” means any Action, Governmental Order, Lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging any Environmental Liability arising out of, based on, or resulting from: (i) any actual or alleged Release of, or exposure to, any Hazardous Materials; or (ii) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“Environmental Laws” means any applicable Law, any Governmental Order, or binding Contract with any Governmental Authority (i) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety (to the extent relating to Hazardous Materials), or the environment (including ambient air, soil, soil vapor,

sediments, surface water or groundwater, or subsurface strata), or (ii) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, labeling, production, disposal, cleanup, control or remediation of any Hazardous Materials. The term “Environmental Law” includes the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

“**Environmental Liability**” means any direct, indirect, pending or threatened Liability, claim, loss, damage, fine, penalty, cost, expense, or deficiency, whether known or unknown, arising under or relating to any Environmental Law, Environmental Permit, or Hazardous Materials, including any actual or alleged Release of, or exposure to, Hazardous Materials, whether based on negligence, strict liability or otherwise, including costs and liabilities for investigation, removal, remediation, restoration, abatement, monitoring, personal injury, property damage, natural resource damages, and court costs (including costs of enforcement proceedings or government responses).

“**Environmental Notice**” means any written directive, written notice of violation or infraction, or other written notice with respect to any Environmental Claim.

“**Environmental Permit**” means any Permit, letter, clearance, consent, waiver, closure, exemption, decision, or other action required under or issued, granted, given, authorized by, or made pursuant to Environmental Law.

“**Equity Securities**” means (i) with respect to any corporation, all shares, interests, participations or other equivalents of capital stock of such corporation (however designated), and any warrants, options or other rights to purchase or acquire any such capital stock and any securities convertible into or exchangeable or exercisable for any such capital stock, (ii) with respect to any partnership, all partnership interests, participations or other equivalents of partnership interests of such partnership (however designated), and any warrants, options or other rights to purchase or acquire any such partnership interests and any securities convertible into or exchangeable or exercisable for any such partnership interests and (iii) with respect to any limited liability company, all limited liability company interests or membership interests, participations or other equivalents of limited liability company interests or membership interests of such limited liability company (however designated), and any warrants, options or other rights to purchase or acquire any such membership interests and any securities convertible into or exchangeable or exercisable for any such membership interests.

“**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 IRC (including under Section 414(b), (c), (m) or (o) of the IRC 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 (i) Books and Records relating solely to the Excluded Assets or Excluded Liabilities, (ii) Seller Fundamental Documents and stock and minute books, Seller’s financial accounting documents and such other books and records of any Seller as pertaining to ownership, organization or existence of such Seller, corporate seal, checkbooks and canceled checks; provided, that Purchaser shall have the right to make copies of any portions of such documents to the extent not prohibited by applicable Law, and (iii) any documents which Seller is prohibited by applicable Law or Contract from delivering to Purchaser at Closing as a Purchased Asset.

“**Excluded Cash**” means, the cash on hand and cash drawn by Seller under the DIP Facility, including cash drawn under the DIP Facility at the Closing, in an amount equal to, without duplication, (i) after taking into account any amounts held by Seller or estate professionals, or any funds of Seller held in escrow or reserved with respect to the fees and expenses of any of Seller’s estate professionals, an amount sufficient to satisfy the estimated accrued and unpaid professional fees and expenses of estate professionals as of the Closing (but only to the extent that such fees of Seller’s estate professionals are included in the Carve-Out (as defined in the DIP Order) or the Professional Fee Reserve (as defined in the DIP Order)), plus (ii) an amount sufficient to pay all ordinary course Administrative Expenses arising or incurred on or after the Petition Date, in each case which are accrued and unpaid as of the Closing, and any other claims for payroll, compensation (including the amount, if any, as set forth in Section 7.6(e)(ii)), taxes, or other Liabilities that if not paid would reasonably be expected to result in personal liability of any current or former employee, officer or director of Seller or any of its subsidiaries (but only to the extent such Administrative Expenses or other liabilities are not Assumed Liabilities); plus (iii) the Wind-Down Amount (which shall be used solely to fund the Post-Sale Expenses), provided that notwithstanding anything in this Agreement to the contrary, Excluded Cash shall not include funds necessary to satisfy any Taxes or other Liabilities relating to any matter described on Schedule 2.4(x).

“**Excluded Employee Liabilities**” means the following Liabilities of Seller or any of its Affiliates or ERISA Affiliates (or any predecessors of any of the foregoing) arising out of, relating to or with respect to any current or former employee or other individual service provider (including any such individual service provider providing services through a personal services entity), or any spouse, dependent, or beneficiary thereof, in each case, other than any Assumed Liabilities and obligations to fund certain Liabilities and expenses as set forth in clause (ii) of the definition of Excluded Cash: (i) any Liability arising at any time under or in connection with any Benefit Plan (other than as expressly provided in Section 2.3(c)(ii) with respect to an Assumed Benefit Plan); (ii) any Liability that constitutes a Pre-Closing COBRA Liability or a Pre-Closing WARN Act Liability or Liability under any similar Law (including if Purchaser does not hire any employee of

Seller); (iii) any Controlled Group Liability; (iv) any Liability arising in connection with the actual or prospective employment or engagement, the retention and/or discharge by Seller or any of its Affiliates or ERISA Affiliates (or any predecessors of the foregoing) of any current or former employee or other individual service provider (including any such individual service provider providing services through a personal services entity) of any of the foregoing; and (v) any employment, labor, compensation, pension, employee welfare, and employee-benefits-related Liabilities relating to any current or former employee or other individual service provider (including any such individual service provider providing services through a personal services entity) of Seller or any of its Affiliates or ERISA Affiliates (or any predecessors of any of the foregoing), or any spouse, dependent, or beneficiary thereof, including but not limited to all Liabilities related to or arising out of claims made by any such Person (a) for any statutory or common law severance or other separation benefits, (b) for any contractual or other severance or separation benefits and any other legally-mandated payment obligations (including any compensation payable during a mandatory termination notice period and any payments pursuant to a judgment of a court, tribunal, or other authority having jurisdiction over the parties hereto), (c) with respect to any unfair labor practice charge, (d) under any unemployment compensation or workers' compensation Law, (e) under any federal, state, local, or non-U.S. employment Law or other Law relating to employment, discrimination, classification, wages and hours (including claims or Liabilities related to the Fair Labor Standards Act and any similar state, local, or non-U.S. Law), or immigration, or (f) relating to any obligation under applicable Law or Contract to inform or consult with employees, employee representatives, unions, works councils, or other employee representative bodies in connection with the transactions contemplated by this Agreement and the other Transaction Documents in each case, (I) except as set forth in the following clause (II), associated with any current or former employee or other individual service provider (including any such individual service provider providing services through a personal services entity) of Seller or any of its Affiliates or ERISA Affiliates (or any predecessors of any of the foregoing), or any spouse, dependent, or beneficiary thereof, arising at any time, or (II) associated with any Transferred Employee or any spouse, dependent, or beneficiary thereof, arising on or prior to the Closing Date (excluding, for the avoidance of doubt in the case of this clause (II), Liabilities in respect of go-forward compensation and benefits arrangements offered by Purchaser to Transferred Employees following their commencement of employment with Purchaser in accordance with Section 7.6).

“Excluded Insurance Policies” means all directors' and officers' insurance policies and any other insurance policy of Seller which (i) relates solely to the Excluded Assets or Excluded Liabilities, (ii) is required to cover claims or expenses in the Bankruptcy Case or (iii) are required to be retained by Seller in connection with the Wind-Down Activities.

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Extended Contract Period Notice” has the meaning set forth in Section 2.5(a).

“Extended Contract Period” has the meaning set forth in **Error! Reference source not found.**

“Fraud” means (i) a false representation of a material fact by Purchaser or Seller with respect to any representation or warranty made by it set forth in ARTICLE V or ARTICLE VI (as

applicable and in each case as qualified by the Seller Disclosure Schedule or Purchaser Disclosure Schedule, as applicable), (ii) made with actual knowledge or belief of its falsity, (iii) with the intent of inducing another Person to act, or refrain from action, to such other Person's detriment, and (iv) upon which such other Person acted or did not act in justifiable reliance on the representation, with resulting Liabilities, and which shall expressly exclude any other claim of fraud that does not include the elements set forth in this definition, including constructive fraud, negligent or reckless misrepresentation or any similar theory.

"Final DIP Order" means an order of the Bankruptcy Court entered in the Bankruptcy Case granting the relief provided in the Interim DIP Order on a final basis, in form and substance acceptable to the Required DIP Lenders.

"Final Order" means any order, ruling or judgment of the Bankruptcy Court or any other court of competent jurisdiction, as to which the time to file an appeal, a motion for rehearing or a petition for writ of *certiorari* has expired and no such appeal, motion or petition is pending.

"Fundamental Documents" means the documents of a Person (other than a natural person) by which such Person establishes its legal existence or which govern its internal affairs. For example, the Fundamental Documents of a corporation would be its charter and bylaws and the Fundamental Documents of a limited liability company would be its certificate of formation and limited liability company agreement or operating agreement.

"GAAP" means generally accepted accounting principles in the United States, consistently applied.

"General Intangibles" means all intangible assets now owned or hereafter acquired by Seller and associated with the Business, including (i) all right, title and interest that Seller may now or hereafter have in or under any Contract, (ii) all payment intangibles, (iii) rights in customer lists, (iv) interest in business associations, (v) proprietary or confidential information, technical information, procedures, designs, knowledge, know-how, software, data bases, data, skill, expertise, experience, processes, rights in models, rights in drawings, (vi) goodwill, (vii) uncertificated securities, (viii) checking and other bank accounts, (ix) rights to receive Tax refunds and other payments, (x) rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged Equity Securities and investment property, and (xi) rights of indemnification, other than any of the foregoing related to or arising in connection with any Excluded Asset or Excluded Liability; provided, that if any of the foregoing is covered by a more specific category(ies) of "Purchased Assets" or "Excluded Assets", such specific category(ies) will control.

"Governmental Authority" means any (i) nation, state, province, tribal, county, city, town, village, district, or other jurisdiction of any nature; (ii) federal, state, local, provincial, municipal, foreign, or other government; (iii) governmental or quasi-governmental authority of any nature (including any government agency, ministry, branch, department, official, or entity and any court or other tribunal); (iv) multi-national organization or body; or (v) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination, or award entered by or with any Governmental Authority, including, but not limited to, any order, writ, judgment, decree, stipulation, determination, award or guideline issued by a Governmental Authority restricting business operations.

“Hazardous Materials” means any chemical, substance, material or waste that is (i) defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “hazardous constituent,” “special waste,” “toxic substance,” a “pollutant” or “contaminant” or is otherwise defined, designated, listed, classified or regulated as hazardous or toxic or as a waste, a pollutant or a contaminant or by other similar term or phrase pursuant to or which can give rise to liability under any Environmental Laws, or (ii) petroleum or any fraction or by-product thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls (PCBs), any radioactive substance, polyvinyl chloride, radon, lead-based paint, toxic mold and per- and polyfluoroalkyl substances.

“Inbound IP Agreements” has the meaning set forth in Section 5.7(a)(xii).

“Indebtedness” means, with respect to any Person, without duplication:

- (i) obligations of such Person for borrowed money, or otherwise evidenced by bonds, debentures, notes or similar instruments;
- (ii) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person, other than any such obligation made in the Ordinary Course of Business;
- (iii) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding obligations of such Person to creditors for raw materials, inventory, services and supplies incurred in the ordinary course of such Person’s business);
- (iv) all obligations of such Person under Leases that have been or should be treated, in accordance with GAAP, as capitalized lease obligations of such Person;
- (v) all obligations of others secured by any Lien on property or assets owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, other than any such obligation made in the Ordinary Course of Business;
- (vi) all obligations of such Person under interest rate or currency swap transactions (valued at the termination value thereof);
- (vii) all letters of credit issued for the account of such Person (excluding letters of credit issued for the benefit of suppliers to support accounts payable to suppliers incurred in the Ordinary Course of Business); and
- (viii) all guarantees and arrangements having the economic effect of a guarantee of such Person of any Indebtedness of any other Person.

“Indemnification Claims” means claims for indemnification of any present or former officer, manager, director, employee, partner or member of Seller or any of its Affiliates whether arising under Seller’s Fundamental Documents or any other Contract arising prior to the Closing.

“Instruments” means all “instruments,” as such term is defined in the UCC, now owned or hereafter acquired by Seller, wherever located, and, in any event, including all certificated securities, all certificates of deposit, and all promissory notes and other evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, chattel paper.

“Intellectual Property” means any and all Patents, Copyrights, Trademarks, Trade Secrets, Software, internet domain names, social media accounts, and other intellectual property, in each case, owned or purported to be owned by Seller throughout the world or used or held for use in connection with the operation of the Business, and all rights to sue at law or in equity for any infringement or other impairment thereof, whether past, present, or future, including the right to receive all proceeds and damages therefrom.

“Intellectual Property Agreements” means all Contracts pursuant to which Seller is licensor or otherwise grants to any Person any license, sublicense, right or interest with respect to any Intellectual Property (expressly excluding shrink wrap, click wrap and other similar commercial technology licenses that are non-exclusive, are on standard terms and are granted in the Ordinary Course of Business).

“Interim DIP Order” means the *Interim Order (I) Authorizing the Debtor to Obtain Postpetition Senior Secured Financing, (II) Authorizing the Debtor to Use Cash Collateral on a Limited Basis, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protections, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief*, entered by the Bankruptcy Court at Docket No. 72 in the Bankruptcy Case.

“Inventory” means all “inventory,” as such term is defined in the UCC, now owned or hereafter acquired by Seller, wherever located, and, without limiting the foregoing, all (i) inventory, (ii) merchandise, (iii) goods and other personal property, (iv) raw materials, work or construction in process, (v) finished goods, returned goods, or materials or supplies of any kind, nature or description and (vi) products, equipment, and appliances, whether owned or on order, including all embedded Software.

“IP Assignment Agreements” has the meaning set forth in Section 4.2(a)(vii).

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

“IRS” means the Internal Revenue Service.

“Knowledge of Seller” means the actual knowledge after reasonable inquiry (and in no event encompass constructive, imputed or similar concepts of knowledge) of the individuals identified in Section 1.1(b) of the Seller Disclosure Schedule, none of whom, for the sake of clarity and avoidance of doubt, shall have any personal Liability or obligations regarding such knowledge, except in the case of Fraud (solely with respect to actual knowledge) or Willful Breach.

“Law” means any federal, state, provincial, local, foreign, international or supranational law (including common law), statute, treaty, ordinance, rule, regulation, Order, code, or other similar authority enacted, adopted, promulgated, or applied by any Governmental Authority.

“Leased Real Estate” has the meaning set forth in Section 5.3(b).

“Lease” means each unexpired lease, sublease or license of real property leased, subleased or licensed to Seller (including all written amendments, modifications, or extensions thereof thereto).

“Liability” means any liability (including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, direct, conditional, implied, vicarious, derivative, joint, several or secondary liability), debt, obligation, deficiency, interest, Tax, penalty, fine, adverse claim, adverse judgment, cause of action or other loss (including loss of benefit or relief), cost or expense of any kind or nature whatsoever, whether asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, and whether due or to become due and regardless of when asserted.

“License” means any licenses, Consents, approvals and any Permits, including Permits of or registrations with any Governmental Authority; but expressly excluding any license or sublicense of Intellectual Property.

“License Approvals” has the meaning set forth in Section 7.8.

“Liens” means any mortgage, pledge, hypothecation, security interest, encumbrance, easement, license, encroachment, servitude, consent, option, Claim, lien (as defined in Section 101(37) of the Bankruptcy Code), put or call right, right of first refusal, voting right, charge, lease, sublease, right to possession or other restrictions or encumbrances of any nature whatsoever.

“Material Adverse Effect” means any fact, condition, change, violation, inaccuracy, circumstance, effect, event, or occurrence that individually or in the aggregate has had, or would be reasonably likely to have, a material adverse change in or material adverse effect on the Purchased Assets, the Assumed Liabilities, or the Business (excluding the Excluded Assets and the Excluded Liabilities), in each case taken as a whole, but excluding (i) any change or effect to the extent that it results from or arises out of (A) the filing and pendency of the Bankruptcy Case (including any objection in the Bankruptcy Court to (x) this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby, (y) the reorganization of Seller and any related plan of reorganization or disclosure statement, or (z) the Sale Motion, Sale Procedures Order or Sale Order) or the financial condition or financial distress of Seller; (B) the execution and delivery of this Agreement or the announcement thereof or consummation of the transactions contemplated hereby (including the impact thereof on the relationships, contractual or otherwise, of the business of Seller with employees, customers, lessors, suppliers, vendors or other commercial partners or litigation arising from or relating to this Agreement or the transactions contemplated hereby); (C) changes in (or proposals to change) Law, generally accepted accounting principles, or other accounting regulations or principles; (D) any action or inaction required by this Agreement, the DIP Facility or any Order of the Bankruptcy Court; or (E) the assumption or rejection of any Contract or Lease; (ii) any change or effect generally applicable to (a) the

industries and markets in which Seller operates or (b) economic or political conditions or the securities or financial markets in any country or region; (iii) any failure by the Business to meet any internal or published projections, forecasts or revenue or earnings predictions; *provided* that this clause (iii) 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”; (iv) any outbreak or escalation of hostilities or war or any act of terrorism; and (v) any occurrence, threat, or effects of a fire, flood, hurricane, earthquake, tornado, windstorm, other calamity or act of God disease outbreak, epidemic or pandemic; *provided* that such change, event, occurrence or circumstance contemplated in the preceding clauses (i)(C), (ii), (iv) and (v) does not affect the Purchased Assets, the Assumed Liabilities, or the Business in a disproportionate manner as compared to other similarly situated companies operating in the same geographic area (or market) or industries as Seller.

“**Material Contract**” and “**Material Contracts**” have the meanings set forth in Section 5.7(a).

“**Material Customers**” has the meaning set forth in Section 5.17.

“**Material Suppliers**” has the meaning set forth in Section 5.16.

“**Multiemployer Plan**” has the meaning as such term is defined in Section 3(37) or Section 4001(a)(3) of ERISA.

“**Mutual Released Party**” means each of the following, and in each case, solely in its capacity as such: (i) the Purchaser and its Related Parties, (ii) the Pre-Petition Secured Lenders and their respective Related Parties, (iii) the DIP Lenders and their respective Related Parties, (iv) the Agent and its Related Parties, (v) ACF Finco I LP, as revolving agent and collateral agent under the Pre-Petition Credit Agreement and its Related Parties, (vi) Carlin Adrianopoli, (vii) Alan Carr, (viii) John Sacksteder, (ix) Alan Boyko and (x) Seller.

“**Omitted Contract**” has the meaning set forth in Section 2.5(d)(iii).

“**Order**” means any judgment, order, administrative order, writ, stipulation, injunction (whether permanent or temporary), award, decree or similar legal restraint of, or binding settlement having the same effect with, any governmental Action.

“**Ordinary Course of Business**” means the ordinary and usual course of operations of the business of Seller taken as a whole consistent with past practice, taking into account the contemplation, commencement and pendency of the Bankruptcy Case and the business and operating practices of Seller in light of its financial condition, financial distress and the Bankruptcy Case.

“**Patents**” means (i) all letters patent, inventions, patents and patent rights of the United States or of any other country, all registrations thereof, and all applications for letters patent, inventions, patents and patent rights of the United States or of any other country, including registrations and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State, or any other country; and (ii) all reissues, continuations, continuations-in-part or extensions thereof.

“Permits” means all approvals, authorizations, certificates, consents, variances, and Licenses (including all Alcohol Licenses) issued by any Governmental Authority (including all applications, renewal applications, or documents filed, or fees paid, in connection therewith).

“Permitted Liens” means: (i) statutory Liens for current and future Taxes, assessments or other governmental charges and utilities, including water and sewage charges, that are not yet due and payable (or being contested in good faith) and for which adequate reserves have been taken in accordance with GAAP or the nonpayment of which is required by the Bankruptcy Code; (ii) present and future zoning, building codes and other land use Laws regulating the use or occupancy of any Leased Real Estate or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over such Leased Real Estate which are not violated by the current use or occupancy of such Leased Real Estate or the operation of the Business currently or as currently contemplated; (iii) all easements, covenants, conditions, restrictions and other similar matters affecting title to the Leased Real Estate that are reflected in the applicable real estate records, and other survey defects, which would be depicted on an accurate survey of such Leased Real Estate, in each instance (A) that does not interfere in any material respect with the present use or occupancy of the applicable Leased Real Estate and (B) would not reasonably be expected to have, in each case, a Material Adverse Effect; and (iv) any Lien that constitutes a Permitted Encumbrance (as defined in the Pre-Petition Credit Agreement).

“Person” means any individual, partnership, corporation, limited liability company, association, joint stock company, estate, trust, joint venture, unincorporated organization, other entity, or a Governmental Authority.

“Petition Date” has the meaning set forth in the Recitals.

“Post-Closing Tax Period” means (i) any Tax period beginning after the Closing Date and (ii) with respect to a Tax period that commences on or before but ends after the Closing Date, the portion of such period beginning after the Closing Date.

“Post-Petition Payables” has the meaning set forth in Section 2.3(i).

“Post-Sale Expenses” means the expenses required to conduct the Wind-Down Activities which are funded by the Wind-Down Amount; *provided* that, for the avoidance of doubt, Purchaser shall not be liable for any expenses in excess of the Wind-Down Amount, except as otherwise set forth in this Agreement, the Transition Services Agreement, the Interim Management Agreement or any other agreement between with the Purchaser that contemplates expenses.

“Pre-Closing COBRA Liability” means any Liability arising under COBRA related to a “qualifying event” occurring at (including as a result of) or prior to the Closing in respect of any current or former Employee or other service provider of Seller or any of its Affiliates or ERISA Affiliates (or any predecessors of any of the foregoing), or any spouse, dependent, or beneficiary thereof.

“Pre-Closing Tax Period” means (i) any Tax period ending on or before the Closing Date and (ii) with respect to a Tax period that commences on or before but ends after the Closing Date, the portion of such period up to and including the Closing Date.

“Pre-Closing WARN Act Liability” means any Liability under the WARN Act, in any case arising at (including as a result of) or prior to the Closing.

“Pre-Petition Credit Agreement” means that certain Credit and Guaranty Agreement dated as of April 20, 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof), by and among (i) Seller, as Borrower, (ii) Vobev Holdings, LLC, a Delaware limited liability company, as Holdings, (iii) certain subsidiaries of Seller from time to time party thereto, as guarantors, (iv) the Pre-Petition Secured Lenders, (v) Ares Capital Corporation, a Maryland corporation, as administrative agent and (v) ACF Finco I LP, a Delaware limited partnership, as revolving agent and collateral agent.

“Pre-Petition Facilities” shall have the meaning ascribed to the term “Prepetition Facilities” in the DIP Order.

“Pre-Petition Obligations” means the loans and other “Obligations” (as defined in the Pre-Petition Credit Agreement) under the Pre-Petition Credit Agreement.

“Pre-Petition Secured Lenders” means the lenders under the Pre-Petition Credit Agreement.

“Projections” means the projections, forward-looking statements and other forecasts (whether in written, electronic, or oral form) provided by Seller or any of the Seller Representatives to Purchaser or any of the Purchaser Advisors.

“Purchase Price” has the meaning set forth in Section 3.1.

“Purchased Actions” has the meaning set forth in Section 2.1(o).

“Purchased Assets” has the meaning set forth in Section 2.1.

“Purchaser” has the meaning set forth in the Preamble.

“Purchaser Advisors” has the meaning set forth in Section 7.2.

“Purchaser Disclosure Schedule” means the schedules relating to ARTICLE VI to be finalized and delivered to Seller on behalf of Purchaser in accordance with Section 7.14(b), a copy of which upon the finalization thereof will be attached to this Agreement and incorporated into this Agreement by reference.

“Purchaser Disclosure Schedules Delivery Date” means the date that is no later than three (3) days prior to the Auction or such later date that Purchaser may in its sole discretion determine, which date must be prior to the Closing Date.

“Registered Intellectual Property” has the meaning set forth in Section 5.5(c).

“Rejection Damages Claims” means all claims arising from or related to the rejection of a Contract under Section 365 of the Bankruptcy Code, including any administrative expense claims

arising from the rejection of Contracts previously assumed, unless such Contract is an Assigned Lease or an Assigned Contract.

“Related Parties” means, with respect to any Person, such Person’s former, current and future Affiliates, successors, predecessors, subsidiaries, parents and assigns, and with respect to each of the foregoing, such Person’s respective former, current and future direct and indirect partners, shareholders, members, investors and potential investors, controlling persons, directors, managers, officers, employees, agents, trustees, administrators, advisors, attorneys, representatives, and other professionals (and with respect to any Person that is a natural person, shall also include such natural person’s immediate family members).

“Release” means any release or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, depositing, disposing, dispersing or allowing to escape or migrate into or through the environment (including ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any Structure, facility, or fixture and including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Materials).

“Required DIP Lenders” has the meaning ascribed to such term in the DIP Term Sheet.

“Responsible Officer” means, with respect to any Person, the chief executive officer, president, chief operating officer, chief financial officer, chief restructuring or transformation officer, controller and chief accounting officer, vice president of finance or treasurer of such Person.

“Restructuring Transaction” means a sale of all or substantially all of Seller’s assets and business pursuant to Section 363 of the Bankruptcy Code in the Bankruptcy Case.

“Sale” has the meaning set forth in the Recitals.

“Sale Hearing” means the hearing scheduled by the Bankruptcy Court to consider approval of the Sale.

“Sale Motion” has the meaning set forth in Section 7.5(a).

“Sale Order” means an Order of the Bankruptcy Court substantially in the form attached hereto as Exhibit B, approving the Sale.

“Sale Procedures” has the meaning ascribed to the term “Bidding Procedures” in the Sale Procedures Order.

“Sale Procedures Order” means an Order of the Bankruptcy Court approving procedures governing the solicitation of bids for the purchase of Seller’s assets and business and scheduling an auction and hearing on the Sale, substantially in the form attached hereto as Exhibit A.

“Securities Act” means the Securities Act of 1933, as amended.

“Selected Courts” has the meaning set forth in Section 12.2(a).

“Seller Disclosure Schedule” means the schedules relating to ARTICLE V to be finalized and delivered to Purchaser on behalf of Seller in accordance with Section 7.14(a), a copy of which upon the finalization thereof will be attached to this Agreement and incorporated into this Agreement by reference.

“Seller Disclosure Schedules Delivery Date” means January 26, 2025 or such later date that Purchaser may in its sole discretion determine.

“Seller Representatives” means Seller’s directors, officers, Employees, advisors, attorneys, accountants, consultants, financial advisors, bankers, or other agents or representatives or any court-appointed Chapter 7 trustee or other fiduciary charged with winding up the affairs of Seller and its directors, officers, employees, advisors, attorneys, accountants, consultants, financial advisors, bankers, or other agents or representatives.

“Seller” has the meaning set forth in the Preamble.

“Software” means computer programs, operating systems, applications, firmware and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications, and other documentation thereof.

“Structures” means, collectively, buildings, structures, and fixtures on, and other improvements to, the Leased Real Estate.

“Successful Bidder” has the meaning given to it in the Sale Procedures Order.

“Tax” or **“Taxes”** means, whether or not disputed, (i) any U.S. federal, state, provincial, county, local or non-U.S. taxes, charges, fees, levies or other assessments, including all net income, gross income, sales and use, goods and services, service, use, inventory, alcohol, mixed beverage, ad valorem, transfer, gains, profits, excise, franchise, real and personal property, gross receipts, gross revenue, value added, capital stock, capital gains, windfall profits, escheat, unclaimed or abandoned property, production, business and occupation, disability, employment, payroll, estimated, stamp, custom, duties, severance, unemployment, lease, recording registration, social security, Medicare, alternative or add-on minimum, net worth, documentary, intangibles, conveyancing, environmental, premium or withholding (including backup withholding) taxes, impost or charges or other compulsory payments imposed by any Governmental Authority, in each case in the nature of, or similar to, a tax and including any interest and penalties (civil or criminal) on or additions to any such taxes and (ii) liability for items in the preceding clause (i) of any other Person by Contract, operation of Law (including, but not limited to any tax sharing or allocation arrangement, any agreement to indemnify such other Person or deemed agreement created by operation of law, and Treasury Regulation Section 1.1502-6 or otherwise as a result of being a successor or transferee of such other Person, or being (or ceasing to be) a member of the same affiliated, consolidated, combined, unitary or other group with such other Person) or otherwise.

“Tax Proceeding” has the meaning set forth in Section 8.2.

“Tax Returns” means any return, report, claim for refund, election, declaration, statement, information return, schedule, or other document (including any related or supporting information) filed or required to be filed with any Governmental Authority in respect of Taxes.

“Taxing Authority” means, with respect to any Tax, a Governmental Authority that imposes such Tax, and the agency (if any) charged with the collection of such Tax.

“Title Affidavit” means, with respect to each Assigned Lease, an affidavit from the applicable Seller or applicable Affiliate thereof that owns or leases such Leased Real Estate to the Title Company, without indemnifications, in customary form for the Title Company to delete the so-called “standard exceptions” (excluding the standard survey exceptions) from the applicable Title Policies, and otherwise in form and substance reasonably acceptable to Seller.

“Title Company” means a nationally recognized title insurance company selected by Purchaser.

“Title Policy” means an ALTA owner’s or leasehold title insurance policy, and together with such endorsements and affirmative coverages as may be reasonably requested by Purchaser, insuring Purchaser’s leasehold interest in each Assigned Lease, as of the Closing Date, subject only to Permitted Liens and in such amount as Purchaser reasonably determines to allocate as the value of the Assigned Lease insured thereunder and otherwise in form and substance reasonably acceptable to Purchaser.

“Trade Secrets” means all confidential and proprietary information, owned by Seller and used in the Business for commercial advantage and not generally known or reasonably ascertainable, including know-how, trade secrets, manufacturing and production processes and techniques, research and development information, databases and data, including, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information.

“Trademarks” means (i) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, slogans, brand names, and other source or business identifiers (whether registered or unregistered), all registrations thereof, and all applications in connection therewith, including registrations and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof; (ii) all reissues, extensions or renewals thereof; and (iii) all goodwill associated with or symbolized by any of the foregoing.

“Transaction Documents” means this Agreement and any other agreements, documents, instruments or other Contracts to be executed and delivered or executed in connection with this Agreement.

“Transfer Taxes” has the meaning set forth in Section 8.1.

“Transferred Employees” has the meaning set forth in Section 7.6.

“Transition Services Agreement” has the meaning set forth in Section 7.15.

“Treasury Regulations” means one or more Treasury regulations promulgated under the IRC by the Treasury Department of the United States.

“UCC” means the Uniform Commercial Code.

“**WARN Act**” means the federal Worker Adjustment and Retraining Notification Act or any similar Law.

“**Welfare Claims**” has the meaning set forth in Section 7.6(c).

“**Willful Breach**” shall mean a deliberate act or a deliberate failure to act regardless of whether breaching was the conscious object of the act or failure to act.

“**Wind-Down Activities**” means the orderly wind-down of Seller’s bankruptcy estate following the Closing, including the liquidation and dissolution of Seller.

“**Wind-Down Amount**” means an amount not to exceed \$350,000; *provided* that such amount shall only be used to pay Post-Sale Expenses; *provided, further*, that to the extent there is any residual Wind-Down Amount remaining after the satisfaction and payment of all Post-Sale Expenses, as determined by Seller in its reasonable discretion, such amount shall be promptly delivered to Purchaser.

Section 1.2 Schedules; Exhibits. References to this Agreement shall include any Exhibits, Schedules and Recitals to this Agreement and references to Sections, Exhibits and Schedules are to Sections of, Exhibits to and Schedules to this Agreement.

Section 1.3 Information. References to books, records or other information mean books, records or other information in any form including paper or electronically stored data.

Section 1.4 Interpretation. When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless the context otherwise requires. The word “or” shall not be deemed to be exclusive. The word “extent” and the phrase “to the extent” when used in this Agreement shall mean the degree to which a subject or other thing extends, and such word or phrase shall not mean simply “if.” All terms defined in this Agreement shall have the same defined meaning when used in any certificate or other document made or delivered pursuant thereto unless otherwise defined therein. Any reference herein to “dollars” or “\$” shall mean United States dollars. The words “as of the date of this Agreement” and words of similar import shall be deemed in each case to refer to the date this Agreement was first signed. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. References in this Agreement to specific Laws or to specific provisions of Laws shall include all rules and regulations promulgated thereunder (and revisions thereof or successors thereto). Each of the parties to this Agreement has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if it is drafted by all the parties to this Agreement, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement. Reference to any Person includes such Person’s successors and assigns, if applicable, but only if such successors and assigns are permitted by this

Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity. Reference to any agreement, document, or instrument means such agreement, document, or instrument as amended or modified and in effect from time to time in accordance with its terms. Any document or item will be deemed “delivered,” “provided” or “made available” by Seller, within the meaning of this Agreement if such document or item is included in that certain datasite administered by Intralinks (the “**Dataroom**”).

ARTICLE II PURCHASED SALE OF ASSETS; ASSUMPTION OF LIABILITIES

Section 2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall (or shall cause its designated Affiliate or Affiliates to) purchase, acquire and accept from Seller, and Seller shall sell, transfer, assign, convey and deliver to Purchaser (or such designated Affiliate or Affiliates), pursuant to and in accordance with the Sale Order, all of Seller’s right, title and interest in, to and under, as of the Closing, the Purchased Assets, free and clear of all Liens (other than Permitted Liens and interests other than the Assumed Liabilities). “**Purchased Assets**” means the assets set forth as follows (other than the Excluded Assets):

(a) all cash, cash equivalents, prepayments (including all prepayments made to third party vendors), deferred assets, refunds, credits or overpayments, in each case, except for the Excluded Cash;

(b) all Accounts Receivables;

(c) all Inventory;

(d) to the extent transferable pursuant to applicable Law, all 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 any Excluded Insurance Policy;

(e) all Assigned Leases;

(f) all Assigned Contracts;

(g) to the extent transferable, any security deposits held by counterparties to the Assigned Leases or Assigned Contracts;

(h) all furniture, fixtures, equipment, marketing materials and other personal property used or usable in the operations of the Business, including, to the extent transferable, all rights to any Software;

(i) all merchandise and other personal property used or usable in the operations of the Business;

(j) to the extent transferable pursuant to applicable Law, all Permits (including all Environmental Permits) required for the conduct of the Business as currently conducted or

proposed to be conducted or for the ownership, operation, use, maintenance, or repair of any of the Purchased Assets;

(k) all Books and Records relating to the Purchased Assets and all employee records of the Transferred Employees (to the extent permitted by applicable Law), other than the Excluded Books and Records;

(l) all Intellectual Property;

(m) all General Intangibles;

(n) all guarantees, representations, warranties, and indemnities given by any third party associated with the operation of the Business to the extent related to any Purchased Assets or any Assumed Liabilities;

(o) all claims, causes of action, including Avoidance Actions and the proceeds thereof, choses in action, rights of recovery, rights of set off, and rights of recoupment and any other Action, other than any of the foregoing, including counterclaims and defenses, related to Excluded Assets or Excluded Liabilities and any proceeds thereof (collectively, the “**Purchased Actions**”);

(p) all prepayments, deposits, deferred assets, rights to refunds and credits (including pre- and post-bankruptcy rights to Tax refunds or credits), rights to recover overpayments or other receivables, other than those related to Excluded Assets or Excluded Liabilities;

(q) all tax returns of or with respect to any Purchased Asset and all records (including working papers) related thereto;

(r) all funds owed to Seller in connection with (or under) any COVID-19 Relief Law (including Employee Retention Credits);

(s) all rights and obligations in or under any Assumed Benefit Plan (and including all pre-payments, deposits, and refunds thereunder and any assets, trusts, or insurance policies maintained pursuant thereto or in connection therewith); and

(t) all rights and obligations under non-disclosure or confidentiality, non-compete or non-solicitation agreements with employees and agents of Seller or with third parties.

Section 2.2 Excluded Assets. Notwithstanding anything in this Agreement to the contrary, Purchaser shall not purchase or assume, and shall not be deemed to have purchased or assumed, any Excluded Assets and Seller and its Affiliates shall retain all right, title and interest to, in and under the Excluded Assets. “**Excluded Assets**” means Seller’s properties and assets which are not Purchased Assets, including those assets set forth as follows:

(a) the Excluded Books and Records;

(b) any Contracts that are not Assigned Leases or Assigned Contracts;

(c) any confidential personnel or other records to the extent pertaining to any current or former employee who is not a Transferred Employee;

(d) equipment and other assets and items that are (i) owned by third parties or (ii) leased to Seller or an Affiliate thereof, or are not freely assignable, saleable, or otherwise transferable to Purchaser, in each case, pursuant to a Contract that is not an Assigned Lease or an Assigned Contract;

(e) all rights and Actions that accrue or will accrue to Seller under (i) any of the Transaction Documents with respect to the Sale (including the Purchase Price and any fees or expenses paid in connection with any Transition Services Agreement) or (ii) any documents prepared by or received by Seller in connection with the Sale, any other sale of or transaction related to the Seller or the Purchased Assets, any Alternative Restructuring Proposal and the Auction (including any privileged materials and including all analyses and reports prepared or received by Seller or any of its Affiliates or advisers in connection therewith);

(f) the Excluded Cash;

(g) the utility deposit account and any cash in such account; *provided*, that to the extent there is any residual cash remaining in such account after the satisfaction and payment of all utilities, as determined by Seller in its reasonable discretion, such amount shall be promptly delivered to Purchaser;

(h) one or more deposit accounts designated by Seller to be used for the Wind-Down Activities or to hold funds for professional fees or other deposits in accordance with the Transaction Documents, in each case solely to the extent of the Excluded Cash deposited in such account(s);

(i) all Excluded Insurance Policies and, in each case, all rights and benefits of any nature of Seller with respect thereto (including right to receive payment or other recoveries and any payments or recoveries thereunder);

(j) all Benefit Plans and any assets of any Benefit Plan or any right, title, or interest in any of the assets, trusts, other funding vehicles or insurance policies thereof or relating thereto (in each case, other than the Assumed Benefit Plans and any assets related thereto);

(k) all Actions, rights, defenses, guarantees, representations, warranties and indemnities to the extent pertaining to any Excluded Asset or any Excluded Liability;

(l) all rights to any Software used in any computer equipment included in the Purchased Assets, to the extent not freely transferable to Purchaser;

(m) all documents protected by any applicable privilege, including attorney-client or attorney work product privilege; and

(n) all shares of capital stock or other equity interests of Seller or any of its subsidiaries.

Section 2.3 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall (or shall cause its designated Affiliate or Affiliates to) assume and be responsible for, effective as of the Closing, and thereafter pay, honor, perform and discharge as and when due, all of the Assumed Liabilities. “**Assumed Liabilities**” means the Liabilities and obligations of Seller set forth as follows:

(a) all Liabilities relating to, or arising in respect of, the Purchased Assets arising out of or relating to (i) events, occurrences, acts or omissions first occurring or first existing after the Closing or (ii) the operation of the Business or the Purchased Assets by Purchaser after the Closing;

(b) (i) subject to the Cure Costs Cap with respect to the Assigned Leases and the Assigned Contracts, all Liabilities (including all Cure Costs) of Seller under the Assigned Leases and the Assigned Contracts and (ii) all Liabilities arising under purchase orders, invoices and similar orders and statements with any customer counterparty to the Assigned Contracts and with any customers set forth on Schedule 2.3(b);

(c) (i) all Liabilities, solely to the extent arising after the Closing relating to the employment, engagement, or performance of services, or termination of employment, engagement, or services, of any Transferred Employee; and (ii) any Liabilities under each Assumed Benefit Plan, solely to the extent arising after the Closing Date;

(d) to the greatest extent permitted by applicable Law, all Liabilities related to any accrued or earned wages and paid time off of any employee who becomes a Transferred Employee;

(e) solely to the extent caused by an action taken by or inaction of Purchaser, any liability under the WARN Act or similar Law or with respect to COBRA or similar Law;

(f) all Liabilities with respect to Transfer Taxes;

(g) any (i) collected and unremitted payroll, sales or use Taxes and (ii) Ad Valorem Taxes, in each case which are (A) secured by liens that are senior to the liens held by Pre-Petition Secured Lenders or DIP Lenders payable in respect of the Purchased Assets or (B) for which the Debtor is obligated under an executory contract or unexpired lease that becomes an Assigned Contract or Assigned Lease;

(h) any and all costs and expenses necessary in connection with providing “adequate assurance of future performance” with respect to the Assigned Leases or Assigned Contracts (as contemplated by Section 365 of the Bankruptcy Code);

(i) all Liabilities for all Administrative Expenses, accounts payable and operating expenses, in each case, accrued, arising or incurred on or after the Petition Date and on or prior to the Closing Date in the Ordinary Course of Business (collectively, the “**Post-Petition Payables**”);

(j) all obligations, commitments and Liabilities to the extent arising from events, occurrence, acts or omissions first occurring or first existing after the Closing under any Permits that are assigned to Purchaser or its Affiliates hereunder;

(k) all Liabilities related to, resulting from or arising out of, any (i) unredeemed refunds, customer credits or similar items, (ii) customer deposits or (iii) customer promotions and related programs, in each case only to the extent both (A) relating to the Purchased Assets and (B) where such obligations arose after the Petition Date; and

(l) the Liabilities set forth on Schedule 2.3(l).

Nothing contained in this Agreement shall require Purchaser to pay or discharge any Assumed Liabilities prior to such Assumed Liabilities becoming due and payable in accordance with the underlying terms of any Assigned Lease or Assigned Contract giving rise to or governing such Assumed Liabilities. The parties hereto acknowledge and agree that the disclosure of any obligation or other Liability on any schedule to this Agreement shall not create an Assumed Liability or liability of Purchaser that would not have been created otherwise, except where such disclosed Liability has been expressly assumed by Purchaser as an Assumed Liability in accordance with the provisions of this Agreement.

Section 2.4 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, except for the Assumed Liabilities, Purchaser shall not assume, and shall be deemed not to have assumed, any Liabilities relating to the Business of Seller or any Affiliate of Seller, including those Liabilities set forth as follows (collectively, such Liabilities that are not Assumed Liabilities, the “**Excluded Liabilities**”):

- (a) any Liability of Seller to the extent arising from any Excluded Asset;
- (b) any Cure Costs in excess of the Cure Costs Cap;
- (c) all Liabilities under Indebtedness of Seller (including any Indebtedness or accounts payable owing from Seller to any Affiliate of Seller);
- (d) except as set forth in Section 8.1 with respect to Transfer Taxes and any other Assumed Liabilities, (i) all Tax Liabilities of Seller or its Affiliates for any taxable period, and (ii) all Tax Liabilities relating to the Purchased Assets attributable to a Pre-Closing Tax Period;
- (e) all Excluded Employee Liabilities;
- (f) all Liabilities relating to, or arising from, Rejection Damages Claims;
- (g) any tort Liabilities of Seller;
- (h) all Liabilities relating to, or arising from, the CARES Act, including any obligation with respect to deferred payroll Taxes;
- (i) all Environmental Liabilities relating to, resulting from, caused by, arising out of or from (i) the Excluded Assets; (ii) the conduct, ownership, operation or control of the

Business or any Purchased Asset, to the extent accruing, arising out of or relating to events, occurrences, acts or omissions first occurring or first existing prior to the Closing Date; (iii) the presence, Release or exposure to any Hazardous Materials at, on, in, under or migrating to or from any real property or otherwise in connection with the conduct of the Business or the ownership, leasehold, use or operation of the Purchased Assets, in each case, prior to the Closing; (iv) the transportation, storage, treatment, disposal, generation, manufacturing, recycling, reclamation, use or other handling of any Hazardous Material with respect to the Purchased Assets, or relating in any manner to the conduct of the Business or the ownership of the Purchased Assets prior to the Closing or (v) the matters set forth on Schedule 2.4**Error! Reference source not found.** of the Disclosure Schedules;

(j) all Actions against Seller, any of its respective 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);

(k) all Liabilities (whether arising before, on or after the Closing) with respect to any employee or former employee of Seller who is not a Transferred Employee, other than any Assumed Liabilities and obligations to fund certain Liabilities and expenses as set forth in clause (ii) of the definition of Excluded Cash;

(l) all Liabilities relating to, or arising from, Indemnification Claims;

(m) except for Post-Petition Payables, all accounts payable of Seller; and

provided, that notwithstanding anything in this Agreement to the contrary, Assumed Liabilities shall not include funds necessary to satisfy any Taxes or other Liabilities relating to any matter described on Schedule 2.4(x).

Section 2.5 Contract, Benefit Plan and Asset Designation Rights.

(a) Seller has delivered to Purchaser a list setting forth, to the Knowledge of Seller, all of the Available Contracts used in, or otherwise related to, the Business with the amount of the Cure Costs associated with each Available Contract as reasonably determined in good faith (which such list also sets forth the applicable Seller or Affiliate(s) thereof which are party, or otherwise subject, to each such Available Contract). Seller shall cooperate with and provide such additional information to Purchaser as may be reasonably necessary in order to identify all Available Contracts (including the Material Contracts that are Available Contracts) used in, or otherwise related to, the Business (and the related Cure Costs associated therewith). No less than five (5) days (but no more than ten (10) days) prior to the anticipated Closing Date, Seller shall supplement such list to add any Available Contracts (including any Material Contracts that are Available Contracts) used in, or otherwise related to, the Business that are entered into by Seller during the pendency of the Bankruptcy Case. Notwithstanding any provision contained herein to the contrary, but subject in all respects to the Transition Services Agreement, in accordance with Section 2.5(d)(iii), Purchaser may elect by providing a written notice to Seller (an “**Extended Contract Period Notice**”) that for a period of thirty (30) days following the Closing Date,

Purchaser retains the right to assume any Available Contract or Benefit Plan that is not listed on Schedule 2.1(e), Schedule 2.1(f) or Schedule 2.1(s), as applicable, on the Closing Date.

(b) Seller has filed one or more motions, seeking, among other things, to (i) cause notice to be provided regarding the potential assumption and assignment to Purchaser of all Available Contracts and (ii) fix the Cure Costs associated with each Available Contract (the “**Cure Amounts Motion**”). Seller shall obtain entry of a Final Order approving Cure Costs subject to the Cure Amounts Motion that are not subject to an objection as soon as reasonably practicable after the Objection Deadline (as set forth in the Cure Amounts Motion).

(c) From and after the date hereof through the Closing, Seller shall not, and shall cause its subsidiaries not to, directly or indirectly, reject or take any action (or fail to take any action that would (or would reasonably be likely to) result in rejection by operation of law) to reject, repudiate or disclaim any Available Contract used in, or otherwise related to, the Business without the prior written consent (email being sufficient) of Purchaser (including by filing any motions with the Bankruptcy Court seeking authorization to assume or reject (or Orders with respect to the assumption or rejection of) any Available Contracts). Seller may not, and shall cause its subsidiaries not to, amend, modify or compromise with respect to Cure Costs or other material terms of any Available Contract without the prior written consent (email being sufficient) of Purchaser. Notwithstanding anything contained in the foregoing to the contrary, Seller shall be permitted, without the prior written consent of Purchaser (email being sufficient) to file a motion with the Bankruptcy Court seeking rejection of any Available Contract or Lease that is not ultimately an Assigned Lease or Assigned Contract effective as of thirty (30) days following the Closing Date.

(d) For the purposes of determining whether an Available Contract or Benefit Plan of Seller shall be included as an Assigned Lease, Assigned Contract or Assumed Benefit Plan, on the one hand, or an Excluded Asset or Excluded Employment Liability, on the other hand, from and after the filing of the Sale Motion all Available Contracts shall be treated as follows:

(i) no later than three (3) Business Days prior to the Auction, Purchaser shall notify Seller in writing of those Available Contracts and Benefit Plans which Purchaser desires to designate to be assigned to Purchaser on the Closing Date by providing Seller with Schedule 2.1 Section 2.1(e), Schedule 2.1(f) and Schedule 2.1(s), with such designation having no effect on the Purchase Price (other than Assumed Liabilities); *provided* that (A) if Purchaser seeks to add an Assigned Lease, Seller shall provide notice of the Assigned Lease within two (2) Business Days of receiving notice from Purchaser and shall provide the third party with five (5) Business Days’ notice to object to such assignment, and (B) such Schedules may be subsequently modified in accordance with Section 2.5(d)(iii);

(ii) promptly following Seller’s entry into any Available Contract used in, or otherwise related to, the Business or Benefit Plan during the pendency of the Bankruptcy Case Seller shall provide written notice of such Available Contract or Benefit Plan and Purchaser shall notify Seller in writing (email being sufficient) no later than three (3) Business Days (or, if such Available Contract or Benefit Plan is entered within six (6) Business Days of the Closing Date, at any time prior to the Closing Date) prior to the Closing Date whether Purchaser shall (A) as applicable, purchase or assume such Available Contract or Benefit Plan as a Purchased Asset or

Assumed Liability (in which case, such Available Contract or Benefit Plan, as applicable, shall be included on Schedule 2.1(e), Schedule 2.1(f) or Schedule 2.1(s), as applicable) or (B) not purchase or assume such Available Contract or Benefit Plan (in which case, such Available Contract or Benefit Plan, as applicable, shall not be assigned to Purchaser and shall constitute an Excluded Asset and/or Excluded Employment Liability);

(iii) until 11:59 PM (New York, New York time) on the date that is thirty (30) days following the Closing Date, if it is discovered that a Benefit Plan or Available Contract should have been listed on Schedule 2.1(e), Schedule 2.1(f) and/or Schedule 2.1(s), as applicable, but was not listed thereon (each, an “**Omitted Contract**”), (A) Seller or Purchaser, as applicable, shall promptly following discovery thereof (but in no event later than three (3) Business Days after such discovery) notify the other party(ies) hereto of such Omitted Contract, (B) Seller shall promptly notify Purchaser in writing of the corresponding related Cure Costs thereof (if any), and (C) if Purchaser agrees (in its sole discretion), in writing (email being sufficient) to assume such Omitted Contract as an Assigned Contract, Assigned Lease or Assumed Benefit Plan hereunder, as applicable, Seller shall, if such schedule has been filed at the time of discovery of the Omitted Contract, file an amended schedule of Assigned Contracts, Assigned Leases or Assumed Benefit Plans, as applicable, with the Bankruptcy Court on notice to the counterparties to such Omitted Contract which shall provide that Seller is seeking to assume and assign the Omitted Contract to Purchaser and include the proposed Cure Costs with respect to the Omitted Contract. Upon entry of an Order by the Bankruptcy Court, if required, such Omitted Contract shall become an Assigned Contract, Assigned Lease or Assumed Benefit Plan, as applicable, and be included on Schedule 2.1(e), Schedule 2.1(f) or Schedule 2.1(s), as applicable. With respect to any Omitted Contract, Purchaser shall fund or cause to be funded all Cure Costs related to such Omitted Contract without regard to any Cure Costs Cap. In addition, there will be no reduction in, or increase to, the Purchase Price (except with respect to Assumed Liabilities) as a result of any addition or elimination of any Omitted Contract. If there is a Cure Cost dispute or other dispute as to the assumption and assignment of such Omitted Contract that has not been resolved to the satisfaction of Purchaser within thirty (30) days following the Closing Date, Purchaser may elect to designate such Omitted Contract as an Excluded Asset pursuant to Section 2.5(d)(iv) (as applied *mutatis mutandis*) following the Bankruptcy Court’s or the parties’ resolution of such dispute;

(iv) no later than three (3) Business Days prior to the Closing Date (except as set forth in Section 2.5(d)(iii)), Purchaser shall have the right to provide written notice (email being sufficient) to Seller of Purchaser’s election to designate any Contract previously included as an Assigned Contract, Assigned Lease, or Assumed Benefit Plan on Schedule 2.1(e), Schedule 2.1(f) or Schedule 2.1(s), as applicable, as an Excluded Asset and/or Excluded Employment Liability, and upon such designation such Contract shall constitute an Excluded Asset and/or Excluded Employment Liability and such designation shall have no effect on the Purchase Price (other than Assumed Liabilities);

(v) subject to Section 2.5(d)(iii), no later than three (3) Business Days prior to the Closing Date, Purchaser shall provide Seller final versions of Schedule 2.1(e), Schedule 2.1(f) and Schedule 2.1(s), and accordingly all Available Contracts and Benefit Plans, as applicable, set forth thereon shall constitute Purchased Assets and be assigned to Purchaser at Closing, and all Available Contracts and Benefits Plans, as applicable, not set forth thereon shall not be assigned to Purchaser and shall constitute Excluded Assets or Excluded Employment Liabilities; and

(vi) Purchaser shall provide, with respect to any Contract designated to be assumed and assigned hereunder as a Purchased Asset, such information or documentation related to “adequate assurance of future performance” as shall be reasonably required in connection with the assumption and assignment of such Contract, and upon Bankruptcy Court approval for the assumption and assignment thereof to Purchaser, any such Contract so designated shall constitute a Purchased Asset hereunder. Any Contract that is not assumed as provided above shall be an Excluded Asset, and shall not constitute a Purchased Asset hereunder. Notwithstanding anything to the contrary set forth in this Agreement, to the extent that, prior to Closing, any Assumed Benefit Plan, Assigned Lease or Assigned Contract is not subject to an order of the Bankruptcy Court with respect to the assumption and assignment of such Assumed Benefit Plan, Assigned Lease or Assigned Contract, any Liabilities of Seller related to such Assumed Benefit Plan, Assigned Lease or Assigned Contract shall not be the responsibility of Purchaser unless such Assumed Benefit Plan, Assigned Lease or Assigned Contract is assigned to Purchaser as a Purchased Asset or an Assumed Liability in accordance with this Agreement.

(e) At Closing, to the extent not previously paid, Purchaser shall pay or cause to be paid any and all Cure Costs (up to the Cure Costs Cap) in respect of all Contracts that are Assigned Contracts or Assigned Leases.

(f) Nothing in this Agreement shall be construed as an attempt by Seller to assign any Contract to the extent that such Contract is not assignable under the Bankruptcy Code or otherwise without the consent of the other party or parties thereto where the consent of such other party has not been given or received, as applicable.

(g) With respect to (i) any Assigned Contract or Assigned Lease for which the consent of a party thereto to the assignment thereof is required (notwithstanding the entry of the Sale Order) shall not have been obtained at Closing and (ii) any claim, right or benefit arising thereunder or resulting therefrom, Seller and Purchaser shall use commercially reasonable efforts to obtain as expeditiously as possible the written consent of the other party or parties to such Assigned Contract or Assigned Lease necessary for the assignment thereof to Purchaser. Until any such consent, waiver, confirmation, novation or approval is obtained, Seller and Purchaser shall cooperate to establish an arrangement reasonably satisfactory to Seller and Purchaser under which Purchaser would obtain the claims, rights and benefits and assume the corresponding Liabilities and obligations thereunder (including by means of any subcontracting, sublicensing or subleasing arrangement). In such event, Seller will hold in trust for and promptly pay to Purchaser, when received, all monies received by Seller under any such Assigned Contract or Assigned Lease or any claim, right or benefit arising thereunder. Purchaser acknowledges that no adjustment to the Purchase Price shall be made for any Contracts that are not assigned. Until such written consent is obtained, Purchaser shall have the ability to designate any such Contract as an Excluded Asset. Nothing in this paragraph shall be deemed a waiver of Purchaser’s right to receive an effective assignment of all of the Purchased Assets at Closing nor shall any Contracts covered by this paragraph be deemed to constitute Excluded Assets solely by virtue of this paragraph. In addition, nothing in this paragraph shall restrict or limit any wind-down, dissolution, liquidation or liquidating plan of Seller following the Closing Date.

(h) As soon as reasonably practicable after the Closing, Seller shall file with the Bankruptcy Court a final list of Assigned Contracts, Assigned Leases and Assumed Benefit Plans.

(i) No later than three (3) Business Days prior to the Closing, Purchaser shall be entitled to designate (by delivery of written notice to Seller of such designation) any assets to purchase, assume or exclude, which assets will thereafter constitute “Purchased Assets” or “Excluded Assets” hereunder, as applicable (including, for the avoidance of doubt, by amending or otherwise modifying the corresponding Schedules which apply with respect thereto, as applicable), *provided, however*, that items that constitute Excluded Assets may not be designated by Purchaser as Purchased Assets pursuant to this Section 2.5(i) without the consent of Seller except for items that constitute Excluded Assets pursuant to Sections 2.2(b) or 2.2**Error! Reference source not found.** For the avoidance of doubt, this Section 2.5(i) shall not (i) apply to the designation of Contracts or Benefit Plans as assumed or excluded, which shall occur in accordance with the procedures set forth in Sections 2.5(a) through 2.5(h) above and (ii) result in any adjustments to the Purchase Price (other than Assumed Liabilities).

ARTICLE III PURCHASE PRICE

Section 3.1 Purchase Price. On the terms and subject to the conditions hereof, at the Closing, the aggregate consideration for the Purchased Assets will be: (a) a credit bid (the “**Credit Bid**”), on a cashless dollar-for-dollar basis, of: (i) the full amount of the DIP Obligations and (ii) such amount of the Pre-Petition Obligations as and to the extent necessary such that the aggregate amount of clause (i) and this clause (ii) is equal to \$150,000,000; (b) the assumption of the Assumed Liabilities; and (c) the Excluded Cash, which shall remain in account(s) controlled by Seller (the sum of clauses (a) through (c), collectively, the “**Purchase Price**”); *provided* that if cash on hand and cash drawn under the DIP Facility is not sufficient to fund all of the amounts set forth in clauses (i) through (iii) of the definition of “Excluded Cash”, Purchaser will fund an amount in cash at Closing equal to the sum of each of clauses (i) through (iii) of the definition of “Excluded Cash” (such amount, the “**Cash Shortfall**”) to an account(s) controlled by Seller.

Section 3.2 Allocation of Purchase Price. Purchaser and Seller agree that the Purchase Price, including the Assumed Liabilities, and any other relevant items, as determined for U.S. federal income tax purposes, shall be allocated in accordance with Section 1060 of the IRC and the Treasury Regulations promulgated thereunder in accordance with an allocation schedule (the “**Allocation Schedule**”). Seller agrees to provide Purchaser promptly with any other information required to complete the Allocation Schedule. The Allocation Schedule shall be prepared in accordance with the principles set forth Section 3.2 of the Seller Disclosure Schedule. As soon as reasonably practicable (and in any event no later than ninety (90) calendar days) after the Closing Date, Purchaser shall deliver to Seller an allocation of the Purchase Price, as determined for U.S. federal income tax purposes. Seller and Purchaser shall (a) use the Allocation Schedule for the purpose of making the requisite filings under Section 1060 of the IRC, and the Treasury Regulations thereunder, (b) report, and cause their respective Affiliates to report, the federal, state, and local income and other Tax consequences of the transactions contemplated herein, and in particular to report the information required by Section 1060(b) of the IRC, and to jointly prepare Form 8594 (Asset Acquisition Statement under Section 1060 of the IRC) as promptly as possible following the Closing Date and in a manner consistent with the Allocation Schedule, (c) promptly notify the other of the existence of any Tax audit, controversy, or litigation related to the Allocation Schedule and (d) not take any position inconsistent therewith before any Taxing Authority or other Governmental Authority unless otherwise required pursuant to a “determination” within the

meaning of Section 1313 of the Code. Notwithstanding the allocation of the Purchase Price agreed among the parties hereto pursuant to this Section 3.2 for the aforementioned Tax purposes, nothing in the foregoing shall be determinative of values ascribed to the Purchased Assets or the allocation of the value of the Purchased Assets for any other purpose.

Section 3.3 Withholding Rights. Purchaser and any other applicable withholding agent shall be entitled to deduct and withhold with respect to any payments made pursuant to this Agreement such amounts that it determines are required to be deducted and withheld with respect to any such payments under the IRC or any other provision of applicable Law. Notwithstanding the foregoing, Purchaser shall provide Seller with reasonable notice of any proposed deduction and withholding prior to making any deduction and withholding of any amount payable to Seller and shall consult in good faith with Seller to reduce or eliminate the amount of such deduction and withholding. Any such withheld amounts that are remitted to the appropriate Governmental Authority shall be treated for all purposes of this Agreement as having been paid to such Persons in respect of which such deduction and withholding was made. The parties hereto agree that to the extent Seller has provided Purchaser prior to Closing with a duly executed IRS Form W-9 there shall be no deduction or withholding pursuant to this Agreement.

Section 3.4 Authorization to Credit Bid. Notwithstanding anything else contained herein to the contrary, the requisite lenders under the DIP Facility (including, for the avoidance of doubt, any amounts under the Pre-Petition Credit Agreement that are rolled up into the DIP Facility) and the Pre-Petition Facilities shall have provided authorization to the applicable Agent before submitting a Credit Bid under Section 363(k) of the Bankruptcy Code on behalf of the DIP Lenders or the Pre-Petition Secured Lenders, as applicable. Purchaser or the applicable Agent shall provide evidence of such authorization upon the request of Seller.

ARTICLE IV CLOSING

Section 4.1 The Closing. The closing of the Sale (the “**Closing**”) shall take place at the offices of Ropes & Gray LLP at 1211 Avenue of the Americas, New York, NY 10036 (or remotely via the electronic or other exchange of documents and signature pages), at 10:00 a.m. (New York, New York time), on the third (3rd) Business Day after the date upon which all conditions set forth in ARTICLE IX hereof have been satisfied or (if permissible) waived (other than those conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at the Closing), or at such other place, date and time as the parties hereto may agree in writing (email to suffice); *provided, however*, that the parties hereto intend to, and will use reasonable best efforts to, cause the Closing to occur on or prior to the End Date. The date on which the Closing occurs is referred to in this Agreement as the “**Closing Date.**” Upon consummation of the Closing, the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities hereunder, and the Closing, shall be deemed to have occurred as of 12:01 a.m. (New York, New York time) on the Closing Date.

Section 4.2 Deliveries at the Closing.

(a) Seller shall deliver or shall cause to be delivered to Purchaser the following at the Closing:

(i) bills of sale, transfer tax forms but only to the extent set forth on Section 4.2(a)(i) of the Seller Disclosure Schedule, assignment agreements and other customary transfer documents necessary to transfer to Purchaser (or its Affiliate) all right, title and interest of Seller to or in the Purchased Assets (including all Assigned Leases and Assigned Contracts), subject only to Permitted Liens (collectively, the “**Assignment Agreements**”), in each case, in form and substance reasonably acceptable to Seller and Purchaser;

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

(iii) physical possession of all of the Purchased Assets capable of passing by delivery with the intent that title in such Purchased Assets shall pass by and upon delivery;

(iv) a certificate signed by a Responsible Officer of Seller (in form and substance reasonably satisfactory to Purchaser) certifying that the closing conditions set forth in Section 9.2(a), Section 9.2(b) and Section 9.2(c) have been satisfied;

(v) a certified copy of the Sale Order;

(vi) a valid, complete and accurate IRS Form W-9 of Seller (or, if Seller is a disregarded entity for U.S. federal income tax purposes, a duly completed and executed IRS Form W-9 or IRS Form W-8 as appropriate of Seller’s regarded direct or indirect owner), or to the extent applicable, its beneficial owner;

(vii) assignment agreements, duly executed by an authorized officer of Seller, transferring the Intellectual Property included in the Purchased Assets to Purchaser, in form and substance reasonably acceptable to Seller and Purchaser (collectively, the “**IP Assignment Agreements**”);

(viii) the Books and Records;

(ix) all documentation reasonably necessary to effectuate the assumption of the Assumed Benefit Plans (if any) by Purchaser;

(x) the Transition Services Agreement, duly executed by an authorized officer of Seller;

(xi) to the extent that Purchaser has elected to obtain one or more Title Policies with respect to any Assigned Lease, a Title Affidavit for such Assigned Lease, duly executed by an authorized officer of Seller;

(xii) any assumption agreements that may be required to be signed and delivered by Purchaser under any Permitted Lien, Assigned Contract or Assigned Lease;

(xiii) a release agreement, in substantially the form attached hereto as Exhibit D, duly executed by each of Carlin Adrianopoli, Alan Carr, John Sacksteder, Alan Boyko and Seller; and

(xiv) such other instruments as are reasonably requested by Purchaser and otherwise necessary to consummate the Sale and reasonably acceptable to Seller.

(b) Purchaser shall deliver or cause to be delivered to Seller, or its designee(s), at the Closing:

(i) a certificate signed by a Responsible Officer of Purchaser (in form and substance reasonably satisfactory to Seller) certifying that the closing conditions set forth in Section 9.3(a) and Section 9.3(b) have been satisfied;

(ii) a certificate signed by a Responsible Officer of Purchaser to which is attached: (A) true and correct copies of the resolutions of the board of managers of Purchaser with respect to the transactions contemplated by this Agreement and the Transaction Documents and (B) a certificate reflecting the incumbency and true signatures of the officers of Purchaser who execute this Agreement and other Transaction Documents on behalf of Purchaser;

(iii) the Assignment Agreements, duly executed by an authorized officer of Purchaser;

(iv) the IP Assignment Agreements, duly executed by an authorized officer of Purchaser;

(v) the Transition Services Agreement, duly executed by an authorized officer of Purchaser;

(vi) the Bid Direction Letter;

(vii) to an account designated in writing by the Seller at least two (2) Business Days prior to Closing, cash equal to the Cash Shortfall (if any), by wire transfer of immediately funds;

(viii) a release agreement, in substantially the form attached hereto as Exhibit D, duly executed by each of Purchaser, the Pre-Petition Secured Lenders, the DIP Lenders, the Agent and ACF Finco I LP; and

(ix) such other instruments as are reasonably requested by Seller and otherwise necessary to consummate the Sale and reasonably acceptable to Purchaser.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Seller Disclosure Schedule, Seller hereby represents and warrants to Purchaser as of the date of this Agreement and as of the Closing as follows:

Section 5.1 Organization, Standing and Power. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Utah and has the requisite limited liability company power and authority to carry on its business as now being conducted. Seller is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified or licensed (individually or in the aggregate) would not reasonably be expected to have a Material Adverse Effect.

Section 5.2 Authority; Noncontravention.

(a) Subject to the Bankruptcy Court's entry of the Sale Procedures Order and the Sale Order (i) Seller has the requisite limited liability company power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement and (ii) the execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions contemplated by this Agreement have been duly authorized by all necessary action on the part of Seller. This Agreement has been duly executed and delivered by Seller and, assuming this Agreement constitutes a valid and binding agreement of Purchaser and subject to entry of the Sale Order, constitutes a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, receivership, insolvency, reorganization, moratorium, fraudulent conveyance, equitable subordination or similar Laws of general application and other Laws affecting creditors' rights generally.

(b) Subject to the Bankruptcy Court's entry of the Sale Procedures Order and the Sale Order, the execution, delivery and performance by Seller of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby do not and will not: (i) violate Seller's Fundamental Documents; (ii) assuming compliance with the matters referred to in Section 5.2(c), constitute or result in a default under or violate any applicable Law that would not reasonably be expected to be, individually or in the aggregate, materially adverse to the Business (including the Purchased Assets or the Assumed Liabilities); (iii) except as to matters that would not reasonably be expected to be, individually or in the aggregate, materially adverse to Business (including the Purchased Assets or the Assumed Liabilities), 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 Material Contract that constitutes a Purchased Asset or Assumed Liability, or (B) any material right or material obligation or to a loss of any material benefit relating to any Purchased Asset to which Seller is entitled under any provision of any Contract binding upon Seller except for breaches and defaults referred to in Section 365(b)(2) of the Bankruptcy Code; or (iv) result in the creation or imposition of any Lien on any Purchased Asset, except for Permitted Liens.

(c) 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 contemplated by this Agreement or the other Transaction Documents, except for (i) the Consents set forth in Section 5.2(c) of the Seller Disclosure Schedule,

(ii) the entry of the Sale Order by the Bankruptcy Court, and (iii) compliance with any applicable requirements of the Exchange Act or Securities Act.

Section 5.3 Real Properties.

(a) Seller does not own and has never owned any real property.

(b) Section 5.3(b) of the Seller Disclosure Schedule sets forth a complete and correct list of all of the real property leased, subleased or licensed to Seller and each Lease with respect thereto (the “**Leased Real Estate**”), including the addresses thereof and all written amendments or modifications to such Leases through the date hereof. With respect to each Leased Real Estate, Seller has good and leasehold title to such Leased Real Estate free and clear of all Liens (other than Permitted Liens). Seller has delivered to Purchaser correct and complete copies of all such Leases, including all written amendments or modifications thereto through the date hereof. To the Knowledge of Seller, Seller is not a sublessor, licensor or grantor under any sublease or other instrument granting to another Person any right to the possession, lease, occupancy or enjoyment of the Leased Real Estate, except as set forth on Section 5.3(b) of the Seller Disclosure Schedule. With respect to each Lease relating to the Leased Real Estate, except as set forth in Section 5.3(b) of the Seller Disclosure Schedule and except with respect to any Bankruptcy-Related Default:

(i) such Leases are in full force and effect and represent binding and enforceable obligations against Seller; and

(ii) Seller has not received any written notice (A) of an event of default (which has not been cured), offset or counterclaim under any such Lease, and, to the Knowledge of Seller, no event or condition has happened or presently exists which constitutes an event of default or, after notice or lapse of time or both, would constitute an event of default under any such Lease on the part of Seller, or (B) of any Action against Seller under any such Lease which if adversely determined would result in such Lease being terminated.

(c) Except as set forth in Section 5.3(c) of the Seller Disclosure Schedule, (i) Seller has good and valid leasehold interest in and to all Leased Real Estate except with respect to any Bankruptcy-Related Default, (ii) there are no pending or, to the Knowledge of Seller, threatened (in writing) condemnation proceedings by or before any Governmental Authority having jurisdiction over such Leased Real Estate and (iii) Seller has valid title to all other Purchased Assets constituting Structures or otherwise have the right to use such other Purchased Assets pursuant to a valid and enforceable lease, license or similar contractual arrangement, in each case free and clear of any Liens, other than Permitted Liens.

(d) Except as set forth in Section 5.3(d) of the Seller Disclosure Schedule, the Leased Real Estate constitutes all of the real property assets used by Seller for the conduct of the Business in substantially the same manner as such Business is being operated as of the date hereof. The Structures included in the Purchased Assets are in good repair, working order and operating condition, subject only to wear and tear. Except as set forth in Section 5.3(d) of the Seller Disclosure Schedule, to the Knowledge of Seller, there are no use restrictions affecting any Leased

Real Estate that would reasonably be expected, individually or in the aggregate, to interfere in any material respect with the current use, occupancy or operation of such Leased Real Estate.

(e) Except as set forth in Section 5.3(e) of the Seller Disclosure Schedule, Seller has not received any written notice from any Governmental Authority having jurisdiction over the applicable Leased Real Estate of any zoning, ordinance, building, fire, health or safety code or other legal violation in respect of any Leased Real Estate would reasonably be expected, individually or in the aggregate, to interfere in any material respect with the current use, occupancy or operation of such Leased Real Estate.

Section 5.4 Assets; Sufficiency of and Title to the Purchased Assets. Except as set forth in Section 5.4 of the Seller Disclosure Schedule and other than the Excluded Assets, Seller has good and valid title to, or have good and valid leasehold interests in, all tangible personal property that is included in the Purchased Assets, free and clear of all Liens other than Permitted Liens, except in each case as (individually or in the aggregate) would not reasonably be expected to have a Material Adverse Effect. Such owned and leased tangible personal property is in good working order, reasonable wear and tear excepted, except as (individually or in the aggregate) would not reasonably be expected to have a Material Adverse Effect. Except as set forth in Section 5.4 of the Seller Disclosure Schedule and other than the Excluded Assets, the Purchased Assets constitute all of the assets, rights, interests, claims and properties of every nature and kind whatsoever used in or held for use in the conduct of the Business, or otherwise necessary for Purchaser to conduct and operate the Business immediately after the Closing in all material respects as presently conducted and proposed to be conducted by Seller.

Section 5.5 Intellectual Property.

(a) The operation of the Business as currently conducted and the use of the Intellectual Property in connection therewith, to the Knowledge of Seller, do not conflict with, infringe, misappropriate, dilute, misuse or otherwise violate the intellectual property rights of any third-party. No Action has been asserted or, to the Knowledge of Seller, is pending or threatened in writing against Seller with respect to the foregoing.

(b) Seller owns all Intellectual Property that Seller owns or purports to own and pursuant to the Assigned Contracts, is entitled to use in the Business all other Intellectual Property used in the Business, except as set forth on Section 5.5(b) of the Seller Disclosure Schedule.

(c) Section 5.5(c) of the Seller Disclosure Schedule identifies all registrations and applications for the Intellectual Property owned by Seller (the “**Registered Intellectual Property**”), specifying as to each item, as applicable: the title, mark, or patent (as applicable); the record owner and inventor(s), if any; the jurisdiction by or in which it has been issued, registered, or filed; the patent, registration, or application serial number; the issue, registration, or filing date; and the current status.

(d) The Registered Intellectual Property is subsisting and has not been adjudicated to be invalid or unenforceable in whole or part, and to the Knowledge of Seller, is valid and enforceable. To the Knowledge of Seller, there are no uses by Seller of any item of

Registered Intellectual Property in connection with the operation of the Business that would (or would reasonably) be expected to lead to such item becoming invalid or unenforceable.

(e) To the Knowledge of Seller, no Person is engaging in any activity that infringes, misappropriates, dilutes, misuses or otherwise violates the Intellectual Property that is material to the Business or Seller's rights therein. Except as set forth on Section 5.5(e) of the Seller Disclosure Schedule, Seller has not granted any license in settlement of an infringement, release, covenant not to sue, or non-assertion assurance to any Person with respect to any Registered Intellectual Property.

(f) No Registered Intellectual Property is subject to any settlement agreement, consent agreement, decree, order, injunction, judgment or ruling materially restricting the use of any Registered Intellectual Property or that would materially impair the validity or enforceability of such Registered Intellectual Property.

(g) The internet domain names set forth on Section 5.5(c) of the Seller Disclosure Schedule are registered and controlled by Seller.

Section 5.6 Litigation. Except for the matters set forth on Section 5.6 of the Seller Disclosure Schedule, with respect to which the Purchased Assets are reasonably expected to be sold free and clear of pursuant to the Sale Order, there is no Action pending or, to the Knowledge of Seller, threatened against Seller that (individually or in the aggregate) would reasonably be expected to have a Material Adverse Effect, nor is there any Governmental Order outstanding against Seller that (individually or in the aggregate) would reasonably be expected to have a Material Adverse Effect.

Section 5.7 Material Contracts; Debt Instruments.

(a) Section 5.7(a) of the Seller Disclosure Schedule identifies all the following types of Contracts (each, a "**Material Contract**", and collectively, the "**Material Contracts**") in effect as of the date hereof that are related to the Purchased Assets or the Business generally and to which Seller is a party:

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

(ii) any Contract relating to the Indebtedness (including, for the avoidance of doubt, any guaranty for borrowed money or otherwise) of Seller or to the mortgaging or pledging of, or otherwise placing a Lien on, any of the assets of Seller or any of the Equity Securities of Seller;

(iii) any Lease for personal property which is material to the Business;

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

(v) any Contract relating to any outstanding commitment for capital expenditures in excess of \$100,000;

(vi) any Contract (or series of related Contracts) relating to the acquisition or disposition of any Person, business or material real property or other assets (whether by merger, sale of stock, sale of assets or otherwise);

(vii) any Contract that (A) limits the freedom of Seller or the Business to compete in any line of business or with any Person or in any geographic area or (B) contains exclusivity obligations or restrictions binding on Seller or the Business;

(viii) any Contract (or series of related Contracts) relating to the purchase by Seller of any products or services under which amounts payable thereunder are prepaid and the undelivered balance of such products or services is in excess of \$100,000;

(ix) any Contracts (including any “take-or-pay” or keepwell agreement) under which (A) any Person has directly or indirectly guaranteed any liabilities or obligations of Seller or (B) Seller has directly or indirectly guaranteed liabilities or obligations of any other Person;

(x) Contracts with any current employee of Seller with aggregate payments of at least \$150,000 remaining under such Contract or providing for any severance Liabilities;

(xi) any Contract with any Material Customer or Material Supplier; or

(xii) any (A) Intellectual Property Agreement, other than (i) non-exclusive licenses granted by Seller to customers for use of Intellectual Property in the Ordinary Course of Business; (ii) non-exclusive licenses granted by Seller to service providers to use Intellectual Property for the limited purposes of providing services to Seller or the Business pursuant to the applicable Contract; (iii) non-exclusive licenses granted by Seller to service providers to use Seller’s Trademark for inclusion on customer lists; and (iv) non-disclosure agreements; and (B) any Contracts under which Seller is a licensee, sublicensee or otherwise granted any right or interest relating to any Patents, Copyrights, Trademarks, Trade Secrets, Software or other intellectual property of a third party in connection with the operation of the Business (collectively, “**Inbound IP Agreements**”), other than (i) non-exclusive licenses for generally commercially available, off-the-shelf Software, (ii) open source software licenses, (iii) non-disclosure agreements, and (iv) immaterial non-exclusive licenses provided ancillary to the sale of products or provision of services;

provided, that Section 5.7(a) of the Seller Disclosure Schedule shall not disclose purchase orders or invoices pursuant to which Seller produces, fills, packs or warehouses aluminum cans and which were entered into in the Ordinary Course of Business.

(b) Except with respect to any Bankruptcy-Related Default or payment default, each Material Contract included in the Purchased Assets is a legal, valid, binding and enforceable agreement of Seller and is in full force and effect, and neither Seller nor, to the Knowledge of Seller, any other party thereto is in default or breach under the terms of, or has provided any written notice to terminate or modify, any such Material Contract. To the Knowledge of Seller, Seller is not a party to a Material Contract that is an oral Contract.

(c) Except as set forth in Section 5.7(c) of the Seller Disclosure Schedule, following the entry of the Sale Order and operation of Section 365 of the Bankruptcy Code, to the Knowledge of Seller, no Consent of any third party is required under any Material Contract included in the Purchased Assets, and the enforceability of any such Material Contract will not be affected by, the execution, delivery and performance of this Agreement or any of the other Transaction Documents or the consummation of the transactions contemplated hereby and thereby. Complete and correct copies of (i) each Material Contract (including all waivers thereunder), (ii) all Contracts for Indebtedness, (iii) Contracts relating to any interest rate, currency or commodity derivatives or hedging transaction; and (iv) all form Contracts related to the Business have been made available to Purchaser.

Section 5.8 Employees; Labor Matters.

(a) Within the past three (3) years there has not occurred or been threatened any strike, slowdown, picketing, work stoppage, concerted refusal to work or other similar material labor protest by any group of employees employed by Seller (“**Employees**”). There are no material labor disputes currently subject to any grievance, arbitration, or Action threatened, by any group of Employees or any union or other labor organization representing Employees. Within the past three (3) years, neither Seller nor any Affiliate thereof has engaged in unfair labor practices (within the meaning of the National Labor Relations Act) that would (or would reasonably be expected to), individually or in the aggregate, directly or indirectly, result in a material Liability with respect to the Purchased Assets taken as a whole. Within the past three (3) years, neither Seller nor any Affiliate thereof has received written notice of the intent of any Governmental Authority responsible for the enforcement of labor and employment laws to conduct an investigation with respect to or relating to the Business which would (or would reasonably be expected to), individually or in the aggregate, directly or indirectly, result in a material Liability to Seller, the Purchased Assets taken as a whole and, to the Knowledge of Seller, no such investigation is in progress. Neither Seller nor any of its Affiliates are party to or bound by a Collective Bargaining Agreement and no employees or other service providers of Seller or any of its Affiliates are represented by any labor union, works council or other labor organization with respect to their employment with Seller or its Affiliates or services provided to Seller or its Affiliates.

(b) Seller and its Affiliates are, and for the past three (3) years have been, in compliance in all material respects with all Laws governing labor and employment, including employment practices, employment standards, terms, and conditions of employment, wages and hours, recruiting, hiring, recordkeeping, disability, severance, immigration, discrimination, equal opportunity, human rights, pay equity, privacy, accessibility, workers’ compensation, worker and employee classification, temporary employees, civil rights, labor relations, and occupational health and safety, including under the Immigration and Reform Control Act, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Federal Age Discrimination in Employment Act, and any other applicable Laws governing labor and employment. Within the past three (3) years, neither Seller nor any of its Affiliates have received a written complaint, warning, order, demand, or written charge issued by a Governmental Authority that includes an allegation by the Governmental Authority of a material violation by Seller or Affiliate thereof of any applicable Law governing labor and employment, including employment practices, employment standards, terms and conditions of employment, wages and hours, recruiting, hiring, recordkeeping, disability, severance, immigration, discrimination, equal

opportunity, human rights, pay equity, privacy, accessibility, workers' compensation, worker and employee classification, temporary employees, civil rights, labor relations, or occupational health and safety, and there are no Actions outstanding, threatened or anticipated, against or in respect of Seller or Affiliate thereof under or in respect of any such applicable Laws. Neither Seller nor any of its Affiliates (i) have engaged in any plant closing, workforce reduction, mass termination, group termination, collective dismissal or other reduction in force that has resulted or would reasonably be expected to result in material Liability under the WARN Act, or (ii) have been issued any written notice that any such Action is to be brought in the future.

(c) Within the past three (3) years, no direct or indirect allegations of sexual harassment or other sexual misconduct have been made to Seller or any of its Affiliates against any Employee, director, independent contractor or other service provider of Seller or any of its Affiliates, and there are no Actions pending or, to the Knowledge of Seller, threatened related to any direct or indirect allegations of sexual harassment or other sexual misconduct by any such individual. Within the past three (3) years, neither Seller nor any of its Affiliates have entered into any settlement or similar agreements related to direct or indirect allegations of sexual harassment or other sexual misconduct by any Employee, director, independent contractor or other service provider of Seller or any of its Affiliates. Within the past three (3) years, to the Knowledge of Seller, no event has occurred or circumstance exists that could reasonably be expected to serve as a basis for any such allegation of sexual harassment or other sexual misconduct.

(d) Seller has delivered to Purchaser (I) a true, correct and complete list, as of the date hereof, setting forth for each current Employee of Seller (or any Affiliate thereof, if such Employee provides services to the Business), in each case, as applicable and to the extent permitted under any applicable privacy Law: (i) name (or, if required by applicable Law, an anonymized identifying number), (ii) title, (iii) place of employment (including city and state/province), (iv) name of legal employer, (v) current annual salary or hourly wage rate, (vi) target bonus or commissions opportunity and total bonus paid in respect of the last completed fiscal year, (vii) deferred or contingent compensation, (viii) accrued vacation and sick days, (ix) severance benefits paid or payable (in cash or otherwise) for the last fiscal year, (x) start date of employment, and, (xi) for any Employee who is inactive or on a leave of absence, the reason for such leave or inactive status, the commencement date of the leave and the expected return to work date, in each case, if known and (II) a true, correct and complete list, as of the date hereof, setting forth for each current independent contractor of Seller or any of its Affiliates, (i) name, (ii) work location (including city and state/province), (iii) name of entity engaging such independent contractor, (iv) compensation, (v) start date of service and (vi) a description of services performed for Seller or its Affiliates.

Section 5.9 Benefit Plans.

(a) Section 5.9(a) of the Seller Disclosure Schedule contains a list of all Benefit Plans. Seller has made available to Purchaser current, accurate and complete copies of the Benefit Plans (or, if such copy does not exist, a complete, accurate and written description of such Benefit Plan) and the most recent summary plan description for each such Benefit Plan for which a summary plan description is required.

(b) Each Benefit Plan (and any related trust or other funding vehicle) has been established, registered, qualified, invested, communicated, maintained, funded, operated and

administered in compliance in all material respects with its terms and all applicable requirements of ERISA, the IRC, and other applicable Laws. No Benefit Plan is subject to any audit, investigation, or examination by any Governmental Authority and no such actions are pending or threatened with respect to any Benefit Plan. Each Benefit Plan which is intended to be qualified within the meaning of IRC Section 401(a) is so qualified and has received, or timely requested, a favorable determination letter from the Internal Revenue Service upon which it may rely, or is comprised of a master or prototype plan that has received a favorable opinion letter from the Internal Revenue Service, and its trust is exempt from federal taxation under IRC Section 501(a), and no event has occurred and no facts or conditions exist that would reasonably be expected to adversely affect the qualified or registered status of any such Benefit Plan or result in the imposition of any liability, penalty, or Tax under ERISA, the IRC, or other applicable Law. There are no Actions pending or, to the Knowledge of Seller, threatened related to any Benefit Plan (other than non-material routine claims for benefits by Employees or their dependents).

(c) There does not now exist, and there are no existing circumstances that would reasonably be expected to result in, any Controlled Group Liability that would be a Liability of Purchaser or any of its Affiliates following the Closing.

(d) No Benefit Plan is a Multiemployer Plan or otherwise subject to Title IV of ERISA, Sections 412 or 4971 of the IRC, or Section 302 of ERISA, nor has Seller or any of its respective ERISA Affiliates been obligated to contribute to, or have any Liability with respect to any of the foregoing within the preceding six (6) years. No Benefit Plan provides retiree or post-employment life insurance, medical, severance, or other employee welfare benefits to any participant, except as required by COBRA or any similar applicable Law and at the sole expense of the applicable participant.

(e) Except as set forth on Section 5.9(e) of the Seller Disclosure Schedule, neither the execution of this Agreement nor the consummation of the transactions contemplated therein, either alone or in combination with another event, will: (i) result in any payment or benefit becoming due to any current or former Employee, independent contractor or consultant of any of Seller or its Affiliates, (ii) increase the amount or value of any compensation or benefits payable under any Benefit Plan, result in any acceleration of the time of payment or vesting of any compensation or benefits, or provide any additional compensatory rights or benefits (including funding of compensation or benefits through a trust or otherwise) to any current or former Employee, independent contractor or consultant of Seller or its Affiliates, or (iii) give rise to payments or benefits that, separately or in the aggregate, could be nondeductible to the payor under Section 280G of the IRC or would result in an excise Tax on any recipient under Section 4999 of the IRC.

(f) Section 5.9(f) of the Seller Disclosure Schedule contains a list of each Benefit Plan subject to Section 409A of the IRC. Each Benefit Plan subject to Section 409A of the IRC is, and has been operated, in compliance in all material respects with Section 409A of the IRC.

Section 5.10 Licenses. Section 5.10 of the Seller Disclosure Schedule contains a true and correct list of all Licenses that are material to the Business as of the date hereof and that are used by Seller to operate the Business in all material respects. To the Knowledge of Seller, all

such Licenses are in full force and effect, as of the date hereof, and Seller is not, as of the date hereof, in default (or with the giving of notice or lapse of time or both, would be in default) under any such Licenses, except for any Bankruptcy-Related Defaults or as would not reasonably be expected to have a Material Adverse Effect. There are no Actions pending or, to the Knowledge of Seller, threatened in writing that seek the revocation, cancellation, suspension or adverse modification of any such Licenses. All required filings with respect to such Licenses have been timely made and any required applications for renewal thereof have been timely filed except where the failure to make any such filing or application would not reasonably be expected to have a Material Adverse Effect.

Section 5.11 Restrictions on Business Activities. There is no Contract or Order binding upon Seller or to which Seller is a party, that by its terms prohibits or impairs any business practice of Seller, any acquisition of property by Seller or the conduct of the Business in any geographic region. Seller has not entered into any Contract under which it is restricted from selling, licensing or otherwise distributing any of its products or providing any of its services to, customers or potential customers or any class of customers, in any geographic area, during any period of time or in any segment of the market.

Section 5.12 Insurance. Section 5.12(a) of the Seller Disclosure Schedule sets forth all material insurance policies maintained by Seller as of the date hereof with respect to the Purchased Assets or the Business. All such policies are in full force and effect and Seller has complied with the terms thereof in all material respects. Except as set forth on Section 5.12(b) of the Seller Disclosure Schedule, there are no claims, by or with respect to Seller, pending under any of the insurance policies listed on Section 5.12(a) of the Seller Disclosure Schedule, or disputes with insurers with respect thereto. Seller has not received any written notice (or to the Knowledge of Seller, oral notice) regarding (i) a termination or material reduction of coverage with respect to any insurance policy set forth on Section 5.12(a) of the Seller Disclosure Schedule, (ii) a refusal of any coverage or rejection of any claim under any insurance policy set forth on Section 5.12(a) of the Seller Disclosure Schedule, (iii) a change in coverage within the last three (3) years of any insurance policy set forth on Section 5.12(a) of the Seller Disclosure Schedule, (iv) a premium audit with respect to any insurance policy set forth on Section 5.12(a) of the Seller Disclosure Schedule, or (v) an adjustment in the amount of the premiums payable within the last three (3) years with respect to any insurance policy set forth on Section 5.12(a) of the Seller Disclosure Schedule. Seller has made available to Purchaser true, complete and accurate copies of all insurance policies set forth on Section 5.12(a) of the Seller Disclosure Schedule.

Section 5.13 Environmental Matters. Except as set forth in Section 5.13 of the Seller Disclosure Schedule:

(a) To the Knowledge of Seller, Seller is and has been for the past three (3) years in compliance in all material respects with all applicable Environmental Laws and all Environmental Permits with respect to the Business and the Purchased Assets, which compliance includes obtaining, maintaining and complying with the terms and conditions of all Environmental Permits necessary to operate the Business and possess, occupy and use the Purchased Assets, subject to renewal of such Environmental Permits in the Ordinary Course of Business in all material respects, and Seller has not received any written notice that any such Environmental Permits will be voided, canceled or withdrawn or will not be renewed.

(b) To the Knowledge of Seller, except as would not be expected to result in material Liability, Seller is not the subject of any outstanding Environmental Claim with respect to violation of Environmental Laws, or any Action based thereon or arising therefrom. There is no condition, event or circumstance on, in, at, under or from any of the Leased Real Estate or with respect to the Business that contravenes any Environmental Law in any material respect or that would reasonably be expected to result in a material Environmental Notice or a material Environmental Claim with respect to the Business or the Purchased Assets.

(c) Seller has not received any Environmental Claim or other written communication alleging any Environmental Liability with respect to the Business, or any Purchased Assets within the last two (2) years prior to the date of this Agreement or, without regard to date of receipt, that remains pending or unresolved or is the source of any ongoing obligations or requirements as of the date hereof, including any written communication that any of the Purchased Assets, the Business, or any real property currently or formerly owned, leased or operated by Seller in connection with the operation of the Business (including soils, soil vapor, groundwater, surface water, and Structures located thereon) has been contaminated with any Hazardous Materials which would reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or the terms of any Environmental Permit by, the owner or operator of the Business or any of the Purchased Assets.

(d) There has been no Release of, or exposure to, Hazardous Materials by Seller, any Affiliates of Seller, or, to the Knowledge of Seller, by any other Person on, in, at, to, under or from the Purchased Assets or otherwise in connection with the Business, including at any location to which any Hazardous Material has been sent for storage, handling, disposal or treatment, or at any other location, in each case, that would (or would reasonably be expected to), (i) require investigation, remediation, monitoring or other corrective action by the owner or operator of the Business or the Purchased Assets, (ii) result in a material Environmental Notice or a material Environmental Claim with respect to the Business or the Purchased Assets or (iii) materially prevent, impede, or increase the costs associated with the ownership, lease, operation, performance, or use of the Purchased Assets, the Business, or any of the Leased Real Estate.

(e) With respect to the Business and the Purchased Assets, Seller is not a party to any Contract that requires Seller to conduct any material investigation, remediation, monitoring or other corrective action with respect to any Hazardous materials or requires Seller to indemnify, defend or hold harmless any Governmental Authority or other Person from or against any material Environmental Claim or material Environmental Liability.

Seller has provided Purchaser with copies of all material environmental assessments, audits (including compliance audits), evaluations, studies, and tests relating to the Business, the Leased Real Estate, the Purchased Assets and any Assumed Liability, in each case, which are in the possession or under the reasonable control of Seller.

Section 5.14 No Brokers. Except as set forth in Section 5.14 of the Seller Disclosure Schedule, no Person has acted, directly or indirectly, as a broker or financial advisor for Seller in connection with the transactions contemplated by this Agreement and no Person is entitled to any fee or commission or like payment in respect thereof.

Section 5.15 Taxes.

(a) Except as set forth in Section 5.15 of the Seller Disclosure Schedule, (i) all income and other material Tax Returns required to be filed by or on behalf of Seller with respect to the Purchased Assets (“**Applicable Tax Returns**”) have been filed, and all such Tax Returns are true, correct and complete in all material respects, (ii) all income and other material Taxes due and payable by Seller with respect to the Purchased Assets, whether or not shown on any such Tax Return, have been timely paid, and (iii) there are no Liens for material Taxes with respect to the Purchased Assets, other than Permitted Liens.

(b) Seller is not the subject of any Action with respect to Taxes or its Tax Returns nor has any such Action been threatened in writing (or, to the Knowledge of Seller, otherwise).

(c) Seller has timely withheld and paid, or caused to be paid, all material Taxes required to have been withheld and paid in connection with any amounts paid or owing to any Person and has complied in all material respects with any Tax reporting requirements relating thereto (including timely and properly distributing all IRS Forms W-2 and Forms 1099).

(d) Seller has not participated in any “listed transaction” within the meaning of Treasury Regulations Section 1.6011-4(b)(2).

(e) Seller has not (with respect to the Purchased Assets) waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency which waiver or extension remains outstanding. There are no pending or threatened audits, investigations, disputes, notices of deficiency, claims or other proceedings for or relating to any liability for Taxes with respect to any Purchased Asset.

(f) Seller has no Liability for Taxes of any other Person as a transferee or successor, by Law, or by Contract other than any Contract (i) that does not generally address Tax sharing, Tax indemnities, or Tax allocation and (ii) was entered into in the ordinary course of business or pursuant to commercial lending arrangements.

(g) Seller is not (with respect to the Purchased Assets) a party to any “closing agreement” as described in Section 7121 of the IRC (or any similar provision of state, local or foreign Law) or any other agreement with any Governmental Authority with respect to Taxes. No private letter ruling, technical advice memoranda or similar rulings (including any applications for change in accounting method) have been requested or issued by any Governmental Authority with respect to any Purchased Assets.

(h) Seller is not (with respect to the Purchased Assets) a party to any Tax allocation, indemnification or sharing agreement. Seller has not (with respect to the Purchased Assets) (i) been a member of an affiliated group filing a consolidated federal income Tax Return, or (ii) had liability for the Taxes of any other Person under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign Law), as a transferee or successor, by Contract or otherwise.

(i) No claim has been made in writing by any Governmental Authority in a jurisdiction where Seller does not file Tax Returns that Seller is or may be subject to taxation by that jurisdiction (with respect to the Purchased Assets).

(j) Seller has properly collected and remitted material sales, use, value-added, and similar Taxes with respect to sales made to its customers and collected and retained any Tax exemption certificates or other similar documentation where applicable.

(k) Purchaser will not be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any Post-Closing Tax Period as a result of any (i) change made prior to the Closing in the method of accounting for a Tax period ending prior to the Closing Date, (ii) "closing agreement" as described in Section 7121 of the IRC (or any corresponding or similar provision of state, local or foreign income Tax law) or any agreement with a Governmental Authority entered into or executed prior to the Closing, (iii) intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of the IRC (or any corresponding or similar provision of state, local or foreign Tax law) made or established prior to the Closing, (iv) installment sale or open transaction disposition made on or prior to the Closing Date, (v) prepaid amount or advance payments received or deferred revenue received or accrued prior to the Closing outside of the ordinary course of business, (vi) use of an improper method of accounting for a taxable period ending on or prior to the Closing Date, (vii) application of Section 952(c)(2) of the IRC, (viii) application of Section 951 or Section 951A of the IRC with respect to income earned or recognized or payments received prior to the Closing, or (ix) a "gain recognition agreement" under Section 367(a) of the IRC.

(l) None of the Purchased Assets consists of equity interests in any person treated as a corporation or partnership for U.S. federal income tax purposes.

(m) Except as otherwise stated in this Agreement, no representation or warranty is made with respect to the availability of any Tax attribute for any Post-Closing Tax Period.

Section 5.16 Material Suppliers. Section 5.16 of the Seller Disclosure Schedule sets forth a list of the top twenty (20) suppliers of the Business by dollar volume of purchases for each of (a) the eleven (11) month period ended November 30, 2024, and (b) the fiscal year ended December 31, 2023, as well as the corresponding dollar volumes for such periods (collectively, the "**Material Suppliers**"). Except as set forth on Section 5.16 of the Seller Disclosure Schedule, the relationships of the Business with the Material Suppliers are good commercial working relationships and, in the last three (3) years, neither Seller nor any of its Affiliates has received any notice from any Material Supplier that any such Material Supplier has or may stop, materially decrease the rate of, or materially change the terms (whether related to payment, price or otherwise) with respect to supplying materials, products or services to the Business, whether as a result of the consummation of the transactions contemplated by this Agreement or otherwise, nor during the last twelve (12) months has any Material Supplier canceled, materially modified, or otherwise terminated (or threatened in writing (or to the Knowledge of Seller, orally) to do the same) its relationship with the Business or materially decreased its services, supplies or materials (or threatened to do the same) to the Business. There are no disputes between Seller (or the Business), on the one hand, and any Material Supplier, on the other hand.

Section 5.17 Material Customers. Section 5.17 of the Seller Disclosure Schedule sets forth a list of the top ten (10) customers of the Business by dollar volume of revenues for each of (a) the eleven (11) month period ended November 30, 2024 and (b) the fiscal year ended December 31, 2023, as well as the corresponding dollar volumes for such periods (collectively, the “**Material Customers**”). Except as set forth on Section 5.17 of the Seller Disclosure Schedule, the relationships of the Business with the Material Customers are good commercial working relationships and, in the last three (3) years, neither Seller nor any of its affiliates has received any notice from any Material Customer that any such Material Customer may stop, materially decrease the rate of, or materially change the terms (whether related to payment, price or otherwise) with respect to purchasing materials, products or services from the Business, whether as a result of the consummation of the transactions contemplated by this Agreement or otherwise, nor during the last twelve (12) months has any Material Customer cancelled, materially modified, or otherwise terminated (or threatened in writing (or to the Knowledge of Seller, orally) to do the same) its relationship with the Business or materially decreased its purchases of services, supplies or materials (or threatened to do the same) to the Business. There are no disputes between Seller (or the Business) on the one hand, and any Material Customer, on the other hand.

Section 5.18 Transactions with Related Parties. Except as set forth on Section 5.18 of the Seller Disclosure Schedule, to the Knowledge of Seller, no Related Party (a) is a party to any Contract or transaction involving the Purchased Assets, Assumed Liabilities or the Business other than (i) loans and other extensions of credit to current managers and officers of Seller (and/or the Business) for travel or business expenses or other employment-related purposes in the Ordinary Course of Business, none of which are material, individually or in the aggregate, and (ii) employment arrangements, or (b) owns, directly or indirectly, any interest in, or is an officer, director, manager, employee or consultant of, any Person which is, or is engaged in business as a material supplier, lessor, lessee, customer or any other Person with a material commercial relationship with the Business.

Section 5.19 No Other Representations. Except for the representations and warranties expressly contained in this ARTICLE V (as qualified by the Seller Disclosure Schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) (the “**Express Representations**”), neither Seller nor any other Person on behalf of Seller makes any express or implied representation or warranty with respect to Seller, the Business, the Purchased Assets, the Excluded Assets, the Assumed Liabilities, the Excluded Liabilities or with respect to any information, statements, disclosures, documents, projections, forecasts or other material of any nature made available or provided by any Person (including in any presentations or other materials prepared by the Seller Representatives) in the Dataroom to Purchaser or any of its Related Parties (or the Purchaser Advisors or advisors to Purchaser’s Related Parties) on behalf of Seller or any of its Related Parties or Seller Representatives, and all other representations, warranties and statements of any kind or nature expressed or implied, whether in written, electronic or oral form, are, in each case, specifically disclaimed by Seller, on its behalf and on behalf of its Related Parties. Without limiting the foregoing, except in the case of Fraud or Willful Breach, from and after the Closing neither Seller nor any other Person will have or be subject to any Liability whatsoever to Purchaser, or any other Person, resulting from the sale to Purchaser or any of its Related Parties or the Purchaser Advisors or advisors to Purchaser’s Related Parties or any of its Related Parties or the Purchaser Advisors or advisors to Purchaser’s Related Parties use of or reliance on, any such information, including the Projections, any information, statements,

disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Related Parties or the Purchaser Advisors or advisors to Purchaser's Related Parties in the Dataroom in expectation of the transactions contemplated by this Agreement or any discussions with respect to any of the foregoing information.

ARTICLE VI REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as set forth in the Purchaser Disclosure Schedule, Purchaser represents and warrants to Seller as of the date of this Agreement and as of the Closing as follows:

Section 6.1 Organization, Standing and Power. Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite limited liability company power and authority to carry on its business as now being conducted. Purchaser is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified or licensed would not prevent or otherwise have a material adverse effect, individually or in the aggregate, on Purchaser's ability to consummate the transactions contemplated by this Agreement.

Section 6.2 Authority; Noncontravention.

(a) Subject to the Bankruptcy Court's entry of the Sale Procedures Order and the Sale Order, (i) Purchaser has the requisite limited liability company power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement and (ii) the execution and delivery of this Agreement by Purchaser and the consummation by Purchaser of the transactions contemplated by this Agreement have been duly authorized by all necessary action on the part of Purchaser. This Agreement has been duly executed and delivered by Purchaser and, assuming this Agreement constitutes a valid and binding agreement of Seller and subject to entry of the Sale Order, constitutes a valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, receivership, insolvency, reorganization, moratorium, fraudulent conveyance, equitable subordination or similar Laws of general application and other Laws affecting creditors' rights generally.

(b) Subject to the Bankruptcy Court's entry of the Sale Procedures Order and the Sale Order, the execution, delivery and performance by Purchaser of this Agreement and the other Transaction Documents to which Purchaser is a party and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate Purchaser's Fundamental Documents; (ii) assuming compliance with the matters referred to in Section 6.2(c), constitute or result in a default under or violate any applicable Law; or (iii) 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 any material Contract to which Purchaser is a party, except in the cases of the preceding clauses (ii) and (iii) as to matters which would not

prevent or otherwise have a material adverse effect, individually or in the aggregate, on Purchaser's ability to consummate the transactions contemplated by this Agreement.

(c) No Consent of any Governmental Authority is required by or with respect to Purchaser in connection with the execution and delivery of this Agreement by Purchaser, or the consummation of the transactions contemplated by this Agreement or the other Transaction Documents, except for (i) the Consents set forth in Section 6.2(c) of the Purchaser Disclosure Schedule, (ii) the entry of the Sale Order by the Bankruptcy Court, and (iii) compliance with any applicable requirements of the Exchange Act or Securities Act.

Section 6.3 Financial Ability.

(a) On the Closing Date, Purchaser will have sufficient cash on hand to allow Purchaser to perform all of its obligations under this Agreement, including (i) payment or satisfaction of Cure Costs (subject to the Cure Costs Cap) and other Assumed Liabilities and (ii) all fees and expenses to be paid by Purchaser related to the transactions contemplated by this Agreement. Purchaser is capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to adequate assurance of future performance under the Assigned Contracts.

(b) Purchaser was formed for the benefit and at the direction of the requisite DIP Lenders and the requisite Pre-Petition Secured Lenders for the purpose of assisting with the Credit Bid, and Purchaser has the legal right to direct the Agent and has directed (or caused to be directed) the Agent, on behalf of the DIP Lenders and the Pre-Petition Secured Lenders, to make a credit bid pursuant to Section 363 of the Bankruptcy Code in order to pay the Credit Bid portion of the Purchase Price, pursuant to the Bid Direction Letter.

Section 6.4 No Brokers. With respect to any broker or financial advisor engaged directly or indirectly by Purchaser in connection with the transactions contemplated by this Agreement, Seller or any of its Affiliates shall not be responsible for any fees, commissions or like payments with respect thereto.

Section 6.5 No Other Representations. Except as and to the extent set forth in this Agreement or any other Transaction Document to which Purchaser is a party, Purchaser does not make any representation or warranty whatsoever to Seller (or any other Person), and Purchaser hereby disclaims all liability and responsibility for any representation, warranty, statement or information not included in this Agreement or any other Transaction Document that was made, communicated or furnished (orally or in writing) to Seller or any of its Affiliates or representatives (or any other Person).

ARTICLE VII COVENANTS

Section 7.1 Conduct of Business Pending Closing.

(a) Except (i) as otherwise expressly contemplated by this Agreement, the other Transaction Documents or Section 7.1(a) of the Seller Disclosure Schedule or (ii) with the prior written consent of Purchaser or as required by applicable Law, including by Order or directive or

the Bankruptcy Court, during the period from and after the date hereof until the earlier of termination of this Agreement and the Closing Date, subject to the Conditions, Seller shall conduct the Business in all material respects in the Ordinary Course of Business, including meeting all postpetition obligations relating to the Business as they become due. Except (A) as otherwise expressly contemplated by this Agreement, the other Transaction Documents or Section 7.1(a) of the Seller Disclosure Schedule, (B) as may be required in connection with or as a result of the Bankruptcy Case, the DIP Facility, applicable Law or any Governmental Order, or (C) with the prior written consent of Purchaser, and subject to the Conditions, during the period from and after the date hereof until the earlier of termination of this Agreement and the Closing, Seller shall (I) use commercially reasonable efforts to preserve and maintain its relationships with its customers, suppliers, unions, partners, lessors, licensors, licensees, contractors, distributors, agents, officers, employees and other Persons with which it has business relationships; *provided* that nothing herein shall prevent Seller from commencing or defending any Action against or by any such Person in connection with the claims of such Person in the Bankruptcy Cases; (II) preserve and maintain in all material respects the Purchased Assets, ordinary wear and tear excepted; (III) preserve in all material respects the ongoing operations of the Business; (IV) maintain the Books and Records in all material respects in the Ordinary Course of Business; (V) comply in all material respects with all applicable Laws (including Environmental Laws); (VI) not enter into any business, arrangement or otherwise take any action that would reasonably be expected to have a material adverse effect on the ability of Seller or Purchaser to obtain any approvals of any Governmental Authority related to the Transaction Documents and the transactions contemplated thereby; (VII) not voluntarily dispose of any Leased Real Estate and, except in the Ordinary Course of Business, not modify or amend in any material respect, or terminate any of the Leases or any other Material Contract; and (VIII) to the extent permitted after the filing of the Bankruptcy Case or by Order of the Bankruptcy Court and as permitted under the DIP Facility (including the DIP Budget), pay all applicable Taxes as such Taxes become due and payable.

(b) Without limiting the generality of the foregoing, except (i) as required by applicable Laws or any requirements or limitations resulting from the Bankruptcy Case (including in connection with the DIP Facility) or (ii) as otherwise expressly required by this Agreement, the other Transaction Documents, Section 7.1(a) of the Seller Disclosure Schedule or with the prior written consent of Purchaser or approval of the Bankruptcy Court, during the period from and after the date hereof until the earlier of termination of this Agreement and the Closing Date, Seller shall not do any of the following:

(i) with respect to the Equity Securities of Seller, declare, set aside or pay any dividends (payable in cash, stock, property or otherwise) on, or make any other distributions in respect of such Equity Securities;

(ii) issue, deliver, sell, pledge or otherwise encumber or subject to any Lien the Equity Securities of Seller;

(iii) amend any of its Fundamental Documents;

(iv) acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial equity interest in or a substantial portion of the assets of, or by any other manner, any business of another Person;

(v) sell, assign, license, transfer, convey, lease or otherwise dispose of any Purchased Assets, other than in the Ordinary Course of Business;

(vi) other than with respect to the DIP Facility, incur any Indebtedness for borrowed money;

(vii) pay, loan or advance any amount to, or sell, transfer or lease any properties or assets (real, personal or mixed, tangible or intangible) to, purchase any properties or assets from, or enter into any (A) Material Contract, (B) Contracts for Indebtedness, or (C) Contract relating to any interest rate, currency or commodity derivatives or hedging transaction with, any of Seller's executive officers or managers (or immediate family members thereof), other than payment of compensation and benefits in the Ordinary Course of Business;

(viii) other than in accordance with Section 2.5 hereof, assume, reject or amend, restate, supplement, modify, waive or terminate any (A) Material Contract, (B) Contracts for Indebtedness, (C) Contract relating to any interest rate, currency or commodity derivatives or hedging transaction or (D) material Permit, including any Alcohol License;

(ix) adopt or change any method of accounting (except as required by changes in GAAP), make, change or revoke any Tax election, change any annual Tax accounting period, files any amended Tax Return, enter into any closing agreement, request any Tax ruling with or from a Governmental Authority, settle or compromise any Tax claim or assessment, surrender any right to claim a Tax refund, offset or other reduction in Tax Liability, consent to the extension or waiver of the limitations period applicable to any Tax claim or assessment, or take or omit to take any other action, in each case to the extent that such action or omission (A) would (or would reasonably be expected to) have a material effect on Seller or (B) would (or would reasonably be expected to) have an adverse effect on Purchaser, in each case, except as required by applicable Law;

(x) enter into any settlement of any claim that (A) is outside the Ordinary Course of Business, (B) would (or would reasonably be expected to) delay (or otherwise impede or prevent) the Closing, (C) arises under a Material Contract or (D) subjects Seller to any material non-compete or other similar material restriction on the conduct of its Business that would be binding on the Purchaser following the Closing;

(xi) except as may be required by applicable Law or by the applicable Benefit Plan as in effect on the date of this Agreement: (A) grant any increase or acceleration in compensation or benefits; (B) grant any increase in severance or termination pay; (C) accelerate the vesting, payment or funding of any compensation or benefits under any Benefit Plan or issue or forgive any loans to any current or former Employees or other service providers (other than routine travel expenses); (D) enter into, amend, or terminate any Benefit Plan or other deferred compensation, severance, or similar termination agreement with or for the benefit of any Employees or other service providers; (E) establish, adopt, enter into, terminate or amend any Collective Bargaining Agreement or other labor union contract (except as required by applicable Law or except as may be expressly required by the terms of this Agreement); (F) take any action to accelerate or dilute any rights or benefits, including vesting and payment, under any Collective Bargaining Agreement; or (G) hire or terminate (other than for cause) the employment of any

Employee or other service provider, other than any Employee receiving annualized total compensation of less than \$100,000 in the Ordinary Course of Business; or

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

Section 7.2 Access to Information. Until the earlier of termination of this Agreement and the Closing Date, Seller shall (a) afford to the officers, employees, attorneys, financial advisors, financing sources, Related Parties and other representatives of Purchaser (collectively, the “**Purchaser Advisors**”), access during normal business hours and upon reasonable advance notice to the Purchased Assets and Seller’s properties, Books and Records (including access to existing environmental reports) and Contracts; (b) make available to the Purchaser Advisors copies of all such Contracts, Books and Records and other existing documents and data in Seller’s possession or control as the Purchaser Advisors may reasonably request, including any financial data filed with the Bankruptcy Court or otherwise provided to any lender under any Indebtedness of Seller; and (c) make available to the Purchaser Advisors during normal business hours and upon reasonable advance notice the appropriate management personnel of Seller (and Seller shall use commercially reasonable efforts to cause its attorneys, accountants and other professionals to be made available to the Purchaser Advisors) for discussion of the Business, the Purchased Assets, the Assumed Liabilities, and personnel as Purchaser may request, in each case so long as such access does not unreasonably interfere with the operations of Seller or the Business; *provided, however*, that nothing in this Section 7.2 shall require Seller to provide access to or furnish to the Purchaser Advisors any information or materials if such access or disclosure would jeopardize the attorney-client privilege of Seller with respect to such information or materials or violate any Laws to which Seller is subject. Purchaser will not, and will not permit any of the Purchaser Advisors or any of its Related Parties to, contact any officer, manager, director, employee, customer, supplier, lessee, lessor, lender, licensee, licensor, distributor, noteholder or other material business relation of Seller or the Business prior to the Closing with respect to Seller, the Business or the transactions contemplated by this Agreement or any Transaction Document without the prior consent of Seller for each such contact.

Section 7.3 Consents. Subject to the Conditions, during the period from and after the date hereof until the earlier of termination of this Agreement and the Closing Date, each party hereto shall use commercially reasonable efforts to cooperate with the other party’s efforts to solicit and obtain all Consents, waivers, approvals, authorizations or Orders required for the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, including with respect to any Contracts designated to be Assigned Contracts in accordance with Section 2.5; *provided* that (a) Seller shall not be required to make any payments to any such third party in connection with obtaining any such Consent, waivers, approvals, or authorizations from such third party and (b) Seller shall not be required to incur any liability with respect to any such third party in connection with obtaining any such Consent, waivers, approvals, authorizations or Orders from such third party.

Section 7.4 Further Assurances; Support of Transaction.

(a) At any time and from time to time after the date hereof, Seller and Purchaser agree to use commercially reasonable efforts to cooperate with each other and (i) at the reasonable request of the other party, execute and deliver any instruments or documents and (ii) take, or cause

to be taken, all such further action as the other party may reasonably request in order to evidence or effectuate the consummation of the transactions contemplated hereby and to otherwise carry out the intent of the parties hereunder as promptly as practicable.

(b) During the period from and after the date hereof until the earlier of termination of this Agreement and the Closing Date, each of the parties hereto shall, and shall cause its Affiliates to use reasonable best efforts to assemble, prepare and file any information (and, as needed, to supplement such information) as may be reasonably necessary or advisable to obtain as promptly as practicable all governmental and regulatory Consents (including any Consents from Governmental Authorities) required to be obtained in connection with the transactions contemplated hereby. The “reasonable best efforts” of Seller will be subject to the Conditions and will not require Seller or any of its Affiliates, Related Parties or any Seller Representatives to expend any money to remedy any breach of any representation or warranty, to commence any Action, to waive or surrender any right, to modify any Contract or to waive or forego any right, remedy or condition hereunder.

(c) Following the Closing, for the purposes of Seller (i) preparing or reviewing Tax Returns, (ii) monitoring or enforcing rights or obligations under this Agreement, (iii) defending third-party Actions or complying with the requirements of any Governmental Authority, or (iv) pursuing any other reasonable business purpose, including assistance with the Wind-Down Activities and related Tax and other administrative matters, upon reasonable notice, Purchaser shall permit Seller, Seller Representatives, its counsel, and its other professionals reasonable access to all premises, properties, personnel, Books and Records, and Contracts or Leases, which access shall include (A) the right to copy such documents and records as they may reasonably request, and (B) Purchaser’s copying and delivering such documents or records as reasonably requested. Following the Closing, Purchaser will, and will cause its controlled Affiliates and employees to, provide Seller and its Affiliates and the Seller Representatives with reasonable assistance, support and cooperation with Seller’s and its Affiliates’ Wind-Down Activities and related activities, including providing reasonable access to and assistance from Purchaser’s personnel during regular business hours to assist Seller in its Wind-Down Activities in connection with preparing Tax Returns and deliverables and other requirements in the Bankruptcy Case, providing former officers (to the extent employed by or under Purchaser’s or its Affiliate’s control) to sign pre-Closing tax returns and providing assistance with administering, prosecuting and processing claims and other Actions; *provided* that such access or assistance does not unreasonably interfere with Purchaser’s or any of its respective Affiliates’ operations.

Section 7.5 Bankruptcy Covenants.

(a) Sale Procedures. Seller shall use commercially reasonable efforts to obtain entry by the Bankruptcy Court of the Sale Procedures Order (with such changes thereto as Purchaser shall approve or request in its sole discretion) within thirty-one (31) days after the Petition Date. Subject to Bankruptcy Court availability and entry of and in accordance with any provisions of the Sale Procedures Order, Seller shall hold an Auction, if needed, on the Sale no later than fifty (50) days after the Petition Date. Seller shall comply with all of the terms and conditions contained in the Sale Procedures Order, including the occurrence of the events by the dates and times listed therein which terms and conditions are expressly incorporated by reference herein as if set forth in full. From the time of execution and delivery by Seller and Purchaser of

this Agreement until its termination, Seller shall not be subject to any restrictions with respect to the solicitation or encouragement of any entity concerning an Alternative Restructuring Proposal or Alternative Transaction in accordance with the Sale Procedures.

(b) Bankruptcy Court Approval.

(i) Seller shall use commercially reasonable efforts to serve a copy to each applicable Taxing Authority of the Sale Motion, proposed Sale Order and Sale Procedures Order, or notice of such motion and orders in addition to instructions on how to obtain such motion and orders, in each jurisdiction where the Purchased Assets are subject to Tax at least twenty-five (25) days prior to the Sale Hearing.

(ii) Subject to Bankruptcy Court availability, Seller shall use commercially reasonable efforts to obtain entry by the Bankruptcy Court of the Sale Order no later than fifty-five (55) days after the Petition Date.

(iii) If the Sale Procedures Order, Sale Order or any other Orders of the Bankruptcy Court relating to this Agreement shall be appealed by any party (or a petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to any such order), Seller shall use commercially reasonable efforts to defend against such appeal, petition or motion and shall use their commercially reasonable efforts to obtain an expedited resolution of any such appeal, petition or motion; *provided* that Seller shall consult with Purchaser at Purchaser's request regarding the status of any such proceedings or other Actions.

(iv) Seller shall consult with Purchaser and its representatives concerning the Sale Procedures Order, the Sale Order and any other Orders of the Bankruptcy Court, and the Bankruptcy Case in connection therewith and provide Purchaser with copies of requested applications, pleadings, notices, proposed Orders and other documents relating to such proceedings as soon as reasonably practicable prior to any submission thereof to the Bankruptcy Court. Seller further covenants and agrees that, after the Closing, the terms of any reorganization or liquidation plan or any motion or similar pleading to dismiss the Bankruptcy Case that Seller submits to the Bankruptcy Court for confirmation, sanction or approval shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement, including any transaction contemplated by or approved pursuant to the Sale Procedures Order or the Sale Order.

Section 7.6 Employee Matters.

(a) No later than five (5) days prior to the Closing, Purchaser shall offer (or cause its applicable Affiliate to offer) at-will employment effective as of the Closing Date to such Employees that Purchaser intends to employ post-Closing (with such Employees, and any applicable terms and conditions of employment, each selected in Purchaser's sole and absolute discretion, and which offers may be made in the form of an "opt-out" or "deemed acceptance" transfer letter). Each Employee who is offered and accepts such offer of employment with Purchaser (or its applicable Affiliate) and further then actually commences employment with

Purchaser 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 requests by Purchaser in order to facilitate the offers of employment and delivery of such offers. Neither Purchaser nor any of its Affiliates shall have any Liability for any pay, benefits, or similar claims of any (i) except to the extent any such pay, benefits, or similar claims is an Assumed Liability or included as part of clause (ii) in the definition of Excluded Cash, Employees or other service providers who are not Transferred Employees or, (ii) except to the extent any such pay, benefits, or similar claims is an Assumed Liability, Transferred Employees earned or accrued prior to the Closing Date, which Liabilities in each case, shall remain the sole responsibility of Seller and its Affiliates, as applicable, and Purchaser (and its Affiliates) shall not be required to maintain any minimum benefit or compensation levels or prevent any change in the employee benefits provided to any Transferred Employees, except as required by Law. Except as expressly provided herein, neither Purchaser nor any of its Affiliates shall have any obligation to provide any severance, payments, or benefits to any other Employees of Seller and its Affiliates. Purchaser and its Affiliates shall have no Liability whatsoever for, and Seller shall retain, any and all Liabilities (including statutory or contractual severance benefits) with respect to, (A) any compensation or other obligations owing or purported to be owing to any current or former Employee or other service provider by Seller, including any severance (including statutory or contractual severance benefits), separation pay, change of control payments or benefits, retention payments, or any other payments or benefits arising in connection with the termination of such Employee’s employment by or such service provider’s services to Seller or any of its Affiliates (whether occurring or arising prior to, upon or after the Closing Date) or (B) any cause of action under the WARN Act by any past or present Employee or other service provider (whether or not a Transferred Employee) in connection with such Employee’s employment with or such service provider’s services to Seller or any of its Affiliates (or any other “employment loss” or similar action identified in the WARN Act), except, in each case, as otherwise expressly provided in this Agreement. 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 any employee or other 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 contemplated by the Transaction Documents shall not alone constitute a severance or termination of employment of any Employee or other 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.

(b) 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 or other applicable Law. 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.

(c) Seller shall be liable for all workers' compensation, short- and long-term disability, medical, prescription drug, dental, vision, life insurance, accidental death and dismemberment, and other welfare benefit claims ("**Welfare Claims**") incurred (i) at any time by their Employees and other 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.

(d) 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 Employees and other service providers, and their respective eligible spouses and dependents, for whom a "qualifying event" (within the meaning of COBRA) occurs at any time prior to the Closing Date (including a qualifying event that occurs in connection with the transactions contemplated by this Agreement). 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.

(e) At its election, Purchaser may (but shall not be obligated to) assume or cause its applicable Affiliate(s) to assume each Transferred Employee's accrued but unused vacation day balances or other paid time off balances as of the Closing Date, to be used in accordance with Purchaser's (or its applicable Affiliate's) corresponding vacation or paid time off policy; *provided*, that to the extent that (i) applicable Law requires that a Transferred Employee be paid for any vacation days or paid time off that is accrued or earned but not yet taken by such Transferred Employee as of the Closing Date and (ii) any such amounts if not so paid or assumed would reasonably be expected to result in personal liability of any current or former employee, officer or director of Seller or any of its subsidiaries, then Excluded Cash shall be increased by an

amount sufficient to pay such Transferred Employee all amounts owed in respect of such vacation days and other paid time off that is accrued but not taken by such Transferred Employee on or prior to the Closing Date and Seller shall promptly make such payments.

(f) The parties hereto shall reasonably cooperate in good faith to assign to Purchaser (or its designee) all Assumed Benefit 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. Further, the parties hereto shall reasonably cooperate in good faith to obtain any required regulatory approvals in connection with the foregoing assignment. If Purchaser's (or its designee's) assumption of one (1) or more Assumed Benefit Plans is not practicable, the parties hereto shall reasonably cooperate in good faith to permit the transfer of the applicable assets of the applicable Benefit Plan(s) related to the Transferred Employees and that are intended to be Assumed Benefit Plans to the corresponding Purchaser employee benefit plan(s) in accordance with the intent of this Agreement. The parties hereto 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 7.6(f).

(g) If requested by Purchaser in a writing delivered to Seller following the date hereof and no later than thirty (30) days following the date hereof, Seller shall adopt resolutions to terminate, effective as of no later than the day before the Closing Date, any Benefit 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 the 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 the Seller 401(k) Plans have been terminated effective as of no later than the day before the Closing Date.

(h) Following the date of this Agreement, Seller and Purchaser shall reasonably cooperate in all matters reasonably necessary to effect the transactions contemplated by this Section 7.6, 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, Employee representatives, or any other Persons, (iv) providing offers of employment to the Employees selected by Purchaser in accordance with Section 7.6(a), and (v) transferring to Purchaser, no later than the Closing Date, all employee records of the Transferred Employees (to the extent permitted by applicable Law), including all current employment eligibility verification forms of the Transferred Employees (*provided*, that, Seller shall be entitled to retain copies of any personnel or similar records of Transferred Employees in their sole discretion, including where required by Law).

(i) The parties hereto shall reasonably cooperate in good faith with respect to any communications to Employees and other individual service providers regarding the transactions contemplated by this Agreement and the other Transaction Documents. Seller will provide Purchaser with a reasonable opportunity to review and comment on any communications

intended for the employees and other individual service providers that it desires or has to send to Employees or other individual 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 Employees, and other individual service providers (including regarding its offers of employment) that it desires or has to send to Employees, and other individual service providers prior to the Closing Date.

(j) The parties hereto shall reasonably cooperate in good faith and as necessary with respect to any litigation or other investigation, proceeding, or inquiry regarding personnel matters of any kind.

(k) The parties hereto acknowledge and agree that all provisions contained in this Section 7.6 are included for the sole benefit of the parties to this Agreement, 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 current or former service provider of Seller (including the 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 hereto or any of their respective Affiliates. Nothing contained in this Section 7.6 is intended to be or shall be considered to be an amendment or adoption of any Benefit Plan or any other plan, program, Contract, arrangement, or policy of the parties hereto or any of their respective Affiliates. In addition, nothing contained in this Section 7.6 shall interfere with the parties' or any of their respective Affiliates' right to amend, modify, or terminate any Benefit Plan in accordance with its provisions or to terminate the employment or engagement of any Employee or other service providers of Seller (including the Employees) or, following the Closing, of the Transferred Employees.

(l) Nothing in this Section 7.6 shall limit the assumption of any Assumed Liabilities and obligations to fund certain Liabilities and expenses as set forth in clause (ii) of the definition of Excluded Cash. In the event of any conflict between this Section 7.6 and **Error! Reference source not found.** or the definition of Excluded Cash, as applicable, **Error! Reference source not found.** or the definition of Excluded Cash, as applicable, shall control.

Section 7.7 Use of Name. Seller agrees, and agrees to cause its Affiliates, within sixty (60) calendar days after the Closing Date, to (a) amend its Fundamental Documents (including in connection with the Bankruptcy Case or in any other legal case or other Action in which Seller is a party and for the purpose of winding up Seller and its respective estates) that are required to change their respective entity names to a new name that is sufficiently dissimilar to Seller's respective present name so as to avoid confusion and make their respective present name available to Purchaser and (b) not use the name "Vobev" or any name confusingly similar thereto for any purpose. Notwithstanding anything to the contrary, Seller shall not be deemed to have violated this Section 7.7 or to have infringed the rights of Purchaser by reason of (i) the reference to or appearance of "Vobev" in or on (A) any third party's publications, marketing materials, brochures, instruction sheets, packaging or products that were distributed in the ordinary course of business or pursuant to a Contract prior to the Closing, and that generally are in the public domain, or (B) any other similar uses by any such third party over which Seller has no control, or (ii) the use of "Vobev" in a non-trademark manner or as otherwise required by or permitted as fair use or

otherwise under applicable Law, including for purposes of (A) conveying to any Person or the general public that the names of Seller have changed or there was a change in ownership of the Business or (B) referencing the historical ownership of the Business.

Section 7.8 License Approvals. At Purchaser's sole cost and expense, Seller shall use commercially reasonable efforts to assist Purchaser with the preparation, filing and prosecution of each application, petition or other filing with any Governmental Authority with respect to obtaining the necessary consents and approvals pertaining to transfer of any Licenses (including all Alcohol Licenses) to Purchaser (collectively, the "**License Approvals**"), including (a) making reasonably available to Purchaser Seller's Employees responsible for managing the Licenses and Seller's License counsel (subject to compliance with ethical rules) to assist and consult with Purchaser on the License Approvals, and (b) with respect to the Alcohol Licenses, participating in any legal proceedings or other Actions reasonably requested by Purchaser to obtain such Alcohol Licenses in connection with the transactions contemplated by this Agreement. Seller shall provide to Purchaser any necessary information in their possession or control for obtaining the Licenses, and shall direct all persons employed by, related to or under control of Seller whose cooperation is reasonably necessary or convenient to Purchaser's application for licenses in Purchaser's name to so cooperate, and shall provide any Licenses of Seller for surrender when directed by Purchaser to do so. To the extent allowed under applicable Law, Seller shall further cooperate with Purchaser at Purchaser's request and at Purchaser's sole cost and expense to allow any Licenses to be used by Purchaser until Purchaser is able to secure its own Licenses. With respect to any Alcohol License or other License related to any alcoholic beverage inventory conveyed hereunder, the parties hereto shall comply with the applicable Laws (including those of any state), including the creation of any necessary escrow and the disbursement or release of any funds held in such escrow.

Section 7.9 Access to Insurance Policies. Following the Closing, to the extent that any insurance policy that constitutes a Purchased Asset covers any Excluded Liabilities (including tort liabilities, operational liabilities, and Environmental Liabilities), if requested by Seller in writing (email being sufficient), Purchaser shall take commercially reasonable efforts to make such insurance policies available to Seller to satisfy bona fide claims with respect to Excluded Liabilities that are covered by such insurance policies. Upon the receipt by Purchaser of any such insurance proceeds or condemnation proceeds relating thereto that relate to any Excluded Asset or Excluded Liability, Purchaser shall as promptly as practicable pay Seller such proceeds, net of any unreimbursed costs or expenses related thereto.

Section 7.10 Title Insurance Policies. Seller and its Affiliates shall use commercially reasonable efforts and shall otherwise reasonably cooperate with Purchaser in connection with Purchaser's efforts to cause the Title Company to issue to Purchaser or its designee at Closing a Title Policy in favor of Purchaser or its designee showing good and valid leasehold interest to each Assigned Lease identified by Purchaser, which cooperation shall include, to the extent that the Title Company is prepared and irrevocably committed to issue to Purchaser or its designee a Title Policy for such Assigned Lease, as applicable, the delivery by Seller or its Affiliates of a Title Affidavit with respect to each applicable Assigned Lease at Closing. Notwithstanding the foregoing, in no event shall the failure of the Title Company to issue to Purchaser or its designee at Closing all or any Title Policy with respect to an Assigned Lease constitute a failure of any condition precedent in favor of Purchaser under this Agreement other than if such failure is due to a breach of the obligations of Seller or its Affiliates hereunder. Furthermore, in no event shall

Purchaser have a termination right or be entitled to any credit under this Agreement or have any claim against Seller as a result of the failure of Purchaser to cause the Title Company to issue all or any Title Policy other than if such failure is due to a breach of the obligations of Seller or its Affiliates hereunder.

Section 7.11 Books and Records. Following the Closing, Purchaser shall provide Seller and any court-appointed Chapter 7 trustee or other fiduciary charged with the wind-down of Seller's bankruptcy estate following the Closing and their respective representatives with reasonable access to the Books and Records (at no cost to Seller).

Section 7.12 Intellectual Property. Following the Closing, Purchaser shall provide Seller and any court-appointed Chapter 7 trustee or other fiduciary charged with the wind-down of Seller's bankruptcy estate following the Closing and their respective representatives with a limited license (at no cost to Seller) to use any Intellectual Property solely for the purposes of conducting the Wind-Down Activities.

Section 7.13 Tax Returns. Following the Closing, Purchaser shall provide Seller and any court-appointed Chapter 7 trustee or other fiduciary charged with the wind-down of Seller's bankruptcy estate following the Closing, if requested by Seller in writing (email being sufficient), with reasonable access to any Tax Returns and working papers, as applicable.

Section 7.14 Disclosure Schedules and Additional Schedules.

(a) Seller shall in good faith prepare and deliver to Purchaser for Purchaser's review proposed final versions of the Seller Disclosure Schedules as promptly as reasonably practicable after the date hereof. A final version of the Seller Disclosure Schedule shall be delivered by the Seller to Purchaser no later than the Seller Disclosure Schedules Delivery Date. The Seller Disclosure Schedules delivered to Purchaser shall comply with the applicable terms set forth in this Agreement with respect thereto in all material respects.

(b) Purchaser shall in good faith prepare and deliver to Seller final versions of the Purchaser Disclosure Schedules no later than the Purchaser Disclosure Schedule Delivery Date. The Purchaser Disclosure Schedules delivered to Seller shall comply with the terms set forth in this Agreement with respect thereto in all material respects.

(c) All other Schedules contemplated by this Agreement shall be delivered by the applicable party or parties hereto in accordance with the applicable terms of this Agreement, including that: (i) Schedule 2.3(l) will be delivered in accordance with Section 2.5(i); and (ii) Schedule 2.3(b) (including the Cure Costs Caps set forth therein) will be determined by Seller in good faith and delivered in accordance with Section 2.5(a).

Section 7.15 Transition Services Agreement; Extended Contract Period. As promptly as practicable following the date hereof and, in any event, prior to the Closing, Purchaser and Seller shall negotiate in good faith and use their respective commercially reasonable efforts to mutually agree on the form of a transition services agreement regarding the mutual provision of services following the Closing between Purchaser, on the one hand, and Seller, on the other hand (the "**Transition Services Agreement**"), it being understood and agreed that Purchaser shall fund or cause to be funded, upon the terms and subject to the conditions set forth therein, such amounts

as may be required to enable Seller to perform its respective obligations under the Transition Services Agreement during the period for which services are contemplated to be provided thereunder, including any administrative expenses arising in connection with providing such services. Without limiting the generality of the foregoing, if an Extended Contract Period Notice is provided under Section 2.5(a), (a) Purchaser shall fund or cause to be funded all administrative expenses arising under Contracts and Benefit Plans that are not Assigned Contracts, Assigned Leases or Assumed Benefit Plans during the period contemplated by such Extended Contract Period Notice (the “**Extended Contract Period**”) or until such earlier time as they become Assigned Contracts, Assigned Leases or Assumed Benefit Plans and (b) Purchaser shall be responsible for any obligations or Liabilities of the Seller arising following the Closing during the Extended Contract Period and any incremental costs or expenses (i) that arise out of the Seller’s extension and continuation of the Bankruptcy Case that is attributable to the Extended Contract Period and (y) are incurred as a result of the Sellers’ performance of their obligations under Section 2.5(a) or this Section 7.15.

Section 7.16 No Pursuit of Certain Purchased Actions. Neither Purchaser nor its successors or assigns, shall prosecute, file suit or bring any cause of action with respect to any of the Purchased Actions against any Mutual Released Party or their employees, partners, officers, directors, or estates.

Section 7.17 Payment of Certain Assumed Liabilities. Purchaser shall pay any Administrative Expenses or other liabilities that are Assumed Liabilities promptly when required.

Section 7.18 Backup Bidder. If an Auction is conducted, and Seller does not choose Purchaser as the Successful Bidder, but instead chooses Purchaser as the Backup Bidder in accordance with the Sale Procedures Order, Purchaser will serve as the Backup Bidder. If Purchaser is chosen as the Backup Bidder, Purchaser will be required to keep its bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon by Purchaser prior to or at the Auction) open and irrevocable until the closing of the sale of the Purchased Assets to the Successful Bidder, subject to the End Date. If the transaction with the Successful Bidder is terminated prior to the termination of this Agreement, Purchaser will be deemed to be the Successful Bidder and will forthwith consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon by Purchaser prior to or at the Auction).

Section 7.19 Receipt of Misdirected Assets; Liabilities.

(a) From and after the Closing, if Seller or any of its controlled Related Parties receives any right, property or asset that is a Purchased Asset, Seller shall promptly transfer or cause such of its controlled Related Parties to transfer such right, property or asset (and shall promptly endorse and deliver any such asset that is received in the form of cash, checks or other documents) to Purchaser, and such asset will be deemed the property of Purchaser held in trust by Seller for Purchaser until so transferred. From and after the Closing, if Purchaser or any of its Related Parties receives any right, property or asset that is an Excluded Asset, Purchaser shall promptly transfer or cause such of its Related Parties to transfer such asset (and shall promptly endorse and deliver any such right, property or asset that is received in the form of cash, checks,

or other documents) to Seller, and such asset will be deemed the property of Seller held in trust by Purchaser for Seller until so transferred.

(b) From and after the Closing, if Seller or any of its Related Parties is subject to a Liability that should belong to Purchaser pursuant to the terms of this Agreement, Seller or such Related Party shall promptly transfer such Liability to Purchaser, and Purchaser shall assume and accept such Liability. From and after the Closing, if Purchaser or any of its Related Parties is subject to a Liability that should belong to Seller pursuant to the terms of this Agreement, Purchaser or such Related Party shall promptly transfer such Liability to Seller, and such Seller shall accept such Liability.

Section 7.20 Acknowledgment by Purchaser.

(a) Purchaser acknowledges and agrees, on its own behalf and on behalf of its Related Parties, that it has conducted to its satisfaction an independent investigation and verification of the business (including its financial condition, results of operations, assets, Liabilities, properties, Contracts, environmental, health or safety conditions and compliance, employee matters, regulatory compliance, business risks and prospects) of Seller, the Business, and the Purchased Assets and the Assumed Liabilities, and, in making its determination to proceed with the transactions contemplated by this Agreement, Purchaser and its Related Parties have relied solely on the Express Representations and the results of the Purchaser's and its Related Parties' own independent investigation and verification and have not relied on, are not relying on, and will not rely on, any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Related Parties or Purchaser Advisors (and any advisors of Purchaser's Related Parties) in the Dataroom, including the Projections.

(b) Without limiting the generality of the foregoing, in connection with the investigation by the Purchaser, its Related Parties and the Purchaser Advisors of Seller, Purchaser and its Related Parties, and the Purchaser Advisors and any advisors of Purchaser's Related Parties, have received or may receive, from or on behalf of Seller, the Projections. Purchaser acknowledges and agrees, on its own behalf and on behalf of its Related Parties and the Purchaser Advisors (and any advisors of Purchaser's Related Parties), that (i) such Projections are being provided solely for the convenience of Purchaser to facilitate its own independent investigation of Seller, (ii) there are uncertainties inherent in attempting to make such Projections, and (iii) Purchaser is familiar with such uncertainties.

(c) Purchaser acknowledges and agrees, on its own behalf and on behalf of its Related Parties and the Purchaser Advisors (and any advisors of Purchaser's Related Parties), that the covenants and agreements contained in this **Error! Reference source not found.** (i) require performance after the Closing to the maximum extent permitted by applicable Law and (ii) are an integral part of the transactions contemplated by this Agreement and that, without these agreements set forth in this **Error! Reference source not found.**, Seller would not enter into this Agreement.

ARTICLE VIII TAX MATTERS

Section 8.1 Transfer Taxes. Any and all stamp, duty, stamp duty, transfer, land transfer, documentary, registration, business and occupation and other similar Taxes (other than taxes imposed on or measured by net income or profits, capital gains, capital taxes, franchise taxes and branch taxes of Seller) imposed by any Governmental Authority in connection with the Sale contemplated by this Agreement (the “**Transfer Taxes**”) shall be paid one hundred percent (100%) by Purchaser.

Section 8.2 Cooperation on Tax Returns and Tax Proceedings. Purchaser and Seller shall cooperate fully as and to the extent reasonably requested by the other party, but without unreasonably disrupting their respective businesses, in connection with the preparation and filing of Tax Returns, amended return or claim for refund, and any Action with respect to Taxes (each a “**Tax Proceeding**”) imposed on or with respect to the Purchased Assets or Business, as well as the making of any election relating to Taxes and the determination of liability for Taxes or a right to refund for Taxes. Such cooperation shall include the retention and (upon the other party’s request) the provision of records and information which are reasonably relevant to any such Tax Return or Tax Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. In furtherance of the foregoing, Seller and any court-appointed Chapter 7 trustee or other fiduciary charged with the wind-down of Seller’s bankruptcy estate following the Closing shall have reasonable access to any Tax Returns and working papers which constitute Purchased Assets, as applicable, upon prior written request (email being sufficient) therefor by Seller or such trustee, as applicable. Seller’s obligations under this Section 8.2 shall terminate upon the dissolution of Seller. Seller and its Affiliates shall (a) abide by all record retention agreements entered into with any Governmental Authority and (b) give Purchaser thirty (30) days’ written notice prior to transferring, destroying or discarding any Tax records, or taking action to dissolve and terminate Seller, and, if Purchaser so requests, shall allow Purchaser to take possession of such Tax records.

Section 8.3 Ad Valorem Taxes. Except with respect to any Assumed Liabilities, all Ad Valorem Taxes for a Tax period which includes (but does not end on) the Closing Date (collectively, the “**Apportioned Obligations**”) shall be apportioned between Seller, on the one hand, and Purchaser, on the other hand, based on the number of days of such Tax period included in the Pre-Closing Tax Period and the number of days of such Tax period included in the Post-Closing Tax Period. Except to the extent as otherwise provided in **Error! Reference source not found.**, including in Section 2.3(g), Seller shall be liable for the proportionate amount of the Apportioned Obligations that is attributable to the Pre-Closing Tax Period, and Purchaser shall be liable for the proportionate amount of the Apportioned Obligations that is attributable to the Post-Closing Tax Period.

Section 8.4 Apportionment. Subject to the Conditions, Apportioned Obligations shall be timely paid, and all applicable filings, reports and Tax Returns shall be filed, as provided by applicable Law. The paying party shall be entitled to reimbursement from the non-paying party for Apportioned Obligations for which the non-paying party is liable pursuant to Section 8.3. Upon payment of any such Apportioned Obligation, the paying party shall present a statement to the non-paying party setting forth the amount of reimbursement to which the paying party is entitled

under Section 8.3, together with such supporting evidence as is reasonably necessary to calculate the amount to be reimbursed. Subject to the Conditions, the non-paying party shall make such reimbursement promptly, but in no event later than ten (10) days after the presentation of such statement.

Section 8.5 Bulk Sales Laws. The parties intend that pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Purchased Assets shall be free and clear of any and all Liens (other than Permitted Liens), including any Liens or claims arising out of any bulk transfer Laws, and the parties shall take such steps as may be reasonably necessary or appropriate to so provide in the Sale Order.

ARTICLE IX CONDITIONS

Section 9.1 Conditions to Each Party's Obligations. The respective obligations of Purchaser and Seller to consummate the Sale shall be subject to the satisfaction at or prior to the Closing of each of the following conditions unless waived (to the extent waivable under applicable Law), by both Seller, on the one hand, and Purchaser, on the other hand, in writing:

(a) No Injunctions or Restraints. No Governmental Order issued by a Governmental Authority of competent jurisdiction or other Law preventing consummation of the Sale shall be in effect or shall have become final and non-appealable and remain in effect.

(b) Continuing Effectiveness. This Agreement shall continue to remain in full force and effect.

(c) Entry of Orders. The Bankruptcy Court shall have entered the Sale Procedures Order and the Sale Order, and each shall be reasonably acceptable to Purchaser and the Required DIP Lenders.

(d) Cure Costs Cap. The Cure Costs, in the aggregate, are less than or equal to the Cure Costs Cap.

Section 9.2 Conditions to the Obligations of Purchaser. The obligation of Purchaser to consummate the Sale shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions unless waived (to the extent waivable under applicable Law) in writing, in whole or in part, by Purchaser:

(a) Representations and Warranties of Seller. The representations and warranties of Seller set forth in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing as though made at and as of the Closing (without giving effect to any "material", "materiality" or "Material Adverse Effect" qualification contained in such representations and warranties), except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct as of such earlier date), except where the failure of any such representations and warranties to be so true and correct has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

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

(c) No Material Adverse Effect. Since the date of this Agreement, no Material Adverse Effect shall have occurred.

(d) Deliverables. Purchaser shall have been furnished with the documents set forth in Section 4.2(a)(iv) (Bring-down Certificate), **Error! Reference source not found.** *(Certified Copy of Sale Order)* and **Error! Reference source not found.** *(Seller W-9)*.

(e) Reserved.

(f) No DIP Facility Default. No default or Event of Default (as defined in the DIP Order) under the DIP Term Sheet or DIP Order shall have occurred and be continuing that has not been waived in accordance with the terms of the DIP Term Sheet or DIP Order.

(g) Reserved.

Section 9.3 Conditions to the Obligations of Seller. The obligation of Seller to consummate the Sale shall be subject to the satisfaction at or prior to the Closing of each of the following conditions unless waived (to the extent waivable under applicable Law) in writing, in whole or in part, by Seller:

(a) Representations and Warranties of Purchaser. The representations and warranties of Purchaser set forth in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing as though made at and as of the Closing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct as of such earlier date), in each case, except for such failure to be so true and correct that, individually or in the aggregate, has not had, or would not reasonably be expected to have, a material adverse effect on the ability of Purchaser to consummate, or would not otherwise materially impair or prevent Purchaser from consummating, the transactions contemplated by this Agreement.

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

(c) Deliverables. Seller shall have been furnished with the documents or made the payments set forth in **Error! Reference source not found.** *(Bring-down Certificate)*, **Error! Reference source not found.** *(Incumbency Certificate)*, **Error! Reference source not found.** *(Bid Direction Letter)* and Section 4.2(b)(viii) (Cash Shortfall).

Section 9.4 Waiver of Conditions. Upon the occurrence of the Closing, any condition set forth in this ARTICLE IX that was not satisfied as of the Closing will be deemed to have been waived for all purposes by the party hereto have the benefit of such condition as of and after the Closing. None of Purchaser or Seller may rely on the failure of any condition set forth in this ARTICLE IX, as applicable, to be satisfied if such failure was caused by such party's failure to

perform any of its obligations under this Agreement, including its obligation to use its reasonable best efforts to consummate the transactions contemplated hereby as required under this Agreement.

ARTICLE X TERMINATION PROCEDURES

Section 10.1 Termination. This Agreement may be terminated and the Sale contemplated in this Agreement may be abandoned at any time prior to the Closing Date, notwithstanding the fact that any requisite authorization and approval of the Sale shall have been received, as follows:

(a) by the mutual written consent of Purchaser, on the one hand, and Seller, on the other hand;

(b) by Purchaser or Seller, if the Closing has not occurred on or prior to February 22, 2025 (the “**End Date**”) (or such later date as provided in the Bidding Procedures Order); *provided*, that Purchaser may agree to extend the End Date in its sole discretion; *provided, further*, that the right to terminate this Agreement under this Section 10.1(b) shall not be available to any party whose breach of this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur by such date;

(c) by Seller, if Purchaser has (i) materially breached any of its material obligations under the Sale Order or (ii) breached any of its obligations under this Agreement and such breach contemplated by this clause (ii) would result in a failure of conditions set forth in Section 9.1 and Section 9.3 to be satisfied and such breach cannot be cured or has not been cured within five (5) Business Days after the delivery of written notice by Seller to Purchaser of such breach;

(d) by Purchaser or Seller, if there shall be any Governmental Order issued by a Governmental Authority of competent jurisdiction or other Law that makes consummation of the Sale illegal or otherwise prohibits, restrains or enjoins the consummation of the Sale and such Governmental Order or other Law shall have become final and non-appealable and remain in effect for five (5) Business Days after notice of such Governmental Order or other Law has been received by Seller and Purchaser; *provided*, that the right to terminate this Agreement under this Section 10.1(d) shall not be available to any party whose breach of this Agreement shall have been the cause of, or shall have resulted in the Governmental Order or other Law prohibits, restrains, or enjoins of the Sale;

(e) by written notice from Seller to Purchaser, if Seller or the board of managers (or similar governing body) of Seller determines that proceeding with the transactions contemplated by this Agreement or failing to terminate this Agreement would be inconsistent with its or such Person’s or body’s fiduciary duties;

(f) by Purchaser or Seller upon the Bankruptcy Court’s approval of Seller’s entry into or pursuit of an Alternative Restructuring Proposal and Seller consummates a resulting Alternative Transaction;

(g) by Purchaser, if Seller has (i) materially breached any of its material obligations under the Sale Order or (ii) breached any of its obligations under this Agreement and such breach contemplated by this clause (ii) would result in a failure of conditions set forth in Section 9.1 and Section 9.2 to be satisfied and such breach cannot be cured or has not been cured within five (5) Business Days after the delivery of written notice by Purchaser to Seller of such breach;

(h) by Purchaser, if the Bankruptcy Case is converted to a case under Chapter 7 of the Bankruptcy Code or is dismissed prior to the Closing, a trustee or examiner with expanded powers is appointed pursuant to the Bankruptcy Code or the Bankruptcy Court enters an Order pursuant to Section 362 of the Bankruptcy Code lifting the automatic stay with respect to any material portion of the Purchased Assets;

(i) by Purchaser, (i) if an Event of Default (as defined in the DIP Order) under the DIP Term Sheet or DIP Order has occurred that gives the secured parties thereunder a right to terminate the DIP Facility and has not been cured or waived and the obligations outstanding under the DIP Facility have been accelerated and such acceleration has not been rescinded within five (5) Business Days after the delivery of written notice by the DIP Lenders of such acceleration or (ii) if the DIP Order or the DIP Term Sheet is modified, amended, reversed, stayed or vacated in any material respect without the consent of Purchaser;

(j) by Purchaser, if for any reason whatsoever, Purchaser is unable to Credit Bid as part of the Purchase Price, in any amount Purchaser deems fit up to the full amount of the DIP Obligations and the Pre-Petition Obligations for the Purchased Assets;

(k) by Purchaser, if the Sale Procedures Order (including the Sale Procedures) or the Sale Order is modified, amended, reversed, stayed or vacated in any material respect without the consent of Purchaser;

(l) by Purchaser, if a final version of the Seller Disclosure Schedule is not delivered by Seller to Purchaser by the Seller Disclosure Schedule Delivery Date as required by Section 7.14(a); or

(m) by Purchaser if the Sale Order has not been entered by the Bankruptcy Court on or before February 7, 2025, and, as of the time of such termination of this Agreement, the Sale Order has not been entered by the Bankruptcy Court.

In the event of termination of this Agreement as permitted by Section 10.1, this Agreement shall become void *ab initio* and of no further force and effect and no party hereto nor any of its Related Parties will have any Liability under this Agreement, except for the provisions of this sentence of Section 10.1, Section 10.2 (relating to Fees and Expenses) and ARTICLE XII, which shall remain in full force and effect; provided, that no such termination shall be deemed to release or relieve any party hereto from any Liability for any Fraud or Willful Breach by such party of the terms and provisions of this Agreement prior to the date of such termination. Nothing in this **Error! Reference source not found.** will be deemed to impair the right of any party hereto to be entitled to specific performance or other equitable remedies to enforce specifically the terms and provisions of this Agreement.

Section 10.2 Fees and Expenses.

(a) Except as otherwise provided herein or therein, all fees and expenses incurred in connection with this Agreement and the other Transaction Documents shall be paid by the party incurring such expenses, whether or not the Sale is consummated, subject to any provision of the DIP Order providing for Seller's payment of the fees and expenses of Purchaser, the Agent, the DIP Lenders or the Pre-Petition Secured Lenders.

(b) This Section 10.2, and the rights and obligations created hereunder, shall survive termination of this Agreement.

**ARTICLE XI
NO SURVIVAL OF REPRESENTATIONS AND WARRANTIES AND CERTAIN
COVENANTS**

Section 11.1 No Survival of Representations and Warranties and Certain Covenants.

None of the representations and warranties of Seller or Purchaser contained in ARTICLE V and ARTICLE VI hereof, respectively, including the Seller Disclosure Schedule or any certificate or instrument delivered in connection herewith at or prior to the Closing, and none of the covenants contained in ARTICLE VII to be performed on or prior to the Closing shall survive the Closing such that no Action or claim for breach of any such representation, warranty, covenant or agreement, detrimental reliance or other right or remedy (whether in contract, in tort or at law or in equity) may be brought with respect thereto after the Closing. The parties' respective covenants and agreements set forth herein that by their specific terms contemplate performance after Closing shall survive the Closing indefinitely unless otherwise set forth herein; *provided*, that nothing herein shall limit the wind-down and liquidation of Seller following the Closing. The parties hereto acknowledge and agree, on their own behalf and on behalf of their respective Related Parties that the agreements contained in this **Error! Reference source not found.** (a) require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing for five years and (b) are an integral part of the transactions contemplated hereby and that, without the agreements set forth in this **Error! Reference source not found.**, none of the parties hereto would enter into this Agreement.

**ARTICLE XII
MISCELLANEOUS**

Section 12.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Bankruptcy Code and, to the extent not inconsistent with the Bankruptcy Code, the laws of the State of New York, without giving effect to conflict of laws principles thereof to the extent that the application of the laws of another jurisdiction would be required thereby.

Section 12.2 Jurisdiction; Forum; Service of Process; Waiver of Jury. With respect to any Action (whether in contract, tort or otherwise) arising out of or relating to this Agreement or the transaction contemplated hereby, Seller, on the one hand, and Purchaser, on the other hand, hereby irrevocably:

(a) consents to the exclusive jurisdiction of the Bankruptcy Court, as the sole judicial forum for the adjudication of any matters arising under or in connection with the

Agreement. After Seller is no longer subject to the jurisdiction of the Bankruptcy Court, Seller, on the one hand, and Purchaser, on the other hand, irrevocably submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York, or in the event (but only in the event) that such United States District Court also does not have jurisdiction over such dispute, any New York State court sitting in the Borough of Manhattan (“**Selected Courts**”) for any Action arising out of or relating to this Agreement or the other Transaction Documents and the transactions contemplated hereby and thereby (and agrees not to commence any Action relating hereto or thereto except in such courts) and waives any objection to venue being laid in the Selected Courts whether based on the grounds of forum non conveniens or otherwise;

(b) consents to service of process in any Action by the mailing of copies thereof by registered or certified mail, postage prepaid, or by recognized international express carrier or delivery service, to Seller, on the one hand, or Purchaser, on the other hand, at their respective addresses referred to in Section 12.5 hereof; *provided, however*, that nothing herein shall affect the right of any party hereto to serve process in any other manner permitted by applicable Law, and

(c) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY PROCEEDING, LITIGATION OR OTHER ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 12.3 Successors and Assigns. This Agreement shall be binding upon Purchaser and, subject to the terms of the Sale Procedures Order (with respect to the matters covered thereby) and the entry and terms of the Sale Order, Seller, and 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 hereto, including any trustee or estate representative appointed in the Bankruptcy Cases or any successor Chapter 7 cases. No assignment of this Agreement may be made by any party at any time, whether or not by operation of law, without, (a) with respect to an assignment by Seller, the prior written consent of Purchaser or (b) with respect to an assignment by Purchaser, the written consent of Seller and, in each case, any attempted assignment or delegation without such prior written consent shall be null and void; *provided, however*, that Purchaser may, without the consent of the other parties hereto, assign any and all of its rights, interests and obligations under this Agreement to one or more Affiliate(s) of Purchaser (including the right to acquire any or all of the Purchased Assets) who have the right to Credit Bid, which assignment, in either case, will not relieve Purchaser of any obligations hereunder; *provided further* that such assignment by Purchaser shall be at no cost, including Taxes, to Seller; and *provided, further*, that Seller may, without the consent of the other parties hereto, assign any and all of its rights, interests and obligations under this Agreement to any trustee, estate representative or other similar Person in connection with the wind-down, liquidation (including any liquidating plan) and dissolution of Seller. Except as specifically provided for herein, only the parties to this Agreement or their permitted assigns shall have rights under this Agreement.

Section 12.4 Entire Agreement; Amendment. This Agreement and the other Transaction Documents constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and supersede all prior agreements relating to the subject matter hereof. Except as expressly provided herein, neither this Agreement nor any term hereof

may be amended, modified, supplemented, waived, discharged or terminated other than by a written instrument signed by Seller and Purchaser expressly stating that such instrument is intended to amend, modify, supplement, waive, discharge or terminate this Agreement or such term hereof. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision hereof (whether or not similar).

Section 12.5 Notices. All notices, requests, consents and other communications hereunder to any party shall be deemed to be sufficient if contained in a written instrument delivered in person or sent by electronic mail (with receipt confirmed (excluding “out of office” or similar automated replies)), nationally recognized overnight courier or first class registered or certified mail, return receipt requested, postage prepaid, addressed to such party at the address set forth below or such other address as may hereafter be designated in writing by such party to the other party:

(a) if to Seller:

Vobev, LLC
5454 W 150 S
Salt Lake City, UT 84104
Attention: Alan Boyko
Email: alan.boyko@fticonsulting.com

with a copy (that shall not constitute notice) to:

Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036
Attention: Gregg M. Galardi, Ellen C. Wheeler
email: Gregg.Galardi@ropesgray.com; Ellen.Wheeler@ropesgray.com

(b) if to Purchaser, to:

c/o Ares Capital Corporation
245 Park Avenue, 44th Floor
New York, NY 10167
Attention: Brian S. Goldman
Email: agencymiddleoffice@aresmgmt.com;
MiddleOfficeDL@aresmgmt.com;
aresagency@alterdomus.com

with copies (that shall not constitute notice) to:

Proskauer Rose LLP
11 Times Square
New York, NY 10036
Attention: Justin Breen, Charles Dale, Christopher Ahn

Email: jbreen@proskauer.com; cdale@proskauer.com;
cahn@proskauer.com

All such notices, requests, consents and other communications shall be deemed to have been given or made if and when delivered personally or by overnight courier to the parties at the above addresses or sent by electronic transmission, with confirmation received, to the e-mail addresses specified above (or at such other address for a party as shall be specified by like notice).

Section 12.6 Reserved.

Section 12.7 Delays or Omissions. Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to Seller or Purchaser upon any breach or default of any party under this Agreement, shall impair any such right, power or remedy of Seller or Purchaser nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Seller or Purchaser of any breach or default under this Agreement, or any waiver on the part of any such party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law, in equity, or otherwise afforded to Seller or Purchaser shall be cumulative and not alternative.

Section 12.8 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or by electronic transmission in .pdf format or other electronic method shall be as effective as delivery of a manually executed counterpart of this Agreement.

Section 12.9 Severability. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provisions; *provided* that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party. Any provision held invalid or unenforceable only in part or degree will remain in full force to the extent not held invalid or unenforceable.

Section 12.10 Titles and Subtitles. The table of contents, titles, subtitles, and section headings used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

Section 12.11 No Public Announcement. Absent the prior written consent of (a) with respect to a press release or public announcement or statement by Seller (or any Affiliate thereof), the prior written consent of Purchaser or (b) with respect to a press release or public announcement or statement by Purchaser, the written consent of Seller, neither Seller nor Purchaser shall make any press release or public announcement or statement concerning the transactions contemplated by the Transaction Documents, except as and to the extent that any such party shall be obligated

to make any such disclosure by this Agreement, by applicable Law or as necessary for any party to enforce its rights hereunder or thereunder, and then only after giving the other party(ies) hereto, to the extent reasonable and practicable, reasonably adequate time to review such disclosure and consider in good faith the comments of the other party(ies) hereto and consultation as to such comments with such party(ies) as to the content of such disclosure; *provided, however*, that nothing in this Section 12.11 shall restrict the parties hereto from making disclosures to the Bankruptcy Court or in filings in the Bankruptcy Court; *provided*, that, to the extent practicable, the disclosing party provides the non-disclosing party with drafts of all such filings or disclosures concerning the transactions contemplated by the Transaction Documents, to be delivered to such non-disclosing party at least two (2) Business Days in advance of any such filing or disclosure and that the disclosing party shall consider in good faith any comments made by the non-disclosing party to such filings or disclosures. Notwithstanding anything to the contrary herein, the parties hereto and each of their respective employees, representatives or other agents, are permitted to disclose to any and all Persons, without limitations of any kind, the tax treatment and tax structure of the transactions and all materials of any kind (including opinions or other tax analyses) that are or have been provided to such parties related to such tax treatment and tax structure; *provided, however*, that the foregoing permission to disclose the tax treatment and tax structure does not permit the disclosure of any information that is not relevant to understanding the tax treatment or tax structure of the transactions (including the identity of any party and the amounts paid in connection with the transactions); *provided, further, however*, that the tax treatment and tax structure shall be kept confidential to the extent necessary to comply with applicable Laws. Notwithstanding the foregoing, Purchaser shall not be restricted from making any public announcements or issuing any press releases or other statements after the Closing regarding the transactions contemplated by this Agreement (including that Purchaser and its Affiliates that are affiliated with investment funds shall not be restricted from disclosing the transactions or their terms, as applicable, to any of their respective investors or financing sources or potential investors or financing sources). Notwithstanding anything to the contrary herein, for so long as the Agent is subject to periodic public filing requirements under the rules and regulations promulgated by the Securities and Exchange Commission, Purchaser and the Agent shall be permitted to disclose the nature and existence of their investment pursuant hereto in accordance with such rules and regulations.

Section 12.12 Specific Performance. Seller and Purchaser agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached, including if any of the parties fails to take any action required of it hereunder to consummate the transactions contemplated by this Agreement. It is accordingly agreed that (a) Seller or Purchaser will be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the parties' respective covenants, obligations and agreements under this Agreement that survive the Closing, without the requirement of posting a bond or other security, and without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement, and (b) the right of specific performance and other equitable relief is an integral part of the transactions contemplated by this Agreement and without that right, neither Seller nor Purchaser would have entered into this Agreement. The remedies available to the parties hereto pursuant to this Section 12.12 will be in addition to any other remedy to which they were entitled at law or in equity, and the election to pursue an injunction or specific performance will

not restrict, impair or otherwise limit any party from seeking to collect or collecting damages. In no event will this Section 12.12 be used, alone or together with any other provision of this Agreement, to require any Seller to remedy any breach of any representation or warranty of any Seller made herein.

Section 12.13 Non-Recourse. All Actions, claims, obligations, liabilities, or causes of action that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to this Agreement, the negotiation, execution or performance of this Agreement (including any representation or warranty made in connection with or as an inducement to this Agreement) or the transactions contemplated hereby may be made only against (and are those solely of) the Persons that are expressly identified as parties to this Agreement. No other Person, including any of their Affiliates, directors, officers, employees, incorporators, members, partners, managers, stockholders, agents, attorneys, or representatives of, or any financial advisors or lenders to any of the foregoing shall have any liabilities for any claims, causes of action, obligations, or liabilities arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or its negotiation, execution, performance, or breach.

Section 12.14 Third Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third party beneficiary rights upon any other Person.

Section 12.15 Seller Disclosure Schedules. The Parties acknowledge and agree that (a) the Seller Disclosure Schedules to this Agreement may include certain items and information solely for informational purposes for the convenience of Purchaser and (b) the disclosure by Seller of any matter in the Seller Disclosure Schedules shall not be deemed to constitute an acknowledgment by Seller that the matter is required to be disclosed by the terms of this Agreement or that the matter is material. If any schedule in the Seller Disclosure Schedules discloses an item or information, the matter shall be deemed to have been disclosed in all other schedules of the Seller Disclosure Schedules for which such information is reasonably apparent on its face to be responsive to such schedules, notwithstanding the omission of an appropriate cross-reference to such other schedules.

Section 12.16 No Right of Set-Off. Purchaser, on its own behalf and on behalf its Related Parties and its and their respective successors and permitted assigns, hereby waives any rights of set-off, netting, offset, recoupment or similar rights that Purchaser, any of its Related Parties or any of its or their respective successors and permitted assigns has or may have with respect to the payment of the Purchase Price or any other payments to be made by Purchaser pursuant to this Agreement or any Transaction Document.

Section 12.17 Fiduciary Obligations. Nothing in this Agreement, or any document related to the transactions contemplated hereby, will require any Seller or any of its Related Parties, managers, officers or members, in each case, in their capacity as such, to take any action, or to refrain from taking any action, to the extent inconsistent with their fiduciary obligations or applicable Law. For the avoidance of doubt, Seller retains the right to pursue any transaction or restructuring strategy that, in Seller's business judgment, will maximize the value of its estate.

[SIGNATURE PAGES TO FOLLOW]

SELLER:

DocuSigned by:

 By: D310029A4DD04F3...
 Name: Alan Boyko
 Title: Chief Transformation Officer

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed as of the date first above written.

PURCHASER:

ADONIS ACQUISITION HOLDINGS LLC

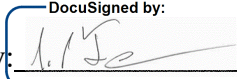
By:  DocuSigned by:
Name: Ian Fitzgerald
Title: Authorized Signatory

EXHIBIT A

FORM OF SALE PROCEDURES ORDER

[See Attached]

Prepared and Submitted by:

Michael R. Johnson (7070)
Jeffrey W. Shields (2948)
David H. Leigh (9433)
Mel Jones-Cannon (19286)
RAY QUINNEY & NEBEKER P.C.
36 South State Street, 14th Floor
Salt Lake City, Utah 84111
Tel: (801) 532-1500
Email: mjohnson@rqn.com
Email: jshields@rqn.com
Email: dleigh@rqn.com
Email: mjonescannon@rqn.com

Eric P. Schriesheim (admitted *pro hac vice*)
ROPES & GRAY LLP
191 North Wacker Drive
Chicago, Illinois 60606
Telephone: (312) 845-1200
Facsimile: (312) 845-5500
E-mail: eric.schriesheim@ropesgray.com

*Proposed Counsel to the Debtor and Debtor
in Possession*

Gregg M. Galardi (admitted *pro hac vice*)
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, New York 10036
Telephone: (212) 596-9000
Facsimile: (212) 596-9090
E-mail: gregg.galardi@ropesgray.com

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF UTAH CENTRAL DIVISION**

In re:

VOBEV, LLC, a Utah limited liability
company,

Debtor-in-Possession.

Bankruptcy Case No. 24-26346 (JTM)

Chapter 11

Honorable Joel T. Marker
[Filed Electronically]

**ORDER (I)(A) APPROVING CERTAIN BIDDING
PROCEDURES AND THE FORM AND MANNER OF
NOTICE THEREOF, (B) APPROVING THE DEBTOR'S ENTRY INTO
THE STALKING HORSE APA, (C) APPROVING THE FORM AND MANNER
OF NOTICE OF THE SALE HEARING; AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”) of the above-captioned debtor and debtor in possession (the “Debtor”) for, *inter alia*, the entry of an order (this “Order”)¹: (i) scheduling a hearing (the “Sale Hearing”) on approval of the proposed sale (the “Sale”) of all or substantially all of the Debtor’s assets (the “Assets”) free and clear of all Liens other than Assumed Liabilities to the Stalking Horse Purchaser and the assumption and assignment of certain executory contracts and unexpired leases (each, a “Purchased Contract” and collectively, the “Purchased Contracts”); (ii) authorizing and approving certain bidding procedures for the Sale (collectively, the “Bidding Procedures,” a copy of which is attached as **Exhibit 1** to this Order), and the form and manner of notice thereof, including the Sale Notice; (iii) authorizing the Debtor’s entry into the Stalking Horse APA with the Stalking Horse Purchaser; (iv) scheduling an auction for the Assets (the “Auction”); and (v) granting related relief; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required except as set forth herein; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Motion; and the Bidding Procedures Hearing (as defined herein) having been held; and the Court having found and determined that the relief set forth herein is in the best interests of the Debtor, its estate and creditors and all parties in

¹ Capitalized terms used but not defined herein shall have the meanings given them in the Bidding Procedures, or to the extent not defined therein, the Motion, the Stalking Horse APA, or the DIP Order.

interest, and that the legal and factual bases set forth in the Motion and the evidence adduced at the Bidding Procedures Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:²

A. This Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334.

B. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. The statutory and legal predicates for the relief requested in the Motion and provided for herein are sections 105, 363, and 365 of the Bankruptcy Code, Rules 2002, 6004, 6006, and 9014 of the Bankruptcy Rules.

D. In the Motion and at the hearing on the relief set forth herein (the “Bidding Procedures Hearing”), the Debtor demonstrated that good and sufficient notice of the relief granted by this Order has been given and no further notice is required except as otherwise provided for herein. A reasonable opportunity to object or be heard regarding the relief granted by this Order (including, without limitation, with respect to the Bidding Procedures) has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

E. The Debtor has articulated good and sufficient business reasons for the Court to approve the Bidding Procedures attached hereto as **Exhibit 1**. The Bidding Procedures are fair, reasonable, and appropriate and are designed to maximize the value of the proceeds of one or more Sale Transactions of all or substantially all of the Debtor’s Assets. The Bidding Procedures were

² The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. 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.

negotiated in good faith and at arm's length and are reasonably designed to promote a competitive and robust bidding process to generate the greatest level of interest in the Debtor's Assets. The process for selecting the Stalking Horse Bidder, respectively, was fair and appropriate under the circumstances and in the best interests of the Debtor's estate.

F. The Sale Notice, in substantially the form attached to this Order as Exhibit 2, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of this Order, the Bidding Procedures, the Auction, the Sale, and the Sale Hearing, and any and all objection deadlines related thereto, and no other or further notice is required of the foregoing.

G. The Debtor has articulated good and sufficient business reasons for the Court to approve the Bidding Procedures. The Bidding Procedures are: (i) fair, reasonable, and appropriate; and (ii) designed to maximize recovery with respect to the Sale. The Bidding Procedures were negotiated in good faith and at arm's-length and are reasonably designed to promote a competitive and robust bidding process to generate the greatest level of interest in the Debtor's Assets. The process for selecting the Stalking Horse Purchaser was fair and appropriate under the circumstances and in the best interests of the Debtor's estate.

H. The Stalking Horse APA represents the highest or otherwise best offer the Debtor has received to date to purchase the Assets designated for purchase thereunder. The Stalking Horse APA provides the Debtor with the opportunity to sell such Assets in a manner designed to preserve and maximize their value and provides a floor for a further marketing and auction process. Without the Stalking Horse APA, the Debtor is at significant risk of realizing a lower price for its Assets. The Stalking Horse Purchaser shall act as a "stalking horse bidder" pursuant to the Stalking Horse APA and shall be subject to higher or otherwise better offers in accordance with the Stalking Horse

APA and the Bidding Procedures. The Stalking Horse Bid will enable the Debtor to minimize disruption to the Debtor's restructuring and/or sale process and secure a fair and adequate Baseline Bid for the Purchased Assets at the Auction(s) (if any). Pursuit of the Stalking Horse Purchaser as a "stalking horse bidder" and the Stalking Horse APA as a "stalking horse purchase agreement" is in the best interests of the Debtor and the Debtor's estate and its creditors, and it reflects a sound exercise of the Debtor's business judgment.

I. The Debtor has articulated good and sufficient business reasons for the Court to approve the Assumption Notice (defined below) attached hereto as **Exhibit 4**. The Assumption Notice is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Debtor's potential assumption and assignment of the Purchased Contracts, as well as any and all objection deadlines related thereto, and no other or further notice is required of the foregoing.

K. Entry of this Order is in the best interests of the Debtor, its estate and creditors and all other interested parties.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Those portions of the Motion seeking approval of (a) the Debtor's entry into the Stalking Horse APA (subject to higher or otherwise better offers in accordance with this Order), (b) the Bidding Procedures substantially in the form attached to this Order as **Exhibit 1**, (c) the date and time of the Sale Hearing, and (d) the noticing and objection procedures related to each of the foregoing, including, without limitation, the notice of the Sale and the Sale Hearing, substantially in the form attached to this Order as **Exhibit 2** (the "Sale Notice"), the notice of the Successful Bidder in the form attached to this Order as **Exhibit 3** (the "Notice of Successful Bidder"), and the notice of the Debtor's potential assumption and assignment of the Purchased

Contracts, substantially in the form attached to this Order as **Exhibit 4** (the “Assumption Notice”), (subclauses (a) - (d) above, collectively, the “Bidding and Auction Process”), are hereby GRANTED to the extent set forth herein.

2. Any objections to the Motion as it pertains to the Bidding and Auction Process or the relief granted by this Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits with prejudice.

3. The Bidding Procedures are hereby approved. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being this Court’s intent that the Bidding Procedures are approved in their entirety, as if fully set forth in this Order. The Debtor is hereby authorized to conduct the Auction pursuant to the terms of the Bidding Procedures and this Order.

4. The Debtor shall have the right, in its reasonable discretion, to withhold or limit access to any due diligence information that the Debtor determines is business-sensitive or otherwise not appropriate for disclosure to an Acceptable Bidder. The Debtor and its estate shall be authorized to provide due diligence information to Acceptable Bidders.

5. For all purposes under the Bidding Procedures: (a) the Stalking Horse Purchaser shall be considered a Qualified Bidder, and the Stalking Horse APA shall be considered a Qualified Bid; (b) the Stalking Horse Purchaser is, and will be deemed to be, a Qualified Bidder for all purposes under the Bidding Procedures, without regard to any of the requirements or conditions set forth herein and without any other or further action by the Stalking Horse Purchaser; and (c) in

determining whether the Acceptable Bidders constitute Qualified Bidders, the Debtor may consider a combination of bids for the Assets.

6. The Bidding Procedures shall apply to the Acceptable Bidders, the Qualified Bidders, the submission, receipt, and analysis of all bids relating to the Sale, and the conduct of the Sale and the Auction.

7. The Debtor's decision to assume and assign the Purchased Contracts to the Stalking Horse Purchaser or, in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, is subject to this Court's approval and the closing of the Sale. Accordingly, absent this Court's approval and the closing of the Sale, the Purchased Contracts shall not be deemed assumed or assumed and assigned, and shall in all respects be subject to further administration by the Debtor and its estate under the Bankruptcy Code in connection with this chapter 11 case (the "Chapter 11 Case").

8. The Assumption Notice is: (a) reasonably calculated to (i) provide sufficient, effective notice to all counterparties and any other affected parties of the Debtor's intent to assume and assign to the Stalking Horse Purchaser or, in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, some or all of the Purchased Contracts, and (ii) afford the counterparties the opportunity to exercise any rights affected by the Motion and the relief granted by this Order pursuant to Bankruptcy Rules 2002(a)(2), 6004, and 6006; and (b) hereby approved.

9. The inclusion of a contract, lease or other agreement on the Sale Notice or Assumption Notice shall not constitute or be deemed a determination or admission by the Debtor and its estate or any other party in interest that such contract, lease or other agreement is, in fact,

an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights of the Debtor and its estate with respect thereto shall be reserved.

10. The Sale Notice, the Assumption Notice, any Supplemental Assumption Notice, the Bidding Procedures, the Auction, and the Sale Hearing, and the objection periods associated with each of the foregoing are reasonably calculated to provide notice to any affected party and afford the affected party the opportunity to exercise any rights affected by the Motion as it relates to the Bidding Procedures, the Auction, the Sale, the Sale Hearing, and the assumption and assignment to the Stalking Horse Purchaser or, in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, of the Purchased Contracts pursuant to Bankruptcy Rules 2002(a)(2), 6004, and 6006, and such notice and objection periods are hereby approved.

11. The Sale Notice is approved. Within three (3) business days of the entry of this Order or as soon as reasonably practicable thereafter, the Debtor shall the Sale Notice on the following parties or their respective counsel, if known: (a) the U.S. Trustee; (b) counterparties to the executory contracts and unexpired leases of nonresidential property (the “Contract Counterparties”), if known; (c) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or interest in the Assets; (d) the Internal Revenue Service; (e) all applicable state and local taxing authorities; (f) all the Debtor’s other creditors; (g) each governmental agency that is an interested party with respect to the proposed Sale Transaction; and (h) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002.

12. The Assumption Notice is approved. Within three (3) business days of the entry of this Order or as soon as reasonably practicable thereafter, the Debtor shall serve the Assumption

Notice by regular mail on counterparties to Purchased Contracts to provide notice of the potential assumption and assignment of their Purchased Contracts by the Successful Bidder.

13. The Debtor shall post the Sale Notice, the Assumption Notice, any Supplemental Assumption Notice, and this Order on the website of the Debtor's claims and noticing agent. Within seven (7) business days of the entry of this Order or as soon as reasonably practicable thereafter, the Debtor shall cause the Sale Notice to be published once in the national edition of *USA Today* or other nationally circulated newspaper, with any modifications necessary for ease of publication. Publication of the Sale Notice as described in this Order conforms to the requirements of Bankruptcy Rules 2002(l) and 9008 and is reasonably calculated to provide notice to any affected party, including any Potential Bidders, and afford the affected party the opportunity to exercise any rights affected by the Motion and the relief granted by this Order.

14. Notwithstanding anything contained herein to the contrary, the right of any party in interest, including the Official Committee of Unsecured Creditors, to object to approval of the Sale or the relief requested in connection with the Sale is preserved in all respects. Any objections to the Sale or the relief requested in connection with the Sale, including any objection to the sale of any Purchased Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, the identity of the Stalking Horse Purchaser, or the adequate assurance of future performance by the Stalking Horse Purchaser but not including objections related to cure amounts for the Purchased Contracts or general objections to the assumption and assignment of the Purchased Contracts (each, a "Sale Objection"), must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of this Court, 351 South West Temple, Salt Lake City, Utah 84101 (the "Clerk"), and proof of service of such Sale Objection upon the Objection

Notice Parties (as defined in the Sale Notice) shall be filed with the Court as and when required by the Local Rules; and (e) be served upon the Objection Notice Parties. Sale Objections must be filed with the Clerk **on or before 4:00 p.m. (M.T.) on January 27, 2025** if there is no Auction and **on or before 4:00 p.m. (M.T.) on January 29, 2025** if there is an Auction.

15. If a Sale Objection is not filed and served on or before the applicable Sale Objection Deadline in accordance with the requirements in the foregoing paragraphs, the objecting party may be barred from objecting to the Sale and being heard at the Sale Hearing, and this Court may enter the Sale Order without further notice to such party.

16. Failure to file a Sale Objection on or before the applicable Sale Objection Deadline (a) may forever bar the assertion, whether at any Sale Hearing or thereafter, of any objection to the Motion, to entry of the Sale Order, and to the consummation and performance of the Sale contemplated by the Stalking Horse APA or any alternative asset purchase agreement (an “Alternative APA”) with a Successful Bidder other than the Stalking Horse Purchaser, and (b) for purposes of section 363(f)(2) of the Bankruptcy Code, shall be deemed to be “consent” to entry of the Sale Order and consummation of the Sale and all transactions related thereto.

17. As part of its bid, each Qualified Bidder must provide the Debtor, the other Bidding Procedures Notice Parties, and the Consultation Parties information supporting the Qualifying Bidder’s ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code (the “Adequate Assurance Information”), including (a) the Qualifying Bidder’s financial wherewithal and willingness to perform under any contracts and leases that are assumed and assigned to such Qualifying Bidder; and (b) a contact person for the proposed assignee that the applicable counterparty may directly contact in connection with the adequate assurance of future

performance. In the event that a Qualifying Bidder (other than the Stalking Horse Purchaser) is a newly formed acquisition entity or the like, the financial and other information supporting the Qualified Bidder's financial wherewithal shall include financial and other information supporting the financial wherewithal of the Qualified Bidder's parent company or sponsor. Adequate Assurance Information shall be made available to contract counterparties within 48 hours of the Bid Deadline upon written request to the Debtor's counsel (email being sufficient).

18. Any party in receipt of Adequate Assurance Information under this Order shall review the Adequate Assurance Information received on a confidential basis and shall not disclose the Adequate Assurance Information except as expressly provided in this Order and the Bidding Procedures. Such counterparty may not use or disclose, except to representatives, attorneys, advisors and financing sources (collectively, "Representatives"), any confidential Adequate Assurance Information for any purpose other than: (a) evaluating whether adequate assurance of future performance as required under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code has been provided; and (b) in support of any objection (the "Assignment Objection") (subject to the limitations on disclosure set forth herein) by such counterparty relating to adequate assurance of future performance. Any Assignment Objection that includes confidential, non-public Adequate Assurance Information must be filed under seal unless disclosure of such confidential, non-public information is authorized by the Debtor and the applicable assignee(s). The party filing an Assignment Objection under seal shall follow the procedures for the same set forth in Local Rule 5003-2(c). The unredacted versions of such Assignment Objections shall be served upon the Debtor, the other Bidding Procedures Notice Parties, the Consultation Parties and the U.S. Trustee; *provided further* that all rights of all parties in interest in the Chapter 11 Case are reserved to oppose the filing under seal of any such

information and to seek any other relief from this Court with respect to such matter. Any Representative receiving Adequate Assurance Information shall be notified and shall agree to be bound by the restrictions set forth in this Order. Assignment Objections, (a) in the event the Stalking Horse Purchaser is the Successful Bidder, must be filed with the Clerk by the Sale Objection Deadline and, (b) in the event the Successful Bidder is not the Stalking Horse Purchaser, need not be written and filed and may be raised at the Sale Hearing.

19. The Stalking Horse Purchaser shall be deemed to be a Qualified Bidder and the Stalking Horse APA is deemed to be a Qualified Bid. The Stalking Horse Purchaser is credit bidding pursuant to 11 U.S.C. § 363(k), and thus is not required to make a Deposit with the Debtor. The Stalking Horse Purchaser shall have the unqualified right at any time to credit bid on a dollar-for-dollar basis up to the full amount of the Prepetition First Lien Obligations and the DIP Obligations. Notwithstanding the foregoing, nothing in this Order shall abridge the Challenge Period (as defined in the Final DIP Order).

20. If no timely Qualified Bids other than the Stalking Horse APA are submitted on or before the Bid Deadline, then on or before **January 24, 2025 at 4:00 p.m. (M.T.)** the Debtor shall file a notice on the docket of the Chapter 11 Case indicating that an Auction will not be held and shall request at the Sale Hearing that this Court approve the Stalking Horse APA and the transactions contemplated thereunder. If the Debtor timely receives one or more Qualified Bids other than the Stalking Horse APA, then the Debtor shall conduct the Auction on **January 27, 2025 at 10:00 a.m. (M.T.)**, at the offices of Ropes & Gray LLP, 1211 6th Avenue, New York, NY 10036, or virtually via telephone and/or video conference pursuant to information to be timely provided by the Debtor to the Auction Participants (as defined herein). Only the Debtor, the Qualified Bidders (including the Stalking Horse Purchaser), the Consultation Parties, the U.S.

Trustee, and any creditors of the Debtor, together with the professional advisors to each of the foregoing parties, may attend the Auction (collectively, the “Auction Participants”); *provided* that any such creditors provide Debtor’s counsel with written notice of their intent to attend the Auction no later than 5:00 p.m. (M.T.) two (2) days prior to the Auction.

21. The Debtor shall have until the Sale Hearing to file and serve a reply to any objection filed in connection with the Sale, including any Sale Objection or Assignment Objection.

22. The Debtor and Cigna Health and Life Insurance Company (“Cigna”) are parties to an Administrative Services Contract and a Stop Loss Policy that facilitates the Debtor’s self-insured employee healthcare benefits (jointly, the “Cigna Employee Benefits Agreements”). Notwithstanding anything in this Order to the contrary, unless Cigna and the Debtor agree otherwise, the Debtor shall, no later than two (2) business days prior to the Sale Hearing, provide to Cigna, through its counsel, written notice of Debtor’s irrevocable (subject to closing of the proposed Sale) decision as to whether or not the Debtor proposes to assume and assign the Cigna Employee Benefits Agreements to the Successful Bidder as part of the proposed Sale.

23. The Sale Hearing shall be held in this Court on **February 5, 2025 at 2:00 p.m. (M.T.)**, unless otherwise determined by this Court. The Sale Hearing may be adjourned by the Debtor, in consultation with the Stalking Horse Purchaser and the Consultation Parties or, in the event the Stalking Horse Purchaser is not the Successful Bidder, then in consultation with the DIP Agent, and the Successful Bidder, from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a hearing agenda or notice on the docket of the Chapter 11 Case.

24. All persons and entities that participate in the Auction or bid for any Asset during the sale process shall be deemed to have knowingly and voluntarily (a) consented to the core jurisdiction of the Court to enter any order related to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order; (b) waived any right to a jury trial in connection with any disputes relating to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order; and (c) consented to the entry of a final order or judgment in connection with any disputes relating to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order, if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties.

25. In the event that there is a conflict between this Order or the Bidding Procedures, on the one hand, and the Motion, the Stalking Horse APA, or an Alternative APA, on the other hand, this Order and the Bidding Procedures shall control and govern. If there is a conflict between this Order and the Bidding Procedures, this Order shall control and govern. If there is a conflict between this Order or the Bidding Procedures, on the one hand, and any notice served in connection with the Motion or this Order, on the other hand, this Order and the Bidding Procedures shall control and govern.

26. Prior to mailing the Assumption Notice, any Supplemental Assumption Notice, and the Sale Notice, the Debtor may fill in, or cause to be filled in, any missing dates and other information, correct any typographical errors, conform the provisions thereof to the provisions of this Order, and make such other, non-material changes as the Debtor deems necessary or appropriate.

27. This Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004(h) or 6006(d) or any other provision of the Bankruptcy Code, the Bankruptcy Rules or the Local Rules is expressly waived. The Debtor is not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and may, in their sole discretion and without further delay, take any action and perform any act authorized or approved under this Order.

28. The Debtor is authorized to take all steps necessary or appropriate to implement the relief granted in this Order.

29. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation or interpretation of the Order.

-----**END OF DOCUMENT**-----

EXHIBIT B

FORM OF SALE ORDER

[See Attached]

Order Prepared and Submitted by:

Michael R. Johnson (7070)
Jeffrey W. Shields (2948)
David H. Leigh (9433)
Austin C. Nate (17789)
RAY QUINNEY & NEBEKER P.C.
36 South State Street, 14th Floor
Salt Lake City, Utah 84111
Tel: (801) 532-1500
Email: mjohnson@rqn.com
Email: jshields@rqn.com
Email: dleigh@rqn.com
Email: anate@rqn.com

Eric P. Schriesheim (admitted *pro hac vice*)
ROPES & GRAY LLP
191 North Wacker Drive
Chicago, Illinois 60606
Telephone: (312) 845-1200
Facsimile: (312) 845-5500
E-mail: eric.schriesheim@ropesgray.com

*[Proposed] Counsel to the Debtor and Debtor
in Possession*

Gregg M. Galardi (admitted *pro hac vice*)
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, New York 10036
Telephone: (212) 596-9000
Facsimile: (212) 596-9090
E-mail: gregg.galardi@ropesgray.com

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF UTAH CENTRAL DIVISION**

In re:

VOBEV, LLC, a Utah limited liability
company,

Debtor-in-Possession.

Bankruptcy Case No. 24-26346 (JTM)

Chapter 11

Honorable Joel T. Marker

[Filed Electronically]

**ORDER (I) APPROVING THE SALE OF SUBSTANTIALLY ALL
OF THE DEBTOR’S ASSETS FREE AND CLEAR OF ALL LIENS,
CLAIMS, INTERESTS, AND ENCUMBRANCES, (II) APPROVING THE
DEBTOR’S ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES, AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)¹ of the above-captioned debtor and debtor-in-possession (the “Debtor”) pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (as amended, the “Bankruptcy Code”), Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2002-1 and 9013-1 for entry of an order (this “Sale Order”) (a) authorizing and approving that certain *Asset Purchase Agreement*, dated as of January 6, 2025, entered into by and between the Debtor, as seller (the “Seller”) and Adonis Acquisition Holdings LLC, as purchaser (together with its designees and assigns, the “Purchaser”), a copy of which is attached to the *Notice of Filing of [Stalking Horse APA]* [Docket No. [___]] (the “Stalking Horse APA”), (b) authorizing and approving the sale of substantially all of the Debtor’s assets (the “Purchased Assets”) to the Purchaser pursuant to the Stalking Horse APA (the “Sale”) free and clear of all claims, liens, interests, and encumbrances, (c) authorizing and approving the assumption and assignment of the Purchased Contracts (as defined below) to the Purchaser, and (d) granting related relief; and the Court having conducted a hearing on January 9, 2025 and having entered that certain *Order (I)(A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Approving the Debtor’s Entry Into the Stalking Horse APA, (C) Approving the Form and Manner of Notice of the Sale Hearing; and (II) Granting Related Relief* [Docket No. [___]] (the “Bidding Procedures Order”) approving, among other things, the Bidding Procedures, the Sale Notice, the Notice of Successful

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion, the Bidding Procedures Order (as defined below), or the Stalking Horse APA (as defined below), as applicable.

Bidder, the procedures for assumption and assignment of Purchased Contracts in connection with the Sale, and authorizing the Debtor to enter into the Stalking Horse APA; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the 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 the Court having found that the relief requested in the Motion, as further explained and supported by the First Day Declaration, the Popehn Declaration, and the *Declaration of [] in Support of the Sale Transaction Between the Debtor and the Stalking Horse Purchaser* [Docket No. []], is in the best interests of the Debtor's estate, its creditors, and other parties in interest; and the Debtor having determined that the highest and otherwise best offer for the Purchased Assets was made by the Purchaser pursuant to the Stalking Horse APA; and the Court having conducted a hearing on February [5], 2025 (the "Sale Hearing"), at which time all parties in interest were offered an opportunity to be heard with respect to the Sale and to consider the approval of the Sale pursuant to the terms and conditions of the Stalking Horse APA, and the Court having considered: (i) the Motion and any objections thereto, (ii) the Sale, (iii) the arguments of counsel made, and evidence adduced, related thereto, and (iv) the record of the Sale Hearing held before the Court; all parties in interest having been heard, or having had the opportunity to be heard, regarding the approval of the Stalking Horse APA and the Sale and the other transactions contemplated by the Stalking Horse APA; and this Court having found that adequate and reasonable notice of the Sale, the relief requested by the Motion as set forth in this Sale Order, and the Sale Hearing has been provided to all entities required to be served in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules; and the Court having determined

that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor; it is hereby **ORDERED THAT**:²

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this chapter 11 case pursuant to Bankruptcy Rule 9014.

B. 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.

C. This Court has jurisdiction over the Motion and over the property of the Debtor, including the Purchased Assets to be sold, transferred, and conveyed pursuant to the Stalking Horse APA, pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this chapter 11 case and the Motion in this District and Court is proper under 28 U.S.C. §§ 1408 and 1409.

D. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court finds that there is no just reason for delay in the implementation of this Sale Order, and directs immediate entry of judgment as set forth herein.

² All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Motion are hereby incorporated herein to the extent not otherwise inconsistent with the express terms of this Sale Order.

E. The Debtor's rights, title and interest in the Purchased Assets constitute property of the Seller's bankruptcy estate and title thereto is vested in the Seller's bankruptcy estate within the meaning of section 541(a) of the Bankruptcy Code.

F. The statutory bases for the relief requested in the Motion and provided for herein are sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006.

G. On December 9, 2024 (the "Petition Date"), the Debtor filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code, commencing this chapter 11 case. Since the Petition Date, the Debtor has continued to operate its business and manage its property as debtor-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

H. This Court previously entered the Bidding Procedures Order: (i) approving the Bidding Procedures in connection with the sale of all or substantially all of the Debtor's assets; (ii) approving the Debtor's entry into the Stalking Horse APA, subject to higher or otherwise better offers submitted in accordance with the Bidding Procedures, naming the Purchaser as Stalking Horse Purchaser; (iii) approving the form and manner of notice of the proposed Sale, the Stalking Horse APA, the Bidding Procedures, the Auction, and the Sale Hearing; (iv) approving procedures for the assumption and assignment of the Purchased Contracts in connection with the Sale, and the form and manner of the notice thereof; (v) scheduling certain dates with respect thereto; and (vi) granting certain related relief.

I. As evidenced by the affidavits or certificates of service and publication previously filed with the Court,³ demonstrated by the evidence presented at, and based on the representations of counsel at the Sale Hearing, due, proper, timely, adequate, and sufficient notice regarding the

³ Docket Nos. [].

Motion, the Sale Hearing, the Auction, the Sale, and the assumption and assignment pursuant to this Sale Order and the Stalking Horse APA of the executory contracts and unexpired leases to be assumed and assigned to the Purchaser at Closing (whether or not deemed to be executory contracts or unexpired leases under the Stalking Horse APA, such contracts and leases designated as Assigned Contracts and Assigned Leases under the Stalking Horse APA in the Purchaser's sole discretion shall collectively be referred to herein as the "Purchased Contracts") has been provided in accordance with sections 102(1), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014 and in compliance with the Bidding Procedures Order, to each party entitled to such notice, including, as applicable: (1) the U.S. Trustee; (2) counsel to the Creditors' Committee; (3) counsel to the Purchaser; (4) all parties known by the Debtor to assert a lien on any of the Purchased Assets; (5) all persons known or reasonably believed, after reasonable inquiry, to have asserted a lien, encumbrance, claim, or any other interest in any of the Purchased Assets; (6) all persons known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the assets of the Debtor from the six months prior to the Petition Date to the present; (7) the Office of the United States Attorney for the District of Utah; (8) the Office of the Attorney General in each state in which the Debtor operates; (9) the Office of the Secretary of State in each state in which the Debtor operates or is organized; (10) all taxing authorities having jurisdiction over any of the Purchased Assets, including the Internal Revenue Service; (11) the Debtor's other known creditors and equity security holders; (12) all counterparties to the Purchased Contracts; (13) all parties set forth in the Debtor's master service list and creditor matrix in this chapter 11 case; and (14) all other parties that had filed a notice of appearance and demand for service of papers in this chapter 11 case as of the service date of the Bidding Procedures Order. With respect to entities whose identities are not reasonably ascertained

by the Debtor, publication of the Sale Notice once in the [____], on [____], 2025 as evidenced by the affidavit of publication filed by the Debtor at Docket No. [____], was, and is deemed, sufficient and reasonably calculated under the circumstances to reach such entities. The notices described above, in the Motion, and in the Bidding Procedures Order were good, sufficient, and appropriate under the circumstances, and reasonably calculated to reach and apprise all known and unknown holders of liens, claims, and encumbrances, and no other or further notice of the Motion, the Auction, the Sale, the Sale Hearing, the potential assumption and assignment of the Purchased Contracts or the related Cure Amounts (as defined below) is, or shall be, required.

J. The Sale Notice provided all interested parties with timely and proper notice of the Sale, Bid Deadline, Auction, and Sale Hearing. Further, a reasonable opportunity to object to and to be heard regarding the relief granted by this Sale Order has been afforded to parties entitled to notice pursuant to Bankruptcy Rule 6004(a).

K. In accordance with the Bidding Procedures Order, the Debtor has served upon each non-Debtor counterparty to a contract or lease a notice (as amended, modified, or otherwise supplemented from time to time, the “Cure Notice”) of the potential assumption and assignment of the contract or lease and of the amounts necessary to cure any defaults under the proposed Purchased Contracts (the “Cure Amounts”) pursuant to section 365(b) of the Bankruptcy Code.

L. The Debtor has articulated good and sufficient reasons for this Court to grant the relief requested in the Motion and provided for herein.

M. The disclosures made by the Debtor at (i) the Sale Hearing, and (ii) in the Motion, the Sale Notice, and related documents filed with the Court concerning the Bidding Procedures, the Stalking Horse APA, the Auction, the Sale and the Sale Hearing were good, complete and adequate.

N. The Bidding Procedures set forth in the Bidding Procedures Order were non-collusive, proposed and executed in good faith as a result of arms'-length negotiations, and were substantively and procedurally fair to all parties.

O. The Debtor conducted the sale process in accordance with, and has otherwise complied in all respects with, the Bidding Procedures Order. The sale process set forth in the Bidding Procedures Order afforded a full, fair, and reasonable opportunity for any entity to make a higher or otherwise better offer to purchase the Purchased Assets.

P. The terms contained in the Stalking Horse APA constitute the highest and best offer for the Purchased Assets and will provide a greater recovery for the Purchased Assets than would be provided by any other available alternative. The Debtor's determination that the Stalking Horse APA constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of Debtor's business judgment.

Q. The Stalking Horse APA and the Sale contemplated thereby represent a fair and reasonable agreement to purchase the Purchased Assets under the circumstances of this chapter 11 case. No other entity or group of entities has presented a higher or otherwise better offer to the Debtor to purchase the Purchased Assets for greater economic value to the Debtor's estate than the Purchaser.

R. Approval of the Motion and the Stalking Horse APA and the consummation of the Sale contemplated thereby is in the best interests of the Debtor, its creditors and its estate and other parties in interest in this chapter 11 case.

S. The Debtor has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the Sale of the Purchased Assets because, among other reasons: (i) the Stalking Horse APA constitutes the highest and best offer for the Purchased Assets;

(ii) the Stalking Horse APA and the closing thereon will present the best opportunity to realize the value of the Purchased Assets; and (iii) any other transaction would not have yielded as favorable an economic result.

T. Neither the Purchaser nor any of its affiliates, members, officers, directors, shareholders, principals, employees, attorneys, advisors, professionals, agents, or any if its or their respective successors or assigns is an “insider” or “affiliate” of the Debtor, as those terms are defined in sections 101(31) and 101(2) of the Bankruptcy Code. The Purchaser’s professionals, agents, and other representatives have complied in all respects with the Bidding Procedures Order and all other applicable orders of the Court in negotiating and entering into the Stalking Horse APA. The Stalking Horse APA complies with the Bidding Procedures Order and all other applicable orders of the Court.

U. The Purchaser is purchasing the Purchased Assets in good faith and is a good-faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and, therefore, is entitled to the full protections of that provision, including in the event that this Sale Order or any portion hereof is reversed or modified on appeal; and otherwise has proceeded in good faith in all respects in connection with the sale of the Purchased Assets in that (i) the Purchaser recognized that the Debtor was free to deal with any other party interested in acquiring the Purchased Assets; (ii) the Purchaser complied with the provisions of the Bidding Procedures Order in all respects; (iii) the Purchaser agreed to subject its bid to the competitive Bidding Procedures set forth in the Bidding Procedures Order, including an Auction; (iv) all payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the Sale have been disclosed; (v) the Purchaser has not violated section 363(n) of the Bankruptcy Code by any action

or inaction; and (vi) the negotiation and execution of the Stalking Horse APA, including the Sale contemplated thereby, were at arms'-length and in good faith.

V. Neither the Debtor nor the Purchaser (nor any of their respective affiliates, members, officers, directors, shareholders, principals, employees, attorneys, advisors, professionals, agents, successors, or assigns) (i) has entered into the Stalking Horse APA or proposes to consummate the Sale for the purpose of hindering, delaying, or defrauding the Debtor's present or future creditors or other parties in interest or (ii) is entering into the Stalking Horse APA or is proposing to consummate the Sale fraudulently, for the purpose of statutory or common law fraudulent conveyance and fraudulent transfer claims, whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

W. The Stalking Horse APA and the transactions contemplated thereby cannot be avoided under section 363(n) of the Bankruptcy Code. The Debtor, the Purchaser, and the Purchaser's agents, representatives, advisors and affiliates have not engaged in any conduct that would cause or permit the Stalking Horse APA or the consummation of the transactions contemplated thereby to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code. The Debtor and its professionals marketed the Purchased Assets and conducted the marketing and sale process in substantial compliance with the Bidding Procedures Order.

X. The Purchaser participated in the sale process in good faith and has not acted in a collusive manner with any of the other bidders, potential bidders, or any other parties interested in or potentially interested in the Purchased Assets.

Y. Pursuant to the Stalking Horse APA and as more fully set forth therein, the Purchaser has offered to purchase the Purchased Assets in exchange for, without duplication, (i) a credit bid, on a dollar-for-dollar basis, pursuant to section 363(k) of the Bankruptcy Code comprised of the full amount of the DIP Obligations (as defined in the DIP Orders⁴) outstanding as of the Closing Date *plus* such amount of the Prepetition Obligations (as defined in the DIP Orders) that the aggregate credit bid amount equals \$150,000,000 (the “Credit Bid Amount”); (ii) assumption of the Assumed Liabilities (subject to the limitations set forth in the Stalking Horse APA); and (iii) the Excluded Cash. The Debtor selected the Purchaser to serve as the Stalking Horse Bidder pursuant to the Bidding Procedures Order. The Purchaser is an acquisition entity designated by the DIP Agent and Prepetition Collateral Agent (each, as defined in the DIP Orders).

Z. The Purchaser had submitted its bid, and [] Qualified Bids other than the Purchaser’s bid were received, by the Bid Deadline of January 24, 2025 at 4:00 p.m. (Mountain Time). The Debtor determined, in a valid and sound exercise of its business judgment, that the transactions contemplated by the Stalking Horse APA represented the highest and best bid and, therefore, the Purchaser’s bid was designated as the Successful Bid. As established by the record of the Sale Hearing, the Debtor and the Purchaser have complied in all material respects with the Bidding Procedures Order. The Bidding Procedures afforded a full, fair, and reasonable

⁴ “DIP Orders” shall mean, collectively, the interim and final orders entered by the Court in this chapter 11 case approving the Debtor’s debtor-in-possession financing facility and/or use of cash collateral, including, without limitation, the *Interim Order (I) Authorizing the Debtor to Obtain Postpetition Senior Secured Financing, (II) Authorizing the Debtor to Use Cash Collateral on a Limited Basis, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 72] (the “Interim DIP Order”), in each case in form and substance acceptable to the Required DIP Lenders (as defined in the Interim DIP Order).

opportunity for any entity or person to make a higher or otherwise better offer to purchase the Purchased Assets.

AA. As set forth more fully in the DIP Orders, the Debtor has acknowledged that the Prepetition Obligations (as defined therein): (a) constitute legal, valid, binding, enforceable, and unavoidable obligations of the Debtor, which are not subject to any Challenge (as defined in the DIP Orders); (b) are secured by valid, binding, enforceable, unavoidable and properly perfected Prepetition Liens on the Prepetition Collateral, which are not subject to any Challenge (each, as defined in the DIP Orders); (c) constitute allowed secured claims under Section 502(a) of the Bankruptcy Code; and (d) are authorized to be credit bid pursuant to Section 363(k) of the Bankruptcy Code.

BB. As set forth more fully in the DIP Orders, the DIP Obligations (as defined in the DIP Orders): (a) constitute legal, valid, binding, enforceable, and unavoidable obligations of the Debtor; (b) are secured by valid, binding, enforceable, unavoidable and properly perfected DIP Liens on the DIP Collateral (each, as defined in the DIP Orders); and (c) are authorized to be credit bid pursuant to Section 363(k) of the Bankruptcy Code.

CC. Pursuant to applicable law, including section 363(k) of the Bankruptcy Code and in accordance with the DIP Orders, the Purchaser is authorized to credit bid the Credit Bid Amount as contemplated under the Stalking Horse APA. The Credit Bid Amount is valid and proper consideration pursuant to sections 363(b) and 363(k) of the Bankruptcy Code, the Bidding Procedures Order, and the DIP Orders.

DD. The consideration provided by the Purchaser pursuant to the Stalking Horse APA: (i) is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession

thereof, or the District of Columbia (including the Uniform Fraudulent Transfer Act); (ii) is fair consideration under the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, the Bankruptcy Code, and other applicable laws; and (iii) will provide a greater recovery for the Debtor's estate and its creditors than would be provided by any other reasonably practicable available alternative. The Stalking Horse APA was not entered into, and the Sale is not being consummated, for the purpose of hindering, delaying, or defrauding creditors of the Debtor under the Bankruptcy Code or under any other applicable law. Neither the Debtor nor the Purchaser has entered into the Stalking Horse APA or is consummating the Sale with any fraudulent intent or otherwise improper purpose. The Court's approval of the Motion as set forth herein, the Sale, and the Stalking Horse APA is in the best interests of the Debtor, its estate, its creditors, and all other parties in interest.

EE. To the greatest extent allowable by applicable law, by virtue of the consummation of the transactions contemplated under the Stalking Horse APA: (i) neither the Purchaser nor any of its affiliates, members, shareholders, successors, or assigns is a continuation of the Debtor or its estate, there is not substantial continuity between the Purchaser or any of its affiliates, members, shareholders, successors, or assigns, and the Debtor, and there is no continuity of enterprise between the Debtor and the Purchaser or any of its affiliates, members, shareholders, successors, or assigns; (ii) neither the Purchaser nor any of its affiliates, members, shareholders, successors, or assigns is holding itself out to the public as a continuation of the Debtor or its estate; (iii) the transactions do not amount to a consolidation, merger, or *de facto* merger of the Purchaser or any of its affiliates, members, shareholders, successors, or assigns, and the Debtor and/or the Debtor's estate; and (iv) neither the Purchaser nor any of its affiliates, members, shareholders, successors, or assigns is a successor or assignee of the Debtor or its estates for any purpose including, but not

limited to, under any federal, state or local statute or common law, or revenue, pension, ERISA, tax, labor, employment, environmental, escheat or unclaimed property laws, or other law, rule or regulation (including, without limitation, filing requirements under any such laws, rules, or regulations), and, except as expressly provided in the Stalking Horse APA or this Sale Order, neither the Purchaser nor any of its affiliates, members, shareholders, successors, or assigns shall have any liability or obligation under the WARN Act or the Comprehensive Environmental Response Compensation and Liability Act and neither the Purchaser nor any of its affiliates, members, shareholders, successors, or assigns shall be deemed to be a “successor employer” for purposes of the Internal Revenue Code of 1986, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Americans with Disability Act, the Family Medical Leave Act, the National Labor Relations Act, the Labor Management Relations Act, the Older Workers Benefit Protection Act, the Equal Pay Act, the Civil Rights Act of 1866 (42 U.S.C. 1981), the ERISA, the Multiemployer Pension Protection Act, the Pension Protection Act, and/or the Fair Labor Standards Act. Except for the Assumed Liabilities or as otherwise expressly provided in the Stalking Horse APA, (x) the transfer of the Purchased Assets to the Purchaser and (y) the assumption and assignment to the Purchaser of the Purchased Contracts does not and shall not subject the Purchaser or any of its affiliates, members, shareholders, successors, or assigns to any liability whatsoever with respect to the operation of the Debtor’s business before the Closing Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based on, in whole or in part, directly or indirectly, any theory of law or equity including, without limitation, any theory of antitrust or successor or transferee liability.

FF. The Sale neither impermissibly restructures the rights of the Debtor's creditors nor impermissibly dictates the terms of a plan of liquidation or reorganization of the Debtor. This Sale Order does not constitute a *sub rosa* plan.

GG. The Purchased Assets constitute property of the Debtor's estate and title thereto is vested in the Debtor's estate within the meaning of section 541 of the Bankruptcy Code. The Debtor, acting by and through its existing agents, representatives, and officers, (i) has full corporate or other organizational power and authority to execute and deliver the Stalking Horse APA and all other documents contemplated thereby, and the Sale to Purchaser has been duly and validly authorized by all necessary corporate action, (ii) has all of the corporate or other organizational power and authority necessary to consummate the Sale and all transactions contemplated by the Stalking Horse APA, (iii) has taken all corporate or other organizational action necessary to authorize and approve the Stalking Horse APA and the consummation by the Debtor of the Sale and all transactions contemplated thereby, and (iv) the Debtor requires no further consents or approvals to consummate the Sale contemplated by the Stalking Horse APA, except as otherwise set forth in the Stalking Horse APA.

HH. The transfer of each of the Purchased Assets to the Purchaser will be as of the Closing Date a legal, valid, and effective transfer of such assets, and vests or will vest the Purchaser with all right, title, and interest of the Seller to the Purchased Assets free and clear of all Encumbrances (as defined below) accruing, arising or relating thereto any time prior to the Closing Date, unless otherwise expressly assumed in, or transferred by, the Stalking Horse APA.

II. The Debtor may sell the Purchased Assets free and clear of all Encumbrances (as defined below) against the Debtor, its bankruptcy estate, or any of the Purchased Assets (unless expressly assumed under the Stalking Horse APA) because, in each case, one or more of the

standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. Each Encumbrance (other than an Assumed Liability) that is attached to the Purchased Assets to be transferred on the Closing Date: (i) is subject to release or discharge under applicable non-bankruptcy law, (ii) is held by an entity that has consented to the Sale or is deemed to have consented to the Sale; (iii) constitutes a lien against some or all of the Purchased Assets and the price at which such property is to be sold under the Stalking Horse APA is greater than the aggregate value of all liens on such property, (iv) is the subject of a bona fide dispute, or (v) is held by an entity that could be compelled in a legal or equitable proceeding to accept money satisfaction of such encumbrance.

JJ. Those holders of Encumbrances (as defined below) against the Debtor, its bankruptcy estate, or any of the Purchased Assets who did not object, or who withdrew their objections, to the Sale or the Motion are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Encumbrances who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code. Specifically, all holders of Encumbrances (other than the Assumed Liabilities) are adequately protected by having their Encumbrances, if any, in each instance against the Seller, its bankruptcy estate, or any of the Purchased Assets, attach to the net cash proceeds, if any, of the Sale ultimately attributable to the Purchased Assets in which such creditor alleges an interest, in the same order of priority with the same validity, force, and effect that such creditor had prior to the Sale, subject to any rights, claims, and defenses the Debtor or its estate may possess with respect thereto.

KK. If, except as otherwise assumed in, or permitted by, the Stalking Horse APA, the Sale was not free and clear of all Encumbrances (as defined below), or if the Purchaser would, or in the future could, be liable for any of the Encumbrances, the Purchaser would not have entered

into the Stalking Horse APA and would not consummate the Sale, thus adversely affecting the Debtor and its bankruptcy estate and creditors.

LL. The Debtor has demonstrated that it is an exercise of its sound business judgment to assume and assign the Purchased Contracts to the Purchaser pursuant to the terms of this Sale Order and the Stalking Horse APA, in each case in connection with the consummation of the Sale, and the assumption and assignment of the Purchased Contracts is in the best interests of the Debtor, its bankruptcy estate and creditors, and other parties in interest. The Purchased Contracts are an integral part of the Stalking Horse APA and the Sale and the assumption and assignment of Purchased Contracts are reasonable and enhance the value of the Debtor's bankruptcy estate. Any non-Debtor counterparty to any of the Purchased Contracts that has not actually filed with the Court an objection to such assumption and assignment in accordance with the *Order Approving Debtor's Motion for Entry of an Order (I) Setting Cure Amounts; and (II) Granting Related Relief* [Docket No. [__]] is deemed to have consented to such assumption and assignment.

MM. The Debtor and the Purchaser have, to the extent necessary, satisfied the requirements of section 365 of the Bankruptcy Code, including sections 365(b)(1)(A), 365(b)(1)(B), 365(b)(1)(C), and 365(f) of the Bankruptcy Code, in connection with the assumption and assignment of the Purchased Contracts to the extent provided under this Sale Order and the Stalking Horse APA and: (i) have or will have cured any default under each of the Purchased Contracts existing as of the date that such Purchased Contracts are assumed, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code; and (ii) have provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under each of the Purchased Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and the Purchaser has provided adequate assurance

of future performance with respect to the Purchased Contracts, within the meaning of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code. The Purchased Contracts are assignable notwithstanding any provisions contained therein to the contrary.

NN. The Stalking Horse APA and Sale must be approved and the Closing must occur promptly to preserve the value of the Purchased Assets and the Debtor's bankruptcy estate.

OO. Given all of the circumstances of this chapter 11 case and the adequacy and fair value of the consideration provided by the Purchaser under the Stalking Horse APA, the Sale constitutes a reasonable and sound exercise of the Debtor's business judgment, is in the best interests of the Debtor, its bankruptcy estate, its creditors, and other parties in interest in this chapter 11 case, and should be approved.

PP. The consummation of the Sale is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), 365(b), and 365(f) of the Bankruptcy Code, and all of the applicable requirements of such sections have been complied with in respect of the Sale.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Motion, and the transactions contemplated thereby and by the Stalking Horse APA, are **APPROVED** as set forth in this Sale Order and on the record of the Sale Hearing, which is incorporated herein as if fully set forth in this Sale Order, and the Sale contemplated by the Stalking Horse APA is **APPROVED**.

2. Any and all objections and responses to the Motion that have not been withdrawn, waived, settled, or resolved, and all reservations of rights included therein, are hereby overruled and denied on the merits. All objections to the entry of this Sale Order or to the relief granted herein that were not timely filed are hereby forever barred. Notice of the Motion, the Auction, the

Sale Hearing, and the Sale was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

Approval of the Sale of the Purchased Assets

3. The Stalking Horse APA, including all other ancillary documents, and all of the terms and conditions thereof, and the Sale contemplated thereby, including the Purchase Price and the Credit Bid Amount, are hereby approved in all respects.

4. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor, acting by and through its existing agents, representatives, and officers, is authorized and empowered to take any and all actions necessary or appropriate to: (a) consummate and close the Sale pursuant to and in accordance with the terms and conditions of this Sale Order and the Stalking Horse APA; (b) transfer and assign all right, title, and interest to all property, licenses, and rights to be conveyed in accordance with the terms and conditions of this Sale Order and the Stalking Horse APA; and (c) execute and deliver, perform under, consummate, and implement this Sale Order, the Stalking Horse APA, the Transition Services Agreement, and all additional instruments and documents that may be reasonably necessary or desirable to implement this Sale Order, the Stalking Horse APA and the Sale, including any other ancillary documents, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by this Sale Order, the Stalking Horse APA and any such other ancillary documents. The Debtor is further authorized to pay, without further order of the Court, whether before, at, or after the Closing, any expenses or costs that are required to be paid in order to consummate the transactions contemplated by the Stalking Horse APA or perform their obligations under the Stalking Horse APA, in each case in accordance with the DIP Orders (including the Approved Budget (as defined therein)).

5. This Sale Order will be binding in all respects upon the Debtor, its bankruptcy estate, all creditors, all holders of equity interests in the Debtor, all holders of any Encumbrances

(whether known or unknown) against the Debtor, any and all alleged holders of Encumbrances against or on all or any portion of the Purchased Assets, all counterparties to the Purchased Contracts, the Purchaser and all agents, representatives, affiliates, and permitted successors and assigns of the Purchaser, and any trustees, examiners, or other fiduciary under any section of the Bankruptcy Code, if any, subsequently appointed in the Debtor's chapter 11 case or upon a conversion to chapter 7 under the Bankruptcy Code of the Debtor's case. The terms and provisions of the Stalking Horse APA and this Sale Order will inure to the benefit of the Debtor, its bankruptcy estate, its creditors, the Purchaser and all agents, representatives, affiliates, and permitted successors and assigns of the Purchaser, and any other affected third parties, including, without limitation, all persons asserting any Encumbrances in the Purchased Assets to be sold to the Purchaser pursuant to the Stalking Horse APA, notwithstanding any subsequent appointment of any trustee(s), party, entity, or other fiduciary under any section of any chapter of the Bankruptcy Code, as to which trustee(s), party, entity, or other fiduciary such terms and provisions likewise will be binding.

Sale and Transfer of Purchased Assets

6. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, upon the Closing Date and except as otherwise set forth in the Stalking Horse APA, the Debtor's rights, title and interests in and to the Purchased Assets will be transferred to the Purchaser free and clear of all encumbrances, claims, interests, and liens, including mortgages, restrictions, covenants, easements, hypothecations, charges, indentures, loan agreements, instruments, collective bargaining agreements, leases, licenses, options, deeds of trust, security interests, other interests, conditional sale or other title retention agreements, pledges, and other liens (including mechanics', materialman's, possessory and other consensual and non-consensual liens and statutory liens), judgments, demands, rights of first refusal, offsets, contracts, rights of

recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, derivative and vicarious liability, alter-ego, environmental, or tax, decrees of any court or foreign or domestic governmental entity, or charges of any kind or nature, if any, against the Debtor or the Purchased Assets, including any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, debts arising in any way in connection with any agreements, acts, or failures to act, including any pension liabilities, retiree medical benefit liabilities, employee benefit liabilities, liabilities arising under or related to the Internal Revenue Code, of the Debtor or any of the Debtor's predecessors or affiliates, claims, 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, at, or subsequent to the commencement of this chapter 11 case, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability (collectively, the "Encumbrances"), with all such Encumbrances to attach to the net cash proceeds, if any, of the Sale in the order of their priority, with the same validity, force, and effect that they now have as against the Purchased Assets, subject to any claims and defenses that the Debtor and its bankruptcy estate may possess with respect thereto.

7. On the Closing Date, this Sale Order will be construed and will constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of all of the Purchased Assets or a bill of sale transferring good and marketable title in such Purchased Assets to the Purchaser pursuant to the terms and conditions set forth in this Sale Order and the Stalking Horse APA. For the avoidance of doubt, the Excluded Assets and Excluded Liabilities set forth

in the Stalking Horse APA are not included in the Purchased Assets and such Excluded Assets and Excluded Liabilities shall remain property and liabilities of the Debtor's estate.

8. Subject to the terms and conditions of this Sale Order, the transfer of the Purchased Assets to the Purchaser pursuant to the Stalking Horse APA and the consummation of the Sale and any related actions contemplated thereby do not require any consents other than as specifically provided for in this Sale Order and the Stalking Horse APA, constitute a legal, valid, and effective transfer of the Purchased Assets, and will vest the Purchaser with all of the Debtor's rights, title, and interests in and to the Purchased Assets as set forth in this Sale Order and the Stalking Horse APA, as applicable, free and clear of all Encumbrances of any kind or nature whatsoever (except as otherwise expressly assumed pursuant to the Stalking Horse APA).

9. The Purchaser, to the extent provided by this Sale Order or the Stalking Horse APA, will be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval ("Licenses") of the Seller constituting Purchased Assets, and all such Licenses are deemed to have been, and hereby are, directed to be transferred to the Purchaser as of the Closing Date as provided by this Sale Order, the Stalking Horse APA and the Transition Services Agreement. To the extent any Licenses are not an assumable and assignable executory contract, the Purchaser shall make reasonable efforts to apply for and obtain any Licenses promptly as of the Closing Date, and the Debtor shall cooperate with the Buyer in those efforts. All existing Licenses shall remain in place for the Purchaser's benefit until either new Licenses are obtained or existing Licenses are transferred in accordance with applicable administrative procedures. To the fullest extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any grant, permit, or license relating to the operation of the Purchased Assets sold, transferred, assigned, or conveyed to the Purchaser on account of the

filing or pendency of this chapter 11 case, the consummation of the Sale, or such other bases prohibited by section 525 of the Bankruptcy Code. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the Sale, including this Sale Order.

10. Upon consummation of the Sale, if any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or recorded real property interests, or filed any other documents or agreements evidencing Encumbrances against or in the Purchased Assets has not delivered to the Debtor prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Encumbrances that the person or entity has with respect to the Purchased Assets (unless otherwise expressly assumed in, or transferred by, the Stalking Horse APA), or otherwise, then: (a) the Debtor is hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Purchased Assets; and (b) the Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered, or otherwise recorded, will constitute conclusive evidence of the release of all Encumbrances in the Purchased Assets of any kind or nature (except as otherwise assumed in, or transferred by, the Stalking Horse APA); *provided that*, notwithstanding anything in this Sale Order or the Stalking Horse APA to the contrary, the provisions of this Sale Order will be self-executing, and neither the Debtor nor the Purchaser will be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Sale Order. For the avoidance of doubt, upon consummation of the Sale, the Purchaser is authorized to file termination statements, lien terminations, or other amendments in any required jurisdiction to remove notice filings, financing

statements or other documents recorded to attach, perfect, or otherwise notice any lien or encumbrance that is extinguished or otherwise released pursuant to this Sale Order under section 363 of the Bankruptcy Code and the related provisions of the Bankruptcy Code.

11. Except to the extent expressly included in Assumed Liabilities, or to enforce the Stalking Horse APA, all entities, including all lenders, debt security holders, equity security holders, governmental, tax, and regulatory authorities, parties to executory contracts and unexpired leases, customers, dealers, sale representatives, vendors, suppliers, trade creditors, current and former directors, officers and employees of the Debtor, and any other creditors holding Encumbrances of any kind or nature whatsoever against or in the Debtor and its bankruptcy estate or the Purchased Assets arising under or out of, in connection with, or in any way relating to, the Purchased Assets or the transfer of the Purchased Assets to the Purchaser, hereby are forever barred and estopped, from asserting any Encumbrances of any kind or nature whatsoever arising prior to the Closing against the Purchaser and its permitted successors, designees, and assigns, or property, or the Purchased Assets conveyed in accordance with the Stalking Horse APA.

12. As of and after the Closing: (a) each of the Debtor's creditors is hereby authorized to execute such documents and take all other actions as may be necessary to release its Encumbrances (if any) in the Purchased Assets as such Encumbrances may have been recorded or may otherwise exist; and (b) any Purchased Asset that may be subject to a statutory or mechanic's lien pursuant to applicable law will be turned over and such liens will attach to the net cash proceeds, if any, of the Sale in the same priority they currently enjoy with respect to the Purchased Assets.

Contracts and Leases to be Assumed and Assigned

13. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, and subject to and conditioned upon the occurrence of the Closing Date, the Seller's assumption and assignment

to the Purchaser, and the Purchaser's assumption, on the terms set forth in this Sale Order and the Stalking Horse APA of the Purchased Contracts, is hereby approved in its entirety, and the requirements of section 365 of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

14. The Seller is hereby authorized in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code to assume and assign to the Purchaser, effective upon the Closing Date, the Purchased Contracts free and clear of all Encumbrances of any kind or nature whatsoever (except as otherwise expressly assumed in, or transferred by, the Stalking Horse APA) and to execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Purchased Contracts to the Purchaser.

15. Upon the Closing, or such later date such Purchased Contract is assumed and assigned pursuant to the Stalking Horse APA, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser will be fully and irrevocably vested in all right, title, and interest of each of the Purchased Contracts.

16. The Purchased Contracts will be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms pursuant to the Stalking Horse APA, notwithstanding any provision in any such Purchased Contracts (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer.

17. Pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code, at the Closing, or as soon as reasonably practicable thereafter, Purchaser will pay to the respective counterparty the Cure Amounts relating to the Purchased Contracts in accordance with the Stalking Horse APA.

18. The payment of the applicable Cure Amounts (if any) will effect a cure of any and

all defaults existing as of the date that such Purchased Contracts are assumed and compensate for any actual pecuniary loss to such non-Debtor party resulting from such default.

19. Upon the Closing, or as otherwise provided in the Stalking Horse APA, Purchaser will assume the Purchased Contracts, and, pursuant to section 365(f) of the Bankruptcy Code, the assignment by the Seller of such Purchased Contracts will not be a default thereunder. After payment of the relevant Cure Amounts, neither the Debtor, its bankruptcy estate, nor the Purchaser will have any further liabilities to the non-Debtor counterparties to the Purchased Contracts, other than Purchaser's obligations under the Purchased Contracts that accrue or become due and payable on or after the date that such Purchased Contracts are assumed.

20. Except as otherwise agreed in writing between the Purchaser, the Debtor and the applicable non-Debtor party to any of the Purchased Contracts or as determined by separate Court order, the Cure Amounts for the Purchased Contracts are hereby fixed at the amounts set forth on **Exhibit 1** attached to this Sale Order, and the non-Debtor parties to such Purchased Contracts are forever bound by such Cure Amounts and, upon payment of such Cure Amounts, if any, are hereby enjoined from taking any action against the Debtor and its bankruptcy estate, the Purchaser and all agents, representatives, affiliates, and permitted successors and assigns of the Purchaser, or the Purchased Assets with respect to any claim for Cure Amounts or otherwise under the Purchased Contracts.

21. Any provisions in any Purchased Contracts that prohibit or condition the assignment of such Purchased Contracts or allow the party to such Purchased Contracts to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon the assignment of such Purchased Contracts constitute unenforceable anti-

assignment provisions that are void, and of no force and effect pursuant to sections 365(b), 365(e), and 365(f) of the Bankruptcy Code.

22. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtor and assignment to the Purchaser of the Purchased Contracts have been satisfied.

23. Any party having the right to consent to the assumption or assignment of any of the Purchased Contracts that failed to object to such assumption or assignment is deemed to have consented to such assumption and assignment as required by section 365(c) of the Bankruptcy Code.

24. Upon the Closing, or as otherwise provided in the Stalking Horse APA, the Purchaser will be deemed to be substituted for the Seller as a party to the applicable Purchased Contracts and the Debtor and its estate will be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Purchased Contracts.

25. The Purchaser has provided adequate assurance of future performance under the relevant Purchased Contracts within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code.

26. All counterparties to the Purchased Contracts shall cooperate and expeditiously execute and deliver, upon reasonable request of the Purchaser, and shall not charge the Debtor or the Purchaser for any instruments, applications, consents, or other documents that may be required or requested by any public authority or other party or entity to effectuate the applicable transfers in connection with the Sale.

27. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, all counterparties to the Purchased Contracts are forever barred from raising or asserting against the

Debtor and its estate or the Purchaser any assignment fee, default, breach, claim, pecuniary loss, penalty or condition to assignment, arising under or related to the Purchased Contracts, existing as of the date that such Purchased Contracts are assumed or arising by reason of or in connection with the Closing.

Additional Provisions

28. The automatic stay provisions of section 362 of the Bankruptcy Code are modified to the extent necessary to implement the terms and conditions of the Stalking Horse APA and the provisions of this Sale Order.

29. The Debtor and the Purchaser hereby waive, and will be deemed to waive, any requirement of compliance with, and any claims related to non-compliance with, the provisions of any bulk sales, bulk transfer, or similar law of any jurisdiction that may be applicable. No bulk sale law or any similar law of any state or other jurisdiction shall apply in any way to the Sale and the transactions contemplated by the Stalking Horse APA.

30. Following the Closing, no holder of an Encumbrance against the Debtor and its bankruptcy estate or the Purchased Assets will interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based on or related to such Encumbrance or any actions that the Debtor and its bankruptcy estate may take in this chapter 11 case or any successor case.

31. The Debtor, including its officers and agents, is hereby authorized to execute such documents and do such acts as are necessary or desirable to carry out the transactions contemplated by the terms and conditions of the Stalking Horse APA and this Sale Order. The Debtor shall be, and hereby is, authorized to take all such actions as may be necessary to effectuate the terms of this Sale Order and the relief granted pursuant to this Sale Order. No consents or approvals, other

than those expressly provided for in the Stalking Horse APA or this Sale Order, are required for the Debtor to consummate the Sale.

32. Absent the express written consent of the Purchaser, the Debtor shall not settle or otherwise resolve any existing or future litigation with any third party or any governmental authority other than any settlement pursuant to which (i) any liability thereunder will be an Excluded Liability, (ii) no payment from the Purchaser is sought or required, or (iii) there will be no impact or restriction on or affecting the Purchased Assets or the operation of the business from and after the Closing Date.

33. The consideration provided by the Purchaser to the Debtor pursuant to the Stalking Horse APA constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and other applicable law within the meaning of section 544(b) of the Bankruptcy Code, under the laws of the United States, any state, territory, possession, or the District of Columbia.

34. Except for the Assumed Liabilities, the Purchaser shall not have any liability whatsoever for any obligation of the Debtor arising under or related to (i) any of the Purchased Assets, (ii) any contracts or leases assumed and assigned to the Purchaser, including the Purchased Contracts, or (iii) the operation of the Debtor's business prior to the closing of the transactions contemplated by the Stalking Horse APA. Without limiting the generality of the foregoing, and except for the Assumed Liabilities, the Purchaser shall not be liable for any Encumbrances (except as set forth in the Stalking Horse APA)) against or in the Debtor, any of its predecessors, successors or affiliates, or any of the Purchased Assets.

35. The Purchaser shall not be deemed or considered to (a) be a successor (or other such similarly situated party) to the Debtor, including a "successor employer" for purposes of the

Internal Revenue Code of 1986, ERISA, or other applicable laws; (b) have any responsibility or liability for any obligations of the Debtor, or any affiliate of the Debtor, based on any theory of successor or similar theories of liability; (c) have, *de facto* or otherwise, merged with or into the Debtor; (d) be an alter ego or a mere continuation or substantial continuation of the Debtor (and there is no continuity of enterprise between the Purchaser and any Debtor), including within the meaning of any foreign, federal, state, or local revenue, pension, ERISA, tax, labor, employment, environmental, or other law, rule, or regulation (including filing requirements under any such laws, rules, or regulations), or under any products liability law or doctrine with respect to the Debtor's liability under such law, rule, or regulation or doctrine; or (e) be holding itself out to the public as a continuation of the Debtor or its estate.

36. The Sale is undertaken by the Purchaser in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale will not affect the validity of the Sale (including the assumption and assignment of the Purchased Contracts by the Purchaser, if any, and the sale free and clear of all Encumbrances (unless otherwise expressly assumed pursuant to, or transferred by, the Stalking Horse APA)), unless such authorization and consummation of such Sale are duly stayed pending such appeal. The Purchaser is a good-faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

37. As a good-faith purchaser of the Purchased Assets, the Purchaser has not colluded with any of the other bidders, potential bidders, or any other parties interested or potentially

interested in the Purchased Assets, and therefore the sale of the Purchased Assets may not be avoided pursuant to section 363(n) of the Bankruptcy Code.

38. Pursuant to section 3.1 of the Stalking Horse APA, the Credit Bid Amount shall include, among other obligations, the full amount of the DIP Obligations outstanding as of the Closing Date, and thereupon the DIP Obligations shall be deemed fully and finally satisfied.

39. Nothing in this Sale Order shall be deemed to limit, abridge, or otherwise modify the Prepetition Secured Parties' (as defined in the DIP Orders) rights, liens, and claims, including any adequate protection liens and claims, against all of the Excluded Assets remaining in the Debtor's estate; *provided, however*, that such liens and claims shall be subject to payments to be made by the Debtor from Excluded Cash, including the Wind-Down Amount, which Wind-Down Amount shall be used strictly in accordance with the Wind-Down Budget. The Wind-Down Budget shall be deemed the Approved Budget (as defined in the DIP Orders). To the extent there exists any residual Wind-Down Amount after payment of the Post-Sale Expenses, such residual amounts shall be promptly paid to the Purchaser.

40. Pursuant to the Stalking Horse APA, the Purchaser and the Seller shall enter into the Transition Services Agreement on or prior to the Closing Date pursuant to which, effective as of the Closing Date, the Purchaser and the Seller shall provide certain services for a transitional period following the Closing Date. The Purchaser and the Seller are hereby authorized to execute and deliver any additional documentation as contemplated by the Stalking Horse APA, and to perform all such other and further acts as may be required under or in connection with the Transition Services Agreement.

41. Nothing in this Sale Order or the Stalking Horse APA releases, nullifies, precludes or enjoins the enforcement of any police or regulatory liability to a governmental unit that any

entity would be subject to as the post-sale owner or operator of property after the Closing Date. Nothing in this Sale Order or the Stalking Horse APA authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization, or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under police or regulatory law. Nothing in this Sale Order divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Sale Order or to adjudicate any defense asserted under this Sale Order.

42. Nothing contained in any plan of liquidation or reorganization, or order of any type or kind entered in this chapter 11 case, any subsequent chapter 7 or chapter 11 case of the Debtor, or any related proceeding subsequent to entry of this Sale Order, will conflict with or derogate from the terms of this Sale Order or the Stalking Horse APA.

43. The mere failure to specifically include any particular provisions of the Stalking Horse APA, including any of the documents, agreements, or instruments executed in connection therewith in this Sale Order will not diminish or impair the efficacy of such provision, document, agreement, or instrument, it being the intent of this Court that the Stalking Horse APA and each document, agreement or instrument be authorized and approved in its entirety, *provided, however*, to the extent there are any inconsistencies between the terms of this Sale Order and the Stalking Horse APA (including all ancillary documents executed in connection therewith), the terms of this Sale Order will govern.

44. All time periods set forth in this Sale Order will be calculated in accordance with Bankruptcy Rule 9006(a).

45. To the extent that this Sale Order is inconsistent with any prior order or pleading with respect to the Motion in this chapter 11 case, the terms of this Sale Order will govern.

46. The Stalking Horse APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court.

47. The provisions of this Sale Order are nonseverable and mutually dependent.

48. Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d) or 7062 or any applicable provisions of the Local Rules, this Sale Order will not be stayed after the entry hereof, but will be effective and enforceable immediately upon entry, and the fourteen (14) day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and will not apply.

49. This Court will retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order and the Stalking Horse APA, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtor is a party or which has been assigned by the Debtor to the Purchaser, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale.

-----**END OF DOCUMENT**-----

EXHIBIT 1

Schedule of Cure Amounts

EXHIBIT C

FORM OF BID DIRECTION LETTER

[See Attached]

CREDIT BID DIRECTION LETTER

Ares Capital Corporation
in its capacity as DIP Agent under the DIP Facility (as defined below)
245 Park Avenue, 44th Floor
New York, NY 10167

ACF FINCO I LP
in its capacity as Prepetition Agent under the Prepetition Facility (as defined below)
560 White Plains Road, Suite 400
Tarrytown, NY 10591

Re: Vobev, LLC: Credit Bid Direction Letter

This Credit Bid Direction Letter dated as of [●] (this “Agreement”), is made among: (a) Adonis Acquisition Holdings LLC, a Delaware limited liability company (the “Purchaser”); (b) the entities set forth under the heading “DIP Lenders” on the signature pages hereto (each a “DIP Lender”, and collectively, the “DIP Lenders”); (c) Ares Capital Corporation (“Ares”) in its capacity as administrative agent and collateral agent for the DIP Lenders (in such capacities, the “DIP Agent”); (d) the entities set forth under the heading “Prepetition Lenders” on the signature pages attached hereto (each a “Prepetition Lender”, and collectively, the “Prepetition Lenders”); and (e) ACF FINCO I LP in its capacity as revolving agent and collateral agent for the Prepetition Lenders (in such capacities, the “Prepetition Agent”, and together with the DIP Agent, the “Agents”, and together with Purchaser, the DIP Lenders, and the Prepetition Lenders, collectively, the “Parties”).

RECITALS

WHEREAS, reference is made to that certain (a) Credit and Guaranty Agreement, dated as of April 20, 2023, as amended, amended and restated, supplemented or otherwise modified from time to time, “Prepetition Credit Agreement”, and the debt facilities contemplated thereby, collectively, the “Prepetition Facility”, among Vobev Holdings LLC (“Parent”), Vobev, LLC (the “Company”), certain subsidiaries of Parent from time to time party thereto as guarantors, the Prepetition Lenders, the Prepetition Agent, and the other parties party thereto from time to time and (b) the senior secured postpetition financing authorized pursuant to the *Interim Order (I) Authorizing the Debtor to Obtain Postpetition Senior Secured Financing, (II) Authorizing the Debtor to Use Cash Collateral on a Limited Basis, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 72] (as amended from time to time, the “DIP Order” and the debt facility contemplated thereby the “DIP Facility”).

WHEREAS, the Company has filed a bankruptcy case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Utah (Case No. 24-26346 (JTM) (the “Bankruptcy Case”), and intends to sell all or substantially all of its assets pursuant to Section 363 of the Bankruptcy Code (the “Bankruptcy Sale”).

WHEREAS, the DIP Lenders and Prepetition Lenders (each, a “Lender”) and the Purchaser intend to credit bid at the Bankruptcy Sale (the “Credit Bid Acquisition”).

WHEREAS, the Purchaser was formed as an acquisition vehicle to facilitate the Credit Bid Acquisition.

WHEREAS, the Purchaser shall enter into that certain Asset Purchase Agreement, dated as of January 6, 2025 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “APA”), between the Purchaser and the Company, pursuant to which Purchaser agrees that it or its designee(s) will acquire and assume from the Company certain of the Company’s assets and assume certain of the Company’s liabilities in exchange for, among other consideration: (a) a credit bid of the obligations under the DIP Facility; and (b) a credit bid of certain of the obligations under the Prepetition Facility (the obligations set forth in the preceding clauses (a) and (b), collectively, the “Credit Bid Amount”).

NOW, THEREFORE, to the facilitate the Credit Bid Acquisition and in consideration of the foregoing premises, the mutual covenants, obligations and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Direction to Agents

- 1.1. The Required DIP Lenders (as defined in the DIP Order) hereby irrevocably and unconditionally direct the DIP Agent to (a) credit bid all the obligations due and owing under the DIP Facility (collectively, the “DIP Obligations”) in connection with the Bankruptcy Sale, and (b) take all other actions deemed necessary or advisable by the DIP Agent to facilitate the Credit Bid Acquisition pursuant to the APA.
- 1.2. The Prepetition Lenders hereby irrevocably and unconditionally direct the Prepetition Agent to (a) credit bid such portion of the term loan obligations due and owing under the Prepetition Facility in the amount set forth in the APA and such additional amounts as the Prepetition Lenders may direct the Prepetition Agent to credit bid in writing (collectively, the “Prepetition Obligations”) in connection with the Bankruptcy Sale, and (b) take all other actions deemed necessary or advisable by the Prepetition Agent to facilitate the Credit Bid Acquisition pursuant to the APA.

2. Contribution By Agents to Purchaser

- 2.1. At the Closing (as defined in Section 3.1), the DIP Agent shall transfer the DIP Obligations to Purchaser or its designee(s) in exchange for debt and/or equity interests of Purchaser in a manner acceptable to each DIP Lender.
- 2.2. At the Closing, the Prepetition Agent shall transfer the Prepetition Obligations to Purchaser in exchange for debt and/or equity interests of Purchaser in a manner acceptable to each Prepetition Lender.

3. Closing.

- 3.1. The closing of the transactions contemplated by this Agreement (the “Closing”) shall occur on the date of, and immediately prior to, the consummation of the Sale pursuant to the APA (the “Sale Closing”).
- 3.2. The Closing is expressly conditioned upon the selection of Purchaser as the winning bidder (the “Winning Bidder”) pursuant to and in accordance with the Sale Procedures Order (as defined in the APA), the entry of the final Sale Order (as defined in the APA), the satisfaction of the other conditions precedent in the APA, and the subsequent occurrence of the Sale Closing.
- 3.3. If Purchaser is not the Winning Bidder, then this Agreement shall automatically terminate without any further action by any of the Parties and shall be nugatory and void in all respects. Upon such termination, no Party shall have any rights or claims against the others hereunder.

4. Lender Representations and Warranties. Each Lender, severally and not jointly, represents and warrants as to itself to each of the other Parties that the following statements are true, correct and complete as of the date hereof and as of the Closing:

- 4.1. Organization and Good Standing; Power and Authority. Such Lender is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Such Lender has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated by, and perform its obligations under, this Agreement.
- 4.2. Authorization. The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary organizational actions on the part of such Lender.
- 4.3. Binding Obligation. This Agreement is the legally valid and binding obligation of such Lender, enforceable against such Lender in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or limiting creditors’ rights generally or by equitable principles relating to enforceability (collectively, the “Enforceability Exceptions”).
- 4.4. No Conflicts. The execution, delivery, and performance by such Lender of this Agreement do not and will not (a) violate any provision of law, rule or regulation applicable to such Lender or by which such Lender is bound, (b) conflict with such Lender’s organizational or governance documents, or (c) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, any material contractual obligation by which such Lender or any of its property is bound.
- 4.5. Ownership of the Indebtedness. Each Lender is the legal and beneficial owner of the principal amounts (*plus* all accrued and unpaid interest thereon) under the

Prepetition Facility and/or the DIP Facility held by such Lender, free and clear of any lien, security interest, encumbrance or other adverse claim.

5. Representations and Warranties of Purchaser. Purchaser represents and warrants to each of the other Parties that the following statements are true, correct and complete as of the date hereof and as of the Closing:
 - 5.1. Organization and Good Standing; Power and Authority. Purchaser is an entity duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization. Purchaser has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated by, and perform its obligations under this Agreement.
 - 5.2. Authorization. The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary organizational actions on the part of Purchaser.
 - 5.3. Binding Obligation. This Agreement is the legally valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as enforcement may be limited by the Enforceability Exceptions.
 - 5.4. No Conflicts. The execution, delivery, and performance by Purchaser of this Agreement do not and will not (a) violate any provision of law, rule or regulation applicable to Purchaser or by which Purchaser is bound, (b) conflict with Purchaser's organizational or governance documents, or (c) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, any material contractual obligation by which Purchaser or any of its property is bound.
6. Miscellaneous.
 - 6.1. Further Assurances. The Parties shall at any time and from time to time after the date hereof execute, deliver and/or file such further agreements, instruments and other documents (including, without limitation, in connection with the conveyance and transfer of the DIP Obligations and the Prepetition Obligations pursuant to this Agreement) in form and substance reasonably satisfactory to the Parties, and take such other action as any Party may reasonably request in order to consummate the transactions contemplated by this Agreement and the APA, as applicable.
 - 6.2. Pre-Sale Closing Structuring; Closing Documentation. In furtherance (and not in limitation in any respect) of the foregoing: (a) each of the Parties acknowledges and agrees that prior to the Sale Closing, Purchaser may assign (or otherwise designate) its rights and obligations under the APA to one or more of its affiliates, or one or more persons or entities may become direct or indirect parent companies of Purchaser (and, accordingly, the terms and conditions set forth in this Agreement shall be automatically amended to apply instead to such affiliate(s)), as (and to the extent) determined by the Agents (any such transaction, a "Purchaser Reorganization"); and (b) in connection with the Closing and/or any Purchaser

Reorganization, the Parties shall execute, deliver and/or file any other agreements, instruments and other documents (including without limitation any contribution or exchange agreement with respect to any equity interests held or to be held by the DIP Lenders or Prepetition Lenders in Purchaser) as necessary (as determined by the Agents) to effectuate the Closing and/or a Purchaser Reorganization.

- 6.3. Successors and Assigns. All covenants, rights, obligations and other agreements of any Party contained in this Agreement are binding upon, and shall inure to the benefit of, such Party and its successors and permitted assigns, whether so expressed or not. This Agreement shall not be assigned by any Party without the prior written consent of the other Parties.
- 6.4. Waiver; Amendment. Neither this Agreement nor any provision hereof shall be waived, amended, supplemented, discharged or terminated except by an instrument in writing executed by the Parties.
- 6.5. Severability. If any provision of this Agreement or the application of any such provision to any person or circumstance shall be declared illegal, void or unenforceable in any respect by a court of competent jurisdiction, all other provisions of this Agreement shall not be affected and shall remain in full force and effect.
- 6.6. Section Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 6.7. GOVERNING LAW, JURISDICTION. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICTS PROVISION THEREOF. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY FEDERAL OR STATE COURTS LOCATED IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK OVER ANY ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT, AND THE PARTIES HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD IN ANY SUCH COURT. THE PARTIES FURTHER WAIVE ANY OBJECTION TO VENUE IN ANY SUCH COURT AND ANY OBJECTION TO ANY ACTION OR PROCEEDING ON THE BASIS OF FORUM NON CONVENIENS. THE PARTIES HERETO IRREVOCABLY AGREE TO WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY SUCH ACTION OR PROCEEDING.
- 6.8. Counterparts. This Agreement may be executed with counterpart signature pages or in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement. Delivery of any such executed counterpart signature

page or counterpart by facsimile transmission, PDF file or other electronic transmission will be deemed to be delivery of an original executed counterpart signature page or counterpart.

- 6.9. Specific Performance. The Parties acknowledge and agree that each would be damaged irreparably if any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, the Parties agree that each Party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement in any action instituted in any court of the United States or any state thereof having jurisdiction over the Parties to this Agreement and the matter, in addition to any other remedy to which any Party may be entitled, at law, in equity or otherwise.
- 6.10. Third Party Rights. Nothing in this Agreement is intended or shall be construed to confer upon or give any person, other than the Parties and their respective successors and permitted assigns any rights.
- 6.11. Entire Agreement. This Agreement (together with the APA) constitutes the full and entire understanding and agreement between the Parties with regard to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

PURCHASER

ADONIS ACQUISITION HOLDINGS LLC,
as Purchaser

By: _____

Name:

Title:

DIP AGENT

ARES CAPITAL CORPORATION,
as DIP Agent

By: _____
Name:
Title:

PREPETITION AGENT

ACF FINCO I LP,
as Prepetition Agent

By: _____
Name:
Title:

DIP LENDERS

ARES CAPITAL CORPORATION,
as a DIP Lender

By: _____
Name:
Title:

[•],
as a DIP Lender

By: _____

Name:

Title:

PREPETITION LENDERS

[•],
as a Prepetition Lender

By: _____
Name:
Title:

EXHIBIT D

FORM OF RELEASE

(a) Effective from and after the Closing, each of (i) the Seller, (ii) the Purchaser, (iii) the Pre-Petition Secured Lenders, (iv) the DIP Lenders, (v) Ares Capital Corporation, (vi) ACF Finco I LP, (vii) Carlin Adrianopoli, (viii) Alan Carr, (ix) Alan Boyko, and (x) John Sacksteder (each, a “**Mutual Releasing Party**”) conclusively, absolutely, unconditionally, irrevocably, and forever releases and discharges, as of the Closing Date, each and every Mutual Released Party, from any and all Claims or causes of action whatsoever (including any derivative claims), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, direct or indirect, existing or hereinafter arising, whether in law or equity, whether sounding in tort or contract, whether arising under federal or state statutory or common law, or any other applicable international foreign, or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, that the Mutual Releasing Party or its Related Party or any other Persons claiming under or through them would have been legally entitled to assert in his/her or its own right (whether individually or collectively) or on behalf of any Person, based on or relating to, or in any manner arising from, in whole or in part, (1) the Purchased Assets, the Assumed Liabilities, or the Business, (2) the funding, providing, purchase, sale, ownership, or rescission of the purchase or sale of any equity security of the Seller, (3) the subject matter of, or the transactions, events, circumstances, acts, or omissions giving rise to, any such Claim or cause of action, including, without limitation, the negotiation, formulation, preparation, or implementation of this Agreement, (4) the formulation, preparation, negotiation, or the entry into, this Agreement or (5) subject to the occurrence of the Closing Date, the consummation of the Restructuring Transaction, in the case of each of the foregoing (1)-(5), such matter involves, arises from, or relates to the Business, this Agreement, or the Restructuring Transaction and is based upon an act, omission, transaction, agreement, event, or other occurrence taking place on or before the Closing; *provided* that, notwithstanding anything in this Agreement to the contrary, nothing shall affect, limit, or otherwise impair any rights that remain in effect from and after the Closing to enforce this Agreement and the obligations contemplated by the Restructuring Transaction; *provided, further* that, notwithstanding anything in this Agreement to the contrary, nothing shall affect, limit, or otherwise impair any rights under the Pre-Petition Credit Agreement, the DIP Term Sheet, or the DIP Order. Each of the Mutual Releasing Parties expressly acknowledges and agrees, with respect to the Claims released in this Section 12.6, that it waives, to the fullest extent permitted by applicable law, any and all provisions, rights, and benefits conferred by any applicable U.S. federal or state law limiting a release or discharge of any unknown Claims, including under Section 1542 of the California Civil Code, which states that “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party” or analogous applicable state or federal law or regulation, any principle of U.S. common law, or any other applicable law in any relevant jurisdiction for the Seller, that would otherwise limit a release or discharge of any unknown Claims pursuant to this Section 12.6. Furthermore, each of the Mutual Releasing Parties hereby absolutely, unconditionally, and irrevocably covenants and agrees with and in favor of each Mutual Released Party that, from and after the Closing, it will not sue (at law, in equity, in any regulatory proceeding,

or otherwise) any Mutual Released Party on the basis of any Claim released or discharged by the Mutual Releasing Parties pursuant to this Section 12.6. Notwithstanding any provision to the contrary herein, the Mutual Releasing Parties do not release or compromise any rights or claims that they may have against the Seller or any credit party under (A) the Pre-Petition Credit Agreement, (B) the DIP Term Sheet, (C) the DIP Order, or (D) except to the extent expressly set forth herein, this Agreement or the Restructuring Transaction, in each case including any other agreements, instruments and documents related thereto.

(b) The release in this Section 12.6 shall (i) grant third-party beneficiary rights to each Mutual Released Party (only to the extent of such Mutual Release) not a party hereto, (ii) constitute a covenant under which each Mutual Releasing Party covenants, from and after the Closing, not to enforce, pursue, prosecute or assist as to any Claim or cause of action that is released hereby, and (iii) require any Mutual Releasing Party that breaches the Mutual Release to pay all reasonable and documented attorneys' fees and out-of-pocket costs incurred by any Mutual Released Party as a result of such breach.

EXHIBIT B

Redline

ASSET PURCHASE AGREEMENT

by and between

ADONIS ACQUISITION HOLDINGS LLC

as Purchaser

and

VOBEV, LLC

as Seller

Dated as of ~~1-6~~ January 6, 2025

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement, dated as of ~~February 1, 2025~~ January 6, 2025 (this “**Agreement**”), is made and entered into by and between (i) Adonis Acquisition Holdings LLC, a Delaware limited liability company (“**Purchaser**”), and (ii) Vobev, LLC, a Utah limited liability company (“**Seller**”).

WHEREAS, Seller (in such capacity, the “**Debtor**”) commenced on December 9, 2024 (the “**Petition Date**”) a voluntary case (the “**Bankruptcy Case**”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the District of Utah (the “**Bankruptcy Court**”);

WHEREAS, the Debtor continues to operate its businesses and manage its properties as debtor and debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, in connection with the Bankruptcy Case, Purchaser shall credit bid on a dollar-for-dollar basis the Credit Bid amount pursuant to Section 363 of the Bankruptcy Code; and

WHEREAS, Purchaser desires to purchase and assume from Seller, and Seller desires to sell and transfer to Purchaser, pursuant to Sections 363 and 365 of the Bankruptcy Code, all of the Purchased Assets and Assumed Liabilities on the terms and subject to the conditions set forth in this Agreement (the “**Sale**”).

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I CERTAIN DEFINITIONS

Section 1.1 Certain Definitions. For purposes of this Agreement, the following terms shall have the respective meanings set forth below:

“**Accounts Receivables**” means as of the Closing, all accounts receivables, trade receivables, notes receivables, and other miscellaneous receivables, whether current or overdue, of Seller, including all credit card receivables, funds in transit, deposits and other receivables from customers and other payments, fees, and other amounts due, and allowances due from landlords under (and rent accounts receivables with respect to) any Assigned Lease, and general third party vendor rebates, discounts and credits, but excluding any of the foregoing arising out of the Excluded Assets.

“**Action**” means any notice of violation, complaint, demand, claim, charge, prosecution, indictment, action, suit, arbitration, audit, hearing, litigation, inquiry, investigation or proceeding (whether civil, criminal, administrative, investigative or informal) commenced, brought or

asserted by any Person or group of Persons or Governmental Authority or conducted or heard by or before any Governmental Authority or any arbitration tribunal.

“Administrative Expenses” means, collectively, the expenses of Seller that are entitled to priority under Section 503 of the Bankruptcy Code.

“Ad Valorem Taxes” means all real property or personal property Taxes and other ad valorem Taxes levied with respect to the Purchased Assets for any taxable period.

“Affiliate” of any Person means any other Person who either directly or indirectly through one or more intermediaries is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, **“control”** 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 the ownership of securities, partnership interests or by contract, assignment, credit arrangement, as trustee or executor, or otherwise, and the terms **“controls,” “controlling”** and **“controlled by”** shall have correlative meanings. With respect to Purchaser, the term **“Affiliate”** shall also include its managers or members or similar Persons, and any other entity controlled by the same managers or members or similar Persons as Purchaser (as the case may be); *provided* that such term shall not include any portfolio companies or managed accounts.

“Agent” means Ares Capital Corporation, a Maryland corporation, in its capacity as administrative agent under the Pre-Petition Credit Agreement or the DIP Term Sheet, as the case may be.

“Agreement” has the meaning set forth in the Preamble.

“Alcohol Licenses” means any Permit held by Seller related to the production, sale, warehousing, storage, or distribution of alcoholic beverages in connection with the operation of the Business.

~~**“Alcohol Interim Management Agreement”** has the meaning set forth in Section 4.2(a)(xi).~~

“Allocation Schedule” has the meaning set forth in Section 3.2.

“Alternative Restructuring Proposal” means any inquiry, proposal, offer, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, financing proposal, debt investment, equity investment, liquidation, tender offer, recapitalization, plan of reorganization, share exchange, business combination, or similar transaction or series of transactions involving Seller or the Equity Securities or debt or other interests in Seller, in each case, that is inconsistent with or represents an alternative to the transactions contemplated by this Agreement.

“Alternative Transaction” means any transaction (or series of transactions), whether direct or indirect, whereby any Person or group of Persons (other than Purchaser and its Affiliates) acquires (i) beneficial ownership of a majority of the Equity Securities of Seller or (ii) a material portion of the Purchased Assets (but does not mean the sale of assets conducted in the

Ordinary Course of Business or with the prior consent of Purchaser), in each case, whether by merger, sale of assets or equity, recapitalization, plan of reorganization or otherwise. Notwithstanding the foregoing, a liquidation or wind-down of Seller's estate shall not be an Alternative Transaction.

"Applicable Tax Returns" has the meaning set forth in Section 5.15(a).

"Apportioned Obligations" has the meaning set forth in Section 8.4Section 8.3.

"Assigned Contracts" means such Available Contracts designated by Purchaser to be assumed and assigned pursuant to Section 2.5 each of which shall be set forth on Schedule 2.1(f), as finalized in accordance with the terms and conditions of this Agreement. For the avoidance of doubt, any Contract not set forth on Schedule 2.1(f) shall constitute an Excluded Asset.

"Assigned Leases" means each unexpired Lease which is designated by Purchaser to be assumed and assigned pursuant to Section 2.5 each of which shall be set forth on Schedule 2.1(e). For the avoidance of doubt, any Lease with respect to real property or portion thereof leased, licensed or otherwise granted to Seller not set forth on Schedule 2.1(e) shall constitute an Excluded Asset.

"Assignment Agreements" has the meaning set forth in Section 4.2(a)(i).

"Assumed Benefit Plans" means those certain Benefit Plans that are designated by Purchaser in its sole and absolute discretion to be assumed and assigned pursuant to Section 2.5, each of which shall be set forth on Section 2.1(s), as finalized in accordance with the terms and conditions of this Agreement. For the avoidance of doubt, any Benefit Plan not set forth on Section 2.1(s) shall constitute an Excluded Asset or Excluded Employment Liability, as applicable.

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

"Auction" has the meaning set forth in the Sale Procedures.

"Available Contract" means any executory Contract (including Inbound IP Agreements) or unexpired Lease, but excluding the Fundamental Documents of Seller. Notwithstanding anything contained in this Agreement to the contrary, for the purposes of the definition "Assigned Contract," Assigned Leases shall not constitute a Contract.

"Avoidance Actions" means all claims and causes of action arising under Sections 542 through 553 of the Bankruptcy Code or any analogous state law.

"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.

“**CARES Act**” means the Coronavirus Aid, Relief, and Economic Security Act, which was enacted on March 27, 2020 (as it may be amended or modified).

“**Cash Shortfall**” has the meaning set forth in ~~Section 3.1~~[Section 3.1](#).

“**Claim**” has the meaning set forth in Section 101(5) of the Bankruptcy Code.

“**Closing**” has the meaning set forth in [Section 4.1](#).

“**Closing Date**” has the meaning set forth in [Section 4.1](#).

“**Collective Bargaining Agreements**” means any collective bargaining agreements related to the Business between Seller (or any Affiliate thereof) and any labor union or other collective bargaining or other representative of current Employees of Seller or any Affiliate thereof, and including local agreements, amendments, supplements, letters and memoranda of understanding of any kind.

“**COBRA**” means the continuation coverage provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, as codified in IRC Section 4980B and ERISA Sections 601 et seq., as amended from time to time, and the regulations and other guidance promulgated thereunder and any other similar provisions of state or local Law.

“**Conditions**” means, with respect to Seller, (i) any Orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code, (ii) limitations on operations imposed by the Bankruptcy Court or the Bankruptcy Code or agreements governing Seller’s debtor-in-possession financing or use of cash collateral, (iii) obligations or limitations arising under or related to the DIP Facility or the DIP Term Sheet, (iv) Seller’s duty to seek and obtain the highest or otherwise best price for its assets as required by the Bankruptcy Code, or (v) limitations arising out of or related to the financial distress of Seller and the Bankruptcy Case, including limitations on personnel, funds and other resources.

“**Consent**” means any consent, approval, order, License, Permit, waiver, authorization, registration, declaration filing, exemption, notice, application, or certification, made with or granted by any Person.

“**Contract**” means any agreement, contract, instrument, commitment, lease (including all Leases), guaranty, indenture, License, or other arrangement or understanding (and all amendments, side letters, modifications and supplements thereto) between parties or by one party in favor of another party, whether written or oral. Notwithstanding anything contained in this Agreement to the contrary, for the purposes of the definition “Assigned Contract,” Assigned Leases shall not constitute a Contract.

“**Controlled Group Liability**” means any and all liabilities under (i) Title IV of ERISA, (ii) Section 302 of ERISA, and (iii) Sections 412 and 4971 of the IRC.

“**Copyrights**” means (i) all copyrights and works of authorship (whether registered or unregistered), all registrations thereof; and all applications in connection therewith, including all registrations, and applications in the United States Copyright Office or in any similar office or

agency of any other Governmental Authority, and (ii) all extensions or renewals thereof. “Copyrights” expressly excludes copyrights in commercially available computer software licensed under a shrink wrap, click wrap or other similar commercial license.

“**COVID-19 Relief Law**” means the CARES Act and any similar or successor legislation, together with any memoranda or executive orders relating to COVID-19.

“**Credit Bid**” has the meaning set forth in Section 3.1.

“**Cure Amounts Motion**” has the meaning set forth in Section 2.5(b).

“**Cure Costs**” means all amounts that must be paid and all obligations that otherwise must be paid or satisfied, pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code to cure any defaults under any Assigned Lease or Assigned Contract in connection with the assumption thereof by, and/or assignment thereof to, Purchaser.

“**Cure Costs Cap**” means Cure Costs in an aggregate amount not to exceed \$2,500,000 unless otherwise agreed in writing by Seller and Purchaser.

“~~Cure Costs Cap~~ **Dataroom**” has the meaning set forth in ~~Section 2.5(b)~~ Section 1.4.

“~~Dataroom~~ **Debtor**” has the meaning set forth in ~~Section 1.4~~ the Recitals.

“**DIP Agent**” means Ares Capital Corporation, a Maryland Corporation.

“**DIP Budget**” means the budget attached as Exhibit B to the Interim DIP Order, as such may be amended or modified from time to time in accordance with the DIP Term Sheet and the DIP Order.

“**DIP Facility**” means the senior secured postpetition financing facility authorized and approved by the Bankruptcy Court pursuant to the DIP Order.

“**DIP Lenders**” means all Persons who are lenders under the DIP Term Sheet, each in its capacity as such.

“**DIP Obligations**” has the meaning ascribed to such term in the DIP Order.

“**DIP Order**” means the Interim DIP Order or the Final DIP Order, as then applicable.

“**DIP Term Sheet**” means the Senior Secured Superpriority DIP Financing Term Sheet, by and among (i) the Seller, (ii) the DIP Agent and (iii) the DIP Lenders, a copy of which is attached as Exhibit A to the DIP Order.

“**Employee Retention Credit**” means any employee retention credit provided for by the CARES Act (including as amended by the Consolidated Appropriations Act, 2021, and the American Rescue Plan Act of 2021) and any similar credit under state or local Law.

“**Employees**” has the meaning set forth in Section 5.8.

securities convertible into or exchangeable or exercisable for any such capital stock, (ii) with respect to any partnership, all partnership interests, participations or other equivalents of partnership interests of such partnership (however designated), and any warrants, options or other rights to purchase or acquire any such partnership interests and any securities convertible into or exchangeable or exercisable for any such partnership interests and (iii) with respect to any limited liability company, all limited liability company interests or membership interests, participations or other equivalents of limited liability company interests or membership interests of such limited liability company (however designated), and any warrants, options or other rights to purchase or acquire any such membership interests and any securities convertible into or exchangeable or exercisable for any such membership interests.

“**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 IRC (including under Section 414(b), (c), (m) or (o) of the IRC 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 (i) Books and Records relating solely to the Excluded Assets or Excluded Liabilities, (ii) Seller Fundamental Documents and stock and minute books, Seller’s financial accounting documents and such other books and records of any Seller as pertaining to ownership, organization or existence of such Seller, corporate seal, checkbooks and canceled checks; provided, that Purchaser shall have the right to make copies of any portions of such documents to the extent not prohibited by applicable Law, and (iii) any documents which Seller is prohibited by applicable Law or Contract from delivering to Purchaser at Closing as a Purchased Asset.

“**Excluded Cash**” means, the cash on hand and cash drawn by Seller under the DIP Facility, including cash drawn under the DIP Facility at the Closing, in an amount equal to, without duplication, (i) after taking into account any amounts held by Seller or estate professionals, or any funds of Seller held in escrow or reserved with respect to the fees and expenses of any of Seller’s estate professionals, an amount sufficient to satisfy the estimated accrued and unpaid professional fees and expenses of estate professionals as of the Closing (but only to the extent that such fees of Seller’s estate professionals are included in the Carve-Out (as defined in the DIP Order) or the Professional Fee Reserve (as defined in the DIP Order)), plus (ii) an amount sufficient to pay all ordinary course Administrative Expenses arising or incurred on or after the Petition Date, in each case which are accrued and unpaid as of the Closing, and any other claims for payroll, compensation (including the amount, if any, as set forth in Section 7.6(e)(ii)), taxes, or other Liabilities that if not paid would reasonably be expected to result in personal liability of any current or former employee, officer or director of Seller or any of its subsidiaries (but only to the extent such Administrative Expenses or other liabilities are not Assumed Liabilities); plus (iii) the Wind-Down Amount (which shall be used solely to fund the Post-Sale Expenses), provided that notwithstanding anything in this Agreement to the contrary,

Excluded Cash shall not include funds necessary to satisfy any Taxes or other Liabilities relating to any matter described on Schedule 2.4(x).

“Excluded Employee Liabilities” means the following Liabilities of Seller or any of its Affiliates or ERISA Affiliates (or any predecessors of any of the foregoing) arising out of, relating to or with respect to any current or former employee or other individual service provider (including any such individual service provider providing services through a personal services entity), or any spouse, dependent, or beneficiary thereof, in each case, other than any Assumed Liabilities and obligations to fund certain Liabilities and expenses as set forth in clause (ii) of the definition of Excluded Cash: (i) any Liability arising at any time under or in connection with any Benefit Plan (other than as expressly provided in Section 2.3(c)(ii) with respect to an Assumed Benefit Plan); (ii) any Liability that constitutes a Pre-Closing COBRA Liability or a Pre-Closing WARN Act Liability or Liability under any similar Law (including if Purchaser does not hire any employee of Seller); (iii) any Controlled Group Liability; (iv) any Liability arising in connection with the actual or prospective employment or engagement, the retention and/or discharge by Seller or any of its Affiliates or ERISA Affiliates (or any predecessors of the foregoing) of any current or former employee or other individual service provider (including any such individual service provider providing services through a personal services entity) of any of the foregoing; and (v) any employment, labor, compensation, pension, employee welfare, and employee-benefits-related Liabilities relating to any current or former employee or other individual service provider (including any such individual service provider providing services through a personal services entity) of Seller or any of its Affiliates or ERISA Affiliates (or any predecessors of any of the foregoing), or any spouse, dependent, or beneficiary thereof, including but not limited to all Liabilities related to or arising out of claims made by any such Person (a) for any statutory or common law severance or other separation benefits, (b) for any contractual or other severance or separation benefits and any other legally-mandated payment obligations (including any compensation payable during a mandatory termination notice period and any payments pursuant to a judgment of a court, tribunal, or other authority having jurisdiction over the parties hereto), (c) with respect to any unfair labor practice charge, (d) under any unemployment compensation or workers’ compensation Law, (e) under any federal, state, local, or non-U.S. employment Law or other Law relating to employment, discrimination, classification, wages and hours (including claims or Liabilities related to the Fair Labor Standards Act and any similar state, local, or non-U.S. Law), or immigration, or (f) relating to any obligation under applicable Law or Contract to inform or consult with employees, employee representatives, unions, works councils, or other employee representative bodies in connection with the transactions contemplated by this Agreement and the other Transaction Documents in each case, (I) except as set forth in the following clause (II), associated with any current or former employee or other individual service provider (including any such individual service provider providing services through a personal services entity) of Seller or any of its Affiliates or ERISA Affiliates (or any predecessors of any of the foregoing), or any spouse, dependent, or beneficiary thereof, arising at any time, or (II) associated with any Transferred Employee or any spouse, dependent, or beneficiary thereof, arising on or prior to the Closing Date (excluding, for the avoidance of doubt in the case of this clause (II), Liabilities in respect of go-forward compensation and benefits arrangements offered by Purchaser to Transferred Employees following their commencement of employment with Purchaser in accordance with Section 7.6).

“Excluded Insurance Policies” means all directors’ and officers’ insurance policies and any other insurance policy of Seller which (i) relates solely to the Excluded Assets or Excluded Liabilities, (ii) is required to cover claims or expenses in the Bankruptcy Case or (iii) are required to be retained by Seller in connection with the Wind-Down Activities.

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Extended Contract Period Notice” has the meaning set forth in Section 2.5(a).

“Extended Contract Period” has the meaning set forth in ~~Section 2.5~~Section 7.15.

“Fraud” means (i) a false representation of a material fact by Purchaser or Seller with respect to any representation or warranty made by it set forth in ARTICLE V or ARTICLE VI (as applicable and in each case as qualified by the Seller Disclosure Schedule or Purchaser Disclosure Schedule, as applicable), (ii) made with actual knowledge or belief of its falsity, (iii) with the intent of inducing another Person to act, or refrain from action, to such other Person’s detriment, and (iv) upon which such other Person acted or did not act in justifiable reliance on the representation, with resulting Liabilities, and which shall expressly exclude any other claim of fraud that does not include the elements set forth in this definition, including constructive fraud, negligent or reckless misrepresentation or any similar theory.

“Final DIP Order” means an order of the Bankruptcy Court entered in the Bankruptcy Case granting the relief provided in the Interim DIP Order on a final basis, in form and substance acceptable to the Required DIP Lenders.

“Final Order” means any order, ruling or judgment of the Bankruptcy Court or any other court of competent jurisdiction, as to which the time to file an appeal, a motion for rehearing or a petition for writ of *certiorari* has expired and no such appeal, motion or petition is pending.

“Fundamental Documents” means the documents of a Person (other than a natural person) by which such Person establishes its legal existence or which govern its internal affairs. For example, the Fundamental Documents of a corporation would be its charter and bylaws and the Fundamental Documents of a limited liability company would be its certificate of formation and limited liability company agreement or operating agreement.

“GAAP” means generally accepted accounting principles in the United States, consistently applied.

“General Intangibles” means all intangible assets now owned or hereafter acquired by Seller and associated with the Business, including (i) all right, title and interest that Seller may now or hereafter have in or under any Contract, (ii) all payment intangibles, (iii) rights in customer lists, (iv) interest in business associations, (v) proprietary or confidential information, technical information, procedures, designs, knowledge, know-how, software, data bases, data, skill, expertise, experience, processes, rights in models, rights in drawings, (vi) goodwill, (vii) uncertificated securities, (viii) checking and other bank accounts, (ix) rights to receive Tax refunds and other payments, (x) rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged Equity Securities and investment property, and (xi) rights of indemnification, other than any of the foregoing related to or arising

kind, nature or description and (vi) products, equipment, and appliances, whether owned or on order, including all embedded Software.

“**IP Assignment Agreements**” has the meaning set forth in ~~Section 4.2(a)(viii)~~[Section 4.2\(a\)\(vii\)](#).

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

“**IRS**” means the Internal Revenue Service.

“**Knowledge of Seller**” means the actual knowledge after reasonable inquiry (and in no event encompass constructive, imputed or similar concepts of knowledge) of the individuals identified in [Section 1.1\(b\)](#) of the Seller Disclosure Schedule, none of whom, for the sake of clarity and avoidance of doubt, shall have any personal Liability or obligations regarding such knowledge, except in the case of Fraud (solely with respect to actual knowledge) or Willful Breach.

“**Law**” means any federal, state, provincial, local, foreign, international or supranational law (including common law), statute, treaty, ordinance, rule, regulation, Order, code, or other similar authority enacted, adopted, promulgated, or applied by any Governmental Authority.

“**Leased Real Estate**” has the meaning set forth in [Section 5.3\(b\)](#).

“**Lease**” means each unexpired lease, sublease or license of real property leased, subleased or licensed to Seller (including all written amendments, modifications, or extensions thereof thereto).

“**Liability**” means any liability (including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, direct, conditional, implied, vicarious, derivative, joint, several or secondary liability), debt, obligation, deficiency, interest, Tax, penalty, fine, adverse claim, adverse judgment, cause of action or other loss (including loss of benefit or relief), cost or expense of any kind or nature whatsoever, whether asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, and whether due or to become due and regardless of when asserted.

“**License**” means any licenses, Consents, approvals and any Permits, including Permits of or registrations with any Governmental Authority; but expressly excluding any license or sublicense of Intellectual Property.

“**License Approvals**” has the meaning set forth in [Section 7.8](#).

“**Liens**” means any mortgage, pledge, hypothecation, security interest, encumbrance, easement, license, encroachment, servitude, consent, option, Claim, lien (as defined in Section 101(37) of the Bankruptcy Code), put or call right, right of first refusal, voting right, charge, lease, sublease, right to possession or other restrictions or encumbrances of any nature whatsoever.

~~“Personal Information” means any information: (i) about an identified or identifiable individual (including Employees); or (ii) that constitutes “personal information” under applicable Laws relating to privacy or data protection.~~

“Petition Date” has the meaning set forth in the Recitals.

“Post-Closing Tax Period” means (i) any Tax period beginning after the Closing Date and (ii) with respect to a Tax period that commences on or before but ends after the Closing Date, the portion of such period beginning after the Closing Date.

“Post-Petition Payables” has the meaning set forth in Section 2.3(i).

“Post-Sale Expenses” means the expenses required to conduct the Wind-Down Activities which are funded by the Wind-Down Amount; *provided* that, for the avoidance of doubt, Purchaser shall not be liable for any expenses in excess of the Wind-Down Amount, except as otherwise set forth in this Agreement, the Transition Services Agreement, the Interim Management Agreement or any other agreement between with the Purchaser that contemplates expenses.

“Pre-Closing COBRA Liability” means any Liability arising under COBRA related to a “qualifying event” occurring at (including as a result of) or prior to the Closing in respect of any current or former Employee or other service provider of Seller or any of its Affiliates or ERISA Affiliates (or any predecessors of any of the foregoing), or any spouse, dependent, or beneficiary thereof.

“Pre-Closing Tax Period” means (i) any Tax period ending on or before the Closing Date and (ii) with respect to a Tax period that commences on or before but ends after the Closing Date, the portion of such period up to and including the Closing Date.

“Pre-Closing WARN Act Liability” means any Liability under the WARN Act, in any case arising at (including as a result of) or prior to the Closing.

“Pre-Petition Credit Agreement” means that certain Credit and Guaranty Agreement dated as of April 20, 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof), by and among (i) Seller, as Borrower, (ii) Vobev Holdings, LLC, a Delaware limited liability company, as Holdings, (iii) certain subsidiaries of Seller from time to time party thereto, as guarantors, (iv) the Pre-Petition Secured Lenders, (v) Ares Capital Corporation, a Maryland corporation, as administrative agent and (v) ACF Finco I LP, a Delaware limited partnership, as revolving agent and collateral agent.

“Pre-Petition Facilities” shall have the meaning ascribed to the term “Prepetition Facilities” in the DIP Order.

“Pre-Petition Obligations” means the loans and other “Obligations” (as defined in the Pre-Petition Credit Agreement) under the Pre-Petition Credit Agreement.

any residual Wind-Down Amount remaining after the satisfaction and payment of all Post-Sale Expenses, as determined by Seller in its reasonable discretion, such amount shall be promptly delivered to Purchaser.

~~“Wind-Down Budget” means a budget for the payment of the Post-Sale Expenses, which shall be mutually agreed by Seller and Purchaser in good faith and attached as an exhibit to the Sale Order.~~

Section 1.2 Schedules; Exhibits. References to this Agreement shall include any Exhibits, Schedules and Recitals to this Agreement and references to Sections, Exhibits and Schedules are to Sections of, Exhibits to and Schedules to this Agreement.

Section 1.3 Information. References to books, records or other information mean books, records or other information in any form including paper or electronically stored data.

Section 1.4 Interpretation. When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless the context otherwise requires. The word “or” shall not be deemed to be exclusive. The word “extent” and the phrase “to the extent” when used in this Agreement shall mean the degree to which a subject or other thing extends, and such word or phrase shall not mean simply “if.” All terms defined in this Agreement shall have the same defined meaning when used in any certificate or other document made or delivered pursuant thereto unless otherwise defined therein. Any reference herein to “dollars” or “\$” shall mean United States dollars. The words “as of the date of this Agreement” and words of similar import shall be deemed in each case to refer to the date this Agreement was first signed. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. References in this Agreement to specific Laws or to specific provisions of Laws shall include all rules and regulations promulgated thereunder (and revisions thereof or successors thereto). Each of the parties to this Agreement has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if it is drafted by all the parties to this Agreement, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement. Reference to any Person includes such Person’s successors and assigns, if applicable, but only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity. Reference to any agreement, document, or instrument means such agreement, document, or instrument as amended or modified and in effect from time to time in accordance with its terms. Any document or item will be deemed “delivered,” “provided” or “made available” by Seller, within the meaning of this Agreement if such document or item is included in that certain datasite administered by Intralinks (the “**Dataroom**”).

ARTICLE II
PURCHASED SALE OF ASSETS;
ASSUMPTION OF LIABILITIES

Section 2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall (or shall cause its designated Affiliate or Affiliates to) purchase, acquire and accept from Seller, and Seller shall sell, transfer, assign, convey and deliver to Purchaser (or such designated Affiliate or Affiliates), pursuant to and in accordance with the Sale Order, all of Seller's right, title and interest in, to and under, as of the Closing, the Purchased Assets, free and clear of all Liens (other than Permitted Liens and interests other than the Assumed Liabilities). "**Purchased Assets**" means the assets set forth as follows (other than the Excluded Assets):

- (a) all cash, cash equivalents, prepayments (including all prepayments made to third party vendors), deferred assets, refunds, credits or overpayments, in each case, except for the Excluded Cash;
- (b) all Accounts Receivables;
- (c) all Inventory;
- (d) to the extent transferable pursuant to applicable Law, all 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 any Excluded Insurance Policy;
- (e) all Assigned Leases;
- (f) all Assigned Contracts;
- (g) to the extent transferable, any security deposits held by counterparties to the Assigned Leases or Assigned Contracts;
- (h) all furniture, fixtures, equipment, marketing materials and other personal property used or usable in the operations of the Business, including, to the extent transferable, all rights to any Software;
- (i) all merchandise and other personal property used or usable in the operations of the Business;
- (j) to the extent transferable pursuant to applicable Law, all Permits (including all Environmental Permits) required for the conduct of the Business as currently conducted or proposed to be conducted or for the ownership, operation, use, maintenance, or repair of any of the Purchased Assets, ~~including Alcohol Licenses and other similar licenses;~~
- (k) all Books and Records relating to the Purchased Assets and all employee records of the Transferred Employees (to the extent permitted by applicable Law), other than the Excluded Books and Records;

honor, perform and discharge as and when due, all of the Assumed Liabilities. “**Assumed Liabilities**” means the Liabilities and obligations of Seller set forth as follows:

(a) all Liabilities relating to, or arising in respect of, the Purchased Assets arising out of or relating to (i) events, occurrences, acts or omissions first occurring or first existing after the Closing or (ii) the operation of the Business or the Purchased Assets by Purchaser after the Closing;

(b) (i) subject to the Cure Costs Cap with respect to the Assigned Leases and the Assigned Contracts, all Liabilities (including all Cure Costs) of Seller under the Assigned Leases and the Assigned Contracts and (ii) all Liabilities arising under purchase orders, invoices and similar orders and statements with any customer counterparty to the Assigned Contracts and with any customers set forth on Schedule 2.3~~(b)~~(b);

(c) (i) all Liabilities, solely to the extent arising after the Closing relating to the employment, engagement, or performance of services, or termination of employment, engagement, or services, of any Transferred Employee; and (ii) any Liabilities under each Assumed Benefit Plan, solely to the extent arising after the Closing Date;

(d) to the greatest extent permitted by applicable Law, all Liabilities related to any accrued or earned wages and paid time off of any employee who becomes a Transferred Employee;

(e) solely to the extent caused by an action taken by or inaction of Purchaser, any liability under the WARN Act or similar Law or with respect to COBRA or similar Law;

(f) all Liabilities with respect to Transfer Taxes;

(g) any (i) collected and unremitted payroll, sales or use Taxes and (ii) Ad Valorem Taxes, in each case which are (A) secured by liens that are senior to the liens held by Pre-Petition Secured Lenders or DIP Lenders payable in respect of the Purchased Assets or (B) for which the Debtor is obligated under an executory contract or unexpired lease that becomes an Assigned Contract or Assigned Lease;

(h) any and all costs and expenses necessary in connection with providing “adequate assurance of future performance” with respect to the Assigned Leases or Assigned Contracts (as contemplated by Section 365 of the Bankruptcy Code);

(i) all Liabilities for all Administrative Expenses, accounts payable and operating expenses, in each case, accrued, arising or incurred on or after the Petition Date and on or prior to the Closing Date in the Ordinary Course of Business (collectively, the “**Post-Petition Payables**”);

(j) all obligations, commitments and Liabilities to the extent arising from events, occurrence, acts or omissions first occurring or first existing after the Closing under any Permits that are assigned to Purchaser or its Affiliates hereunder;

(k) all Liabilities related to, resulting from or arising out of, any (i) unredeemed refunds, customer credits or similar items, (ii) customer deposits or (iii) customer promotions and related programs, in each case only to the extent both (A) relating to the Purchased Assets and (B) where such obligations arose after the Petition Date; and

(l) the Liabilities set forth on Schedule ~~2.3(m)~~2.3(l).

Nothing contained in this Agreement shall require Purchaser to pay or discharge any Assumed Liabilities prior to such Assumed Liabilities becoming due and payable in accordance with the underlying terms of any Assigned Lease or Assigned Contract giving rise to or governing such Assumed Liabilities. The parties hereto acknowledge and agree that the disclosure of any obligation or other Liability on any schedule to this Agreement shall not create an Assumed Liability or liability of Purchaser that would not have been created otherwise, except where such disclosed Liability has been expressly assumed by Purchaser as an Assumed Liability in accordance with the provisions of this Agreement.

Section 2.4 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, except for the Assumed Liabilities, Purchaser shall not assume, and shall be deemed not to have assumed, any Liabilities relating to the Business of Seller or any Affiliate of Seller, including those Liabilities set forth as follows (collectively, such Liabilities that are not Assumed Liabilities, the “**Excluded Liabilities**”):

- (a) any Liability of Seller to the extent arising from any Excluded Asset;
- (b) any Cure Costs in excess of the Cure Costs Cap;
- (c) all Liabilities under Indebtedness of Seller (including any Indebtedness or accounts payable owing from Seller to any Affiliate of Seller);
- (d) except as set forth in ~~Section 8.2~~Section 8.1 with respect to Transfer Taxes and any other Assumed Liabilities, (i) all Tax Liabilities of Seller or its Affiliates for any taxable period, and (ii) all Tax Liabilities relating to the Purchased Assets attributable to a Pre-Closing Tax Period;
- (e) all Excluded Employee Liabilities;
- (f) all Liabilities relating to, or arising from, Rejection Damages Claims;
- (g) any tort Liabilities of Seller;
- (h) all Liabilities relating to, or arising from, the CARES Act, including any obligation with respect to deferred payroll Taxes;
- (i) all Environmental Liabilities relating to, resulting from, caused by, arising out of or from (i) the Excluded Assets; (ii) the conduct, ownership, operation or control of the Business or any Purchased Asset, to the extent accruing, arising out of or relating to events, occurrences, acts or omissions first occurring or first existing prior to the Closing Date; (iii) the presence, Release or exposure to any Hazardous Materials at, on, in, under or migrating to or

from any real property or otherwise in connection with the conduct of the Business or the ownership, leasehold, use or operation of the Purchased Assets, in each case, prior to the Closing; (iv) the transportation, storage, treatment, disposal, generation, manufacturing, recycling, reclamation, use or other handling of any Hazardous Material with respect to the Purchased Assets, or relating in any manner to the conduct of the Business or the ownership of the Purchased Assets prior to the Closing or (v) the matters set forth on Schedule 2.4(i) of the Disclosure Schedules;

(j) all Actions against Seller, any of its respective 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);

(k) all Liabilities (whether arising before, on or after the Closing) with respect to any employee or former employee of Seller who is not a Transferred Employee, other than any Assumed Liabilities and obligations to fund certain Liabilities and expenses as set forth in clause (ii) of the definition of Excluded Cash;

(l) all Liabilities relating to, or arising from, Indemnification Claims; ~~and~~

(m) except for Post-Petition Payables, all accounts payable of Seller; ~~and~~

provided, that notwithstanding anything in this Agreement to the contrary, Assumed Liabilities shall not include funds necessary to satisfy any Taxes or other Liabilities relating to any matter described on Schedule 2.4(x).

Section 2.5 Contract, Benefit Plan and Asset Designation Rights.

(a) ~~No later than thirteen (13) days after the Petition Date, Seller shall deliver~~ Seller has delivered to Purchaser a list setting forth, to the Knowledge of Seller, all of the Available Contracts used in, or otherwise related to, the Business with the amount of the Cure Costs associated with each Available Contract as reasonably determined in good faith (~~and~~ which such list ~~shall~~ also sets forth the applicable Seller or Affiliate(s) thereof which are party, or otherwise subject, to each such Available Contract). Seller shall cooperate with and provide such additional information to Purchaser as may be reasonably necessary in order to identify all Available Contracts (including the Material Contracts that are Available Contracts) used in, or otherwise related to, the Business (and the related Cure Costs associated therewith). No less than five (5) days (but no more than ten (10) days) prior to the anticipated Closing Date, Seller shall supplement such list to add any Available Contracts (including any Material Contracts that are Available Contracts) used in, or otherwise related to, the Business that are entered into by Seller during the pendency of the Bankruptcy Case. Notwithstanding any provision contained herein to the contrary, but subject in all respects to the Transition Services Agreement, in accordance with Section 2.5(d)(iii), Purchaser may elect by providing a written notice to Seller (an “**Extended Contract Period Notice**”) that for a period of thirty (30) days following the Closing Date, Purchaser retains the right to assume any Available Contract or Benefit Plan that is not listed on Schedule 2.1(e), Schedule 2.1(f) or Schedule 2.1(s), as applicable, on the Closing Date.

(b) ~~No later than thirteen (13) days after the Petition Date, Seller shall file~~Seller has filed one or more motions, seeking, among other things, to (i) cause notice to be provided regarding the potential assumption and assignment to Purchaser of all Available Contracts and (ii) fix the Cure Costs associated with each Available Contract (the “**Cure Amounts Motion**”). ~~The objection deadline to the Cure Amounts Motion shall be fixed at no later than five (5) days prior to the Auction. Purchaser and Seller shall negotiate in good faith and agree on the aggregate amount of Cure Costs to be assumed by Purchaser (the “Cure Costs Cap”)¹ within three (3) days of filing the Cure Amounts Motion, which Cure Costs Cap will be based on the Cure Costs set forth in the motion plus a reasonable buffer.~~ Seller shall obtain entry of a Final Order approving Cure Costs subject to the Cure Amounts Motion ~~no later than seven (7) days in advance of the Auction~~that are not subject to an objection as soon as reasonably practicable after the Objection Deadline (as set forth in the Cure Amounts Motion).

(c) From and after the date hereof through the Closing, Seller shall not, and shall cause its subsidiaries not to, directly or indirectly, reject or take any action (or fail to take any action that would (or would reasonably be likely to) result in rejection by operation of law) to reject, repudiate or disclaim any Available Contract used in, or otherwise related to, the Business without the prior written consent (email being sufficient) of Purchaser (including by filing any motions with the Bankruptcy Court seeking authorization to assume or reject (or Orders with respect to the assumption or rejection of) any Available Contracts). Seller may not, and shall cause its subsidiaries not to, amend, modify or compromise with respect to Cure Costs or other material terms of any Available Contract without the prior written consent (email being sufficient) of Purchaser. Notwithstanding anything contained in the foregoing to the contrary, Seller shall be permitted, without the prior written consent of Purchaser (email being sufficient) to file a motion with the Bankruptcy Court seeking rejection of any Available Contract or Lease that is not ultimately an Assigned Lease or Assigned Contract effective as of thirty (30) days following the Closing Date.

(d) For the purposes of determining whether an Available Contract or Benefit Plan of Seller shall be included as an Assigned Lease, Assigned Contract or Assumed Benefit Plan, on the one hand, or an Excluded Asset or Excluded Employment Liability, on the other hand, from and after the filing of the Sale Motion all Available Contracts shall be treated as follows:

(i) no later than three (3) Business Days prior to the Auction, Purchaser shall notify Seller in writing of those Available Contracts and Benefit Plans which Purchaser desires to designate to be assigned to Purchaser on the Closing Date by providing Seller with Schedule 2.1(e), Schedule 2.1(f) and Schedule 2.1(s), with such designation having no effect on the Purchase Price (other than Assumed Liabilities); *provided* that (A) if Purchaser seeks to add an Assigned Lease, Seller shall provide notice of the Assigned Lease within two (2) Business Days of receiving notice from Purchaser and shall provide the third party with five (5) Business Days’ notice to object to such assignment, and (B) such Schedules may be subsequently modified in accordance with Section 2.5(d)(iii);

¹ ~~Note to Draft: To be \$2.5 million.~~

(ii) promptly following Seller's entry into any Available Contract used in, or otherwise related to, the Business or Benefit Plan during the pendency of the Bankruptcy Case Seller shall provide written notice of such Available Contract or Benefit Plan and Purchaser shall notify Seller in writing (email being sufficient) no later than three (3) Business Days (or, if such Available Contract or Benefit Plan is entered within six (6) Business Days of the Closing Date, at any time prior to the Closing Date) prior to the Closing Date whether Purchaser shall (A) as applicable, purchase or assume such Available Contract or Benefit Plan as a Purchased Asset or Assumed Liability (in which case, such Available Contract or Benefit Plan, as applicable, shall be included on Schedule 2.1(e), Schedule 2.1(f) or Schedule 2.1(s), as applicable) or (B) not purchase or assume such Available Contract or Benefit Plan (in which case, such Available Contract or Benefit Plan, as applicable, shall not be assigned to Purchaser and shall constitute an Excluded Asset and/or Excluded Employment Liability);

(iii) until 11:59 PM (New York, New York time) on the date that is thirty (30) days following the Closing Date, if it is discovered that a Benefit Plan or Available Contract should have been listed on Schedule 2.1(e), Schedule 2.1(f) and/or Schedule 2.1(s), as applicable, but was not listed thereon (each, an "**Omitted Contract**"), (A) Seller or Purchaser, as applicable, shall promptly following discovery thereof (but in no event later than three (3) Business Days after such discovery) notify the other party(ies) hereto of such Omitted Contract, (B) Seller shall promptly notify Purchaser in writing of the corresponding related Cure Costs thereof (if any), and (C) if Purchaser agrees (in its sole discretion), in writing (email being sufficient) to assume such Omitted Contract as an Assigned Contract, Assigned Lease or Assumed Benefit Plan hereunder, as applicable, Seller shall, if such schedule has been filed at the time of discovery of the Omitted Contract, file an amended schedule of Assigned Contracts, Assigned Leases or Assumed Benefit Plans, as applicable, with the Bankruptcy Court on notice to the counterparties to such Omitted Contract which shall provide that Seller is seeking to assume and assign the Omitted Contract to Purchaser and include the proposed Cure Costs with respect to the Omitted Contract. Upon entry of an Order by the Bankruptcy Court, if required, such Omitted Contract shall become an Assigned Contract, Assigned Lease or Assumed Benefit Plan, as applicable, and be included on Schedule 2.1(e), Schedule 2.1(f) or Schedule 2.1(s), as applicable. With respect to any Omitted Contract, Purchaser shall fund or cause to be funded all Cure Costs related to such Omitted Contract without regard to any Cure Costs Cap. In addition, there will be no reduction in, or increase to, the Purchase Price (except with respect to Assumed Liabilities) as a result of any addition or elimination of any Omitted Contract. If there is a Cure Cost dispute or other dispute as to the assumption and assignment of such Omitted Contract that has not been resolved to the satisfaction of Purchaser within thirty (30) days following the Closing Date, Purchaser may elect to designate such Omitted Contract as an Excluded Asset pursuant to Section 2.5(d)(iv) (as applied *mutatis mutandis*) following the Bankruptcy Court's or the parties' resolution of such dispute;²

(iv) no later than three (3) Business Days prior to the Closing Date (except as set forth in Section 2.5(d)(iii)), Purchaser shall have the right to provide written notice (email being sufficient) to Seller of Purchaser's election to designate any Contract previously included as an Assigned Contract, Assigned Lease, or Assumed Benefit Plan on Schedule 2.1(e),

² ~~Note to Draft: To be updated for the procedures to be provided in the Cure Amounts Motion.~~

Liabilities and obligations thereunder (including by means of any subcontracting, sublicensing or subleasing arrangement). In such event, Seller will hold in trust for and promptly pay to Purchaser, when received, all monies received by Seller under any such Assigned Contract or Assigned Lease or any claim, right or benefit arising thereunder. Purchaser acknowledges that no adjustment to the Purchase Price shall be made for any Contracts that are not assigned. Until such written consent is obtained, Purchaser shall have the ability to designate any such Contract as an Excluded Asset. Nothing in this paragraph shall be deemed a waiver of Purchaser's right to receive an effective assignment of all of the Purchased Assets at Closing nor shall any Contracts covered by this paragraph be deemed to constitute Excluded Assets solely by virtue of this paragraph. In addition, nothing in this paragraph shall restrict or limit any wind-down, dissolution, liquidation or liquidating plan of Seller following the Closing Date.

(h) As soon as reasonably practicable after the Closing, Seller shall file with the Bankruptcy Court a final list of Assigned Contracts, Assigned Leases and Assumed Benefit Plans.

(i) No later than three (3) Business Days prior to the Closing, Purchaser shall be entitled to designate (by delivery of written notice to Seller of such designation) any assets to purchase, assume or exclude, which assets will thereafter constitute "Purchased Assets" or "Excluded Assets" hereunder, as applicable (including, for the avoidance of doubt, by amending or otherwise modifying the corresponding Schedules which apply with respect thereto, as applicable), *provided, however*, that items that constitute Excluded Assets may not be designated by Purchaser as Purchased Assets pursuant to this Section 2.5(i) without the consent of Seller except for items that constitute Excluded Assets pursuant to Sections 2.2(b) or 2.2(i). For the avoidance of doubt, this Section 2.5(i) shall not (i) apply to the designation of Contracts or Benefit Plans as assumed or excluded, which shall occur in accordance with the procedures set forth in Sections 2.5(a) through 2.5(h) above and (ii) result in any adjustments to the Purchase Price (other than Assumed Liabilities).

ARTICLE III PURCHASE PRICE

Section 3.1 Purchase Price. On the terms and subject to the conditions hereof, at the Closing, the aggregate consideration for the Purchased Assets will be: (a) a credit bid (the "**Credit Bid**"), on a cashless dollar-for-dollar basis, of: (i) the full amount of the DIP Obligations and (ii) such amount of the Pre-Petition Obligations as and to the extent necessary such that the aggregate amount of clause (i) and this clause (ii) is equal to \$150,000,000; (b) the assumption of the Assumed Liabilities; and (c) the Excluded Cash, which shall remain in account(s) controlled by Seller (the sum of clauses (a) through (c), collectively, the "**Purchase Price**"); *provided* that if cash on hand and cash drawn under the DIP Facility is not sufficient to fund all of the amounts set forth in clauses (i) through (iii) of the definition of "Excluded Cash", Purchaser will fund an amount in cash at Closing equal to the sum of each of clauses (i) through (iii) of the definition of "Excluded Cash" (such amount, the "**Cash Shortfall**") to an account(s) controlled by Seller.

Section 3.2 Allocation of Purchase Price. Purchaser and Seller agree that the Purchase Price, including the Assumed Liabilities, and any other relevant items, as determined for U.S. federal income tax purposes, shall be allocated in accordance with Section 1060 of the

IRC and the Treasury Regulations promulgated thereunder in accordance with an allocation schedule (the “**Allocation Schedule**”). Seller agrees to provide Purchaser promptly with any other information required to complete the Allocation Schedule. The Allocation Schedule shall be prepared in accordance with the principles set forth Section 3.2 of the Seller Disclosure Schedule. As soon as reasonably practicable (and in any event no later than ~~forty~~ninety (90) calendar days) after the Closing Date, Purchaser shall deliver to Seller an allocation of the Purchase Price, as determined for U.S. federal income tax purposes. Seller and Purchaser shall (a) use the Allocation Schedule for the purpose of making the requisite filings under Section 1060 of the IRC, and the Treasury Regulations thereunder, (b) report, and cause their respective Affiliates to report, the federal, state, and local income and other Tax consequences of the transactions contemplated herein, and in particular to report the information required by Section 1060(b) of the IRC, and to jointly prepare Form 8594 (Asset Acquisition Statement under Section 1060 of the IRC) as promptly as possible following the Closing Date and in a manner consistent with the Allocation Schedule, (c) promptly notify the other of the existence of any Tax audit, controversy, or litigation related to the Allocation Schedule and (d) not take any position inconsistent therewith before any Taxing Authority or other Governmental Authority unless otherwise required pursuant to a “determination” within the meaning of Section 1313 of the Code. Notwithstanding the allocation of the Purchase Price agreed among the parties hereto pursuant to this Section 3.2 for the aforementioned Tax purposes, nothing in the foregoing shall be determinative of values ascribed to the Purchased Assets or the allocation of the value of the Purchased Assets for any other purpose.

Section 3.3 Withholding Rights. Purchaser and any other applicable withholding agent shall be entitled to deduct and withhold with respect to any payments made pursuant to this Agreement such amounts that it determines are required to be deducted and withheld with respect to any such payments under the IRC or any other provision of applicable Law. Notwithstanding the foregoing, Purchaser shall provide Seller with reasonable notice of any proposed deduction and withholding prior to making any deduction and withholding of any amount payable to Seller and shall consult in good faith with Seller to reduce or eliminate the amount of such deduction and withholding. Any such withheld amounts that are remitted to the appropriate Governmental Authority shall be treated for all purposes of this Agreement as having been paid to such Persons in respect of which such deduction and withholding was made. The parties hereto agree that to the extent Seller has provided Purchaser prior to Closing with a duly executed IRS Form W-9 there shall be no deduction or withholding pursuant to this Agreement.

Section 3.4 Authorization to Credit Bid. Notwithstanding anything else contained herein to the contrary, the requisite lenders under the DIP Facility (including, for the avoidance of doubt, any amounts under the Pre-Petition Credit Agreement that are rolled up into the DIP Facility) and the Pre-Petition Facilities shall have provided authorization to the applicable Agent before submitting a Credit Bid under Section 363(k) of the Bankruptcy Code on behalf of the DIP Lenders or the Pre-Petition Secured Lenders, as applicable. Purchaser or the applicable Agent shall provide evidence of such authorization upon the request of Seller.

executed IRS Form W-9 or IRS Form W-8 as appropriate of Seller's regarded direct or indirect owner), or to the extent applicable, its beneficial owner;

(vii) assignment agreements, duly executed by an authorized officer of Seller, transferring the Intellectual Property included in the Purchased Assets to Purchaser, in form and substance reasonably acceptable to Seller and Purchaser (collectively, the **"IP Assignment Agreements"**);

(viii) the Books and Records;

(ix) all documentation reasonably necessary to effectuate the assumption of the Assumed Benefit Plans (if any) by Purchaser;

~~(x) to the extent any Alcohol Licenses included in the Purchased Assets are not transferrable to Purchaser as a Purchased Asset pursuant to applicable Law, an interim management agreement (or other similar agreement), in form and substance reasonably acceptable to Purchaser and Seller, duly executed by an authorized officer of Seller, regarding the continued post Closing use by Purchaser of any such Alcohol Licenses such that the Business, to the extent not prohibited by Law, (with respect to the sale of alcoholic beverages) can continue to be operated by Purchaser following the Closing in the ordinary course of business consistent with past practice (the **"Alcohol Interim Management Agreement"**);~~

~~(xi)~~ (x) the Transition Services Agreement, duly executed by an authorized officer of Seller;

~~(xii)~~ (xi) to the extent that Purchaser has elected to obtain one or more Title Policies with respect to any Assigned Lease, a Title Affidavit for such Assigned Lease, duly executed by an authorized officer of Seller;

~~(xiii)~~ (xii) any assumption agreements that may be required to be signed and delivered by Purchaser under any Permitted Lien, Assigned Contract or Assigned Lease;

~~(xiv)~~ (xiii) a release agreement, in substantially the form attached hereto as Exhibit D, duly executed by each of Carlin Adrianopoli, Alan Carr, John Sacksteder, Alan Boyko and Seller; and

~~(xv)~~ (xiv) such other instruments as are reasonably requested by Purchaser and otherwise necessary to consummate the Sale and reasonably acceptable to Seller.

(b) Purchaser shall deliver or cause to be delivered to Seller, or its designee(s), at the Closing:

(i) a certificate signed by a Responsible Officer of Purchaser (in form and substance reasonably satisfactory to Seller) certifying that the closing conditions set forth in Section 9.3(a) and Section 9.3(b) have been satisfied;

(ii) a certificate signed by a Responsible Officer of Purchaser to which is attached: (A) true and correct copies of the resolutions of the board of managers of Purchaser

with respect to the transactions contemplated by this Agreement and the Transaction Documents and (B) a certificate reflecting the incumbency and true signatures of the officers of Purchaser who execute this Agreement and other Transaction Documents on behalf of Purchaser;

(iii) the Assignment Agreements, duly executed by an authorized officer of Purchaser;

(iv) the IP Assignment Agreements, duly executed by an authorized officer of Purchaser;

~~(v) if applicable, the Alcohol Interim Management Agreement, duly executed by an authorized officer of Purchaser;~~

(v) ~~(vi)~~ the Transition Services Agreement, duly executed by an authorized officer of Purchaser;

(vi) ~~(vii)~~ the Bid Direction Letter;

(vii) ~~(viii)~~ to an account designated in writing by the Seller at least two (2) Business Days prior to Closing, cash equal to the Cash Shortfall (if any), by wire transfer of immediately funds;

(viii) ~~(ix)~~ a release agreement, in substantially the form attached hereto as Exhibit D, duly executed by each of Purchaser, the Pre-Petition Secured Lenders, the DIP Lenders, the Agent and ACF Finco I LP; and

(ix) ~~(x)~~ such other instruments as are reasonably requested by Seller and otherwise necessary to consummate the Sale and reasonably acceptable to Purchaser.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Seller Disclosure Schedule, Seller hereby represents and warrants to Purchaser as of the date of this Agreement and as of the Closing as follows:

Section 5.1 Organization, Standing and Power. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Utah and has the requisite limited liability company power and authority to carry on its business as now being conducted. Seller is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified or licensed (individually or in the aggregate) would not reasonably be expected to have a Material Adverse Effect.

Section 5.2 Authority; Noncontravention.

(a) Subject to the Bankruptcy Court's entry of the Sale Procedures Order and the Sale Order (i) Seller has the requisite limited liability company power and authority to enter

(a) the eleven (11) month period ended November 30, 2024 and (b) the fiscal year ended December 31, 2023, as well as the corresponding dollar volumes for such periods (collectively, the “**Material Customers**”). Except as set forth on Section 5.17 of the Seller Disclosure Schedule, the relationships of the Business with the Material Customers are good commercial working relationships and, in the last three (3) years, neither Seller nor any of its affiliates has received any notice from any Material Customer that any such Material Customer may stop, materially decrease the rate of, or materially change the terms (whether related to payment, price or otherwise) with respect to purchasing materials, products or services from the Business, whether as a result of the consummation of the transactions contemplated by this Agreement or otherwise, nor during the last twelve (12) months has any Material Customer cancelled, materially modified, or otherwise terminated (or threatened in writing (or to the Knowledge of Seller, orally) to do the same) its relationship with the Business or materially decreased its purchases of services, supplies or materials (or threatened to do the same) to the Business. There are no disputes between Seller (or the Business) on the one hand, and any Material Customer, on the other hand.

Section 5.18 Transactions with Related Parties. Except as set forth on Section 5.18 of the Seller Disclosure Schedule, to the Knowledge of Seller, no Related Party (a) is a party to any Contract or transaction involving the Purchased Assets, Assumed Liabilities or the Business other than (i) loans and other extensions of credit to current managers and officers of Seller (and/or the Business) for travel or business expenses or other employment-related purposes in the Ordinary Course of Business, none of which are material, individually or in the aggregate, and (ii) employment arrangements, or (b) owns, directly or indirectly, any interest in, or is an officer, director, manager, employee or consultant of, any Person which is, or is engaged in business as a material supplier, lessor, lessee, customer or any other Person with a material commercial relationship with the Business.

Section 5.19 No Other Representations. Except for the representations and warranties expressly contained in this ~~Article V~~ARTICLE V (as qualified by the Seller Disclosure Schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) (the “**Express Representations**”), neither Seller nor any other Person on behalf of Seller makes any express or implied representation or warranty with respect to Seller, the Business, the Purchased Assets, the Excluded Assets, the Assumed Liabilities, the Excluded Liabilities or with respect to any information, statements, disclosures, documents, projections, forecasts or other material of any nature made available or provided by any Person (including in any presentations or other materials prepared by the Seller Representatives) in the Dataroom to Purchaser or any of its Related Parties (or the Purchaser Advisors or advisors to Purchaser’s Related Parties) on behalf of Seller or any of its Related Parties or Seller Representatives, and all other representations, warranties and statements of any kind or nature expressed or implied, whether in written, electronic or oral form, are, in each case, specifically disclaimed by Seller, on its behalf and on behalf of its Related Parties. Without limiting the foregoing, except in the case of Fraud or Willful Breach, from and after the Closing neither Seller nor any other Person will have or be subject to any Liability whatsoever to Purchaser, or any other Person, resulting from the sale to Purchaser or any of its Related Parties or the Purchaser Advisors or advisors to Purchaser’s Related Parties or any of its Related Parties or the Purchaser Advisors or advisors to Purchaser’s Related Parties use of or reliance on, any such information, including the Projections, any information, statements, disclosures, documents,

directive or the Bankruptcy Court, during the period from and after the date hereof until the earlier of termination of this Agreement and the Closing Date, subject to the Conditions, Seller shall conduct the Business in all material respects in the Ordinary Course of Business, including meeting all postpetition obligations relating to the Business as they become due. Except (A) as otherwise expressly contemplated by this Agreement, the other Transaction Documents or Section 7.1(a) of the Seller Disclosure Schedule, (B) as may be required in connection with or as a result of the Bankruptcy Case, the DIP Facility, applicable Law or any Governmental Order, or (C) with the prior written consent of Purchaser, and subject to the Conditions, during the period from and after the date hereof until the earlier of termination of this Agreement and the Closing, Seller shall (I) use commercially reasonable efforts to preserve and maintain its relationships with its customers, suppliers, unions, partners, lessors, licensors, licensees, contractors, distributors, agents, officers, employees and other Persons with which it has business relationships; *provided* that nothing herein shall prevent Seller from commencing or defending any Action against or by any such Person in connection with the claims of such Person in the Bankruptcy Cases; (II) preserve and maintain in all material respects the Purchased Assets, ordinary wear and tear excepted; (III) preserve in all material respects the ongoing operations of the Business; (IV) maintain the Books and Records in all material respects in the Ordinary Course of Business; (V) comply in all material respects with all applicable Laws (including Environmental Laws); (VI) not enter into any business, arrangement or otherwise take any action that would reasonably be expected to have a material adverse effect on the ability of Seller or Purchaser to obtain any approvals of any Governmental Authority ~~(including with respect to Alcohol Licenses and any Alcohol Interim Management Agreement)~~ related to the Transaction Documents and the transactions contemplated thereby; (VII) not voluntarily dispose of any Leased Real Estate and, except in the Ordinary Course of Business, not modify or amend in any material respect, or terminate any of the Leases or any other Material Contract; and (VIII) to the extent permitted after the filing of the Bankruptcy Case or by Order of the Bankruptcy Court and as permitted under the DIP Facility (including the DIP Budget), pay all applicable Taxes as such Taxes become due and payable.

(b) Without limiting the generality of the foregoing, except (i) as required by applicable Laws or any requirements or limitations resulting from the Bankruptcy Case (including in connection with the DIP Facility) or (ii) as otherwise expressly required by this Agreement, the other Transaction Documents, Section 7.1(b) of the Seller Disclosure Schedule or with the prior written consent of Purchaser or approval of the Bankruptcy Court, during the period from and after the date hereof until the earlier of termination of this Agreement and the Closing Date, Seller shall not do any of the following:

(i) with respect to the Equity Securities of Seller, declare, set aside or pay any dividends (payable in cash, stock, property or otherwise) on, or make any other distributions in respect of such Equity Securities;

(ii) issue, deliver, sell, pledge or otherwise encumber or subject to any Lien the Equity Securities of Seller;

(iii) amend any of its Fundamental Documents;

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, Employee representatives, or any other Persons, (iv) providing offers of employment to the Employees selected by Purchaser in accordance with Section 7.6(a), and (v) transferring to Purchaser, no later than the Closing Date, all employee records of the Transferred Employees (to the extent permitted by applicable Law), including all current employment eligibility verification forms of the Transferred Employees (*provided*, that, Seller shall be entitled to retain copies of any personnel or similar records of Transferred Employees in their sole discretion, including where required by Law).

(i) The parties hereto shall reasonably cooperate in good faith with respect to any communications to Employees and other individual service providers regarding the transactions contemplated by this Agreement and the other Transaction Documents. Seller will provide Purchaser with a reasonable opportunity to review and comment on any communications intended for the employees and other individual service providers that it desires or has to send to Employees or other individual 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 Employees, and other individual service providers (including regarding its offers of employment) that it desires or has to send to Employees, and other individual service providers prior to the Closing Date.

(j) The parties hereto shall reasonably cooperate in good faith and as necessary with respect to any litigation or other investigation, proceeding, or inquiry regarding personnel matters of any kind.

(k) The parties hereto acknowledge and agree that all provisions contained in this Section 7.6 are included for the sole benefit of the parties to this Agreement, 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 current or former service provider of Seller (including the 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 hereto or any of their respective Affiliates. Nothing contained in this Section 7.6 is intended to be or shall be considered to be an amendment or adoption of any Benefit Plan or any other plan, program, Contract, arrangement, or policy of the parties hereto or any of their respective Affiliates. In addition, nothing contained in this Section 7.6 shall interfere with the parties' or any of their respective Affiliates' right to amend, modify, or terminate any Benefit Plan in accordance with its provisions or to terminate the employment or engagement of any Employee or other service providers of Seller (including the Employees) or, following the Closing, of the Transferred Employees.

(l) Nothing in this ~~Section 7.6~~Section 7.6 shall limit the assumption of any Assumed Liabilities and obligations to fund certain Liabilities and expenses as set forth in clause (ii) of the definition of Excluded Cash. In the event of any conflict between this ~~Section 7.6~~ and

~~Section 2.3~~ Section 7.6 and Section 2.3 or the definition of Excluded Cash, as applicable, ~~Section 2.3~~ Section 2.3 or the definition of Excluded Cash, as applicable, shall control.

Section 7.7 Use of Name. Seller agrees, and agrees to cause its Affiliates, within sixty (60) calendar days after the Closing Date, to (a) amend its Fundamental Documents (including in connection with the Bankruptcy Case or in any other legal case or other Action in which Seller is a party and for the purpose of winding up Seller and its respective estates) that are required to change their respective entity names to a new name that is sufficiently dissimilar to Seller's respective present name so as to avoid confusion and make their respective present name available to Purchaser and (b) not use the name "Vobev" or any name confusingly similar thereto for any purpose. Notwithstanding anything to the contrary, Seller shall not be deemed to have violated this Section 7.7 or to have infringed the rights of Purchaser by reason of (i) the reference to or appearance of "Vobev" in or on (A) any third party's publications, marketing materials, brochures, instruction sheets, packaging or products that were distributed in the ordinary course of business or pursuant to a Contract prior to the Closing, and that generally are in the public domain, or (B) any other similar uses by any such third party over which Seller has no control, or (ii) the use of "Vobev" in a non-trademark manner or as otherwise required by or permitted as fair use or otherwise under applicable Law, including for purposes of (A) conveying to any Person or the general public that the names of Seller have changed or there was a change in ownership of the Business or (B) referencing the historical ownership of the Business.

Section 7.8 License Approvals. At Purchaser's sole cost and expense, Seller shall use commercially reasonable efforts to assist Purchaser with the preparation, filing and prosecution of each application, petition or other filing with any Governmental Authority with respect to obtaining the necessary consents and approvals pertaining to transfer of any Licenses (including all Alcohol Licenses) to Purchaser (collectively, the "**License Approvals**"), including (a) making reasonably available to Purchaser Seller's Employees responsible for managing the Licenses and Seller's License counsel (subject to compliance with ethical rules) to assist and consult with Purchaser on the License Approvals, and (b) with respect to the Alcohol Licenses, participating in any legal proceedings or other Actions reasonably requested by Purchaser to obtain such Alcohol Licenses in connection with the transactions contemplated by this Agreement. Seller shall provide to Purchaser any necessary information in their possession or control for obtaining the Licenses, and shall direct all persons employed by, related to or under control of Seller whose cooperation is reasonably necessary or convenient to Purchaser's application for licenses in Purchaser's name to so cooperate, and shall provide any Licenses of Seller for surrender when directed by Purchaser to do so. To the extent allowed under applicable Law, Seller shall further cooperate with Purchaser at Purchaser's request and at Purchaser's sole cost and expense to allow any Licenses to be used by Purchaser until Purchaser is able to secure its own Licenses. With respect to any Alcohol License or other License related to any alcoholic beverage inventory conveyed hereunder, the parties hereto shall comply with the applicable Laws (including those of any state), including the creation of any necessary escrow and the disbursement or release of any funds held in such escrow.

Section 7.9 Access to Insurance Policies. Following the Closing, to the extent that any insurance policy that constitutes a Purchased Asset covers any Excluded Liabilities (including tort liabilities, operational liabilities, and Environmental Liabilities), if requested by Seller in writing (email being sufficient), Purchaser shall take commercially reasonable efforts to

Related Parties' own independent investigation and verification and have not relied on, are not relying on, and will not rely on, any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Related Parties or Purchaser Advisors (and any advisors of Purchaser's Related Parties) in the Dataroom, including the Projections.

(b) Without limiting the generality of the foregoing, in connection with the investigation by the Purchaser, its Related Parties and the Purchaser Advisors of Seller, Purchaser and its Related Parties, and the Purchaser Advisors and any advisors of Purchaser's Related Parties, have received or may receive, from or on behalf of Seller, the Projections. Purchaser acknowledges and agrees, on its own behalf and on behalf of its Related Parties and the Purchaser Advisors (and any advisors of Purchaser's Related Parties), that (i) such Projections are being provided solely for the convenience of Purchaser to facilitate its own independent investigation of Seller, (ii) there are uncertainties inherent in attempting to make such Projections, and (iii) Purchaser is familiar with such uncertainties.

(c) Purchaser acknowledges and agrees, on its own behalf and on behalf of its Related Parties and the Purchaser Advisors (and any advisors of Purchaser's Related Parties), that the covenants and agreements contained in this ~~Section 7.21~~[Section 7.20](#) (i) require performance after the Closing to the maximum extent permitted by applicable Law and (ii) are an integral part of the transactions contemplated by this Agreement and that, without these agreements set forth in this ~~Section 7.21~~[Section 7.20](#), Seller would not enter into this Agreement.

ARTICLE VIII TAX MATTERS

Section 8.1 Transfer Taxes. Any and all stamp, duty, stamp duty, transfer, land transfer, documentary, registration, business and occupation and other similar Taxes (other than taxes imposed on or measured by net income or profits, capital gains, capital taxes, franchise taxes and branch taxes of Seller) imposed by any Governmental Authority in connection with the Sale contemplated by this Agreement (the "**Transfer Taxes**") shall be paid one hundred percent (100%) by Purchaser.

Section 8.2 Cooperation on Tax Returns and Tax Proceedings. Purchaser and Seller shall cooperate fully as and to the extent reasonably requested by the other party, but without unreasonably disrupting their respective businesses, in connection with the preparation and filing of Tax Returns, amended return or claim for refund, and any Action with respect to Taxes (each a "**Tax Proceeding**") imposed on or with respect to the Purchased Assets or Business, as well as the making of any election relating to Taxes and the determination of liability for Taxes or a right to refund for Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such Tax Return or Tax Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. In furtherance of the foregoing, Seller and any court-appointed Chapter 7 trustee or other fiduciary charged with the wind-down of Seller's bankruptcy estate following the Closing shall have reasonable access to any Tax Returns and working papers which constitute Purchased Assets, as applicable, upon prior written request (email being sufficient) therefor by

Seller or such trustee, as applicable. Seller's obligations under this ~~Section 8.3~~[Section 8.2](#) shall terminate upon the dissolution of Seller. Seller and its Affiliates shall (a) abide by all record retention agreements entered into with any Governmental Authority and (b) give Purchaser thirty (30) days' written notice prior to transferring, destroying or discarding any Tax records, or taking action to dissolve and terminate Seller, and, if Purchaser so requests, shall allow Purchaser to take possession of such Tax records.

Section 8.3 Ad Valorem Taxes. Except with respect to any Assumed Liabilities, all Ad Valorem Taxes for a Tax period which includes (but does not end on) the Closing Date (collectively, the "**Apportioned Obligations**") shall be apportioned between Seller, on the one hand, and Purchaser, on the other hand, based on the number of days of such Tax period included in the Pre-Closing Tax Period and the number of days of such Tax period included in the Post-Closing Tax Period. Except to the extent as otherwise provided in ~~Section 2.3~~[Section 2.3](#), including in [Section 2.3\(g\)](#), Seller shall be liable for the proportionate amount of the Apportioned Obligations that is attributable to the Pre-Closing Tax Period, and Purchaser shall be liable for the proportionate amount of the Apportioned Obligations that is attributable to the Post-Closing Tax Period.

Section 8.4 Apportionment. Subject to the Conditions, ~~apportioned~~[Apportioned](#) Obligations shall be timely paid, and all applicable filings, reports and Tax Returns shall be filed, as provided by applicable Law. The paying party shall be entitled to reimbursement from the non-paying party for Apportioned Obligations for which the non-paying party is liable pursuant to [Section 8.3](#). Upon payment of any such Apportioned Obligation, the paying party shall present a statement to the non-paying party setting forth the amount of reimbursement to which the paying party is entitled under [Section 8.3](#), together with such supporting evidence as is reasonably necessary to calculate the amount to be reimbursed. Subject to the Conditions, the non-paying party shall make such reimbursement promptly, but in no event later than ten (10) days after the presentation of such statement.

Section 8.5 Bulk Sales Laws. The parties intend that pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Purchased Assets shall be free and clear of any and all Liens (other than Permitted Liens), including any Liens or claims arising out of any bulk transfer Laws, and the parties shall take such steps as may be reasonably necessary or appropriate to so provide in the Sale Order.

ARTICLE IX CONDITIONS

Section 9.1 Conditions to Each Party's Obligations. The respective obligations of Purchaser and Seller to consummate the Sale shall be subject to the satisfaction at or prior to the Closing of each of the following conditions unless waived (to the extent waivable under applicable Law), by both Seller, on the one hand, and Purchaser, on the other hand, in writing:

(a) No Injunctions or Restraints. No Governmental Order issued by a Governmental Authority of competent jurisdiction or other Law preventing consummation of the Sale shall be in effect or shall have become final and non-appealable and remain in effect.

(b) Continuing Effectiveness. This Agreement shall continue to remain in full force and effect.

(c) Entry of Orders. The Bankruptcy Court shall have entered the Sale Procedures Order and the Sale Order, and each shall be reasonably acceptable to Purchaser and the Required DIP Lenders.

(d) Cure Costs Cap. The Cure Costs, in the aggregate, are less than or equal to the Cure Costs Cap.

Section 9.2 Conditions to the Obligations of Purchaser. The obligation of Purchaser to consummate the Sale shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions unless waived (to the extent waivable under applicable Law) in writing, in whole or in part, by Purchaser:

(a) Representations and Warranties of Seller. The representations and warranties of Seller set forth in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing as though made at and as of the Closing (without giving effect to any “material”, “materiality” or “Material Adverse Effect” qualification contained in such representations and warranties), except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct as of such earlier date), except where the failure of any such representations and warranties to be so true and correct has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

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

(c) No Material Adverse Effect. Since the date of this Agreement, no Material Adverse Effect shall have occurred.

(d) Deliverables. Purchaser shall have been furnished with the documents set forth in ~~Section 4.2(a)(iv)~~[Section 4.2\(a\)\(iv\)](#) (*Bring-down Certificate*), ~~Section 4.2(a)(v)~~[Section 4.2\(a\)\(v\)](#) (*Certified Copy of Sale Order*) and ~~Section 4.2(a)(vi)~~[Section 4.2\(a\)\(vi\)](#) (*Seller W-9*).

(e) Reserved.

(f) No DIP Facility Default. No default or Event of Default (as defined in the DIP Order) under the DIP Term Sheet or DIP Order shall have occurred and be continuing that has not been waived in accordance with the terms of the DIP Term Sheet or DIP Order.

(g) Reserved.

Section 9.3 Conditions to the Obligations of Seller. The obligation of Seller to consummate the Sale shall be subject to the satisfaction at or prior to the Closing of each of the

following conditions unless waived (to the extent waivable under applicable Law) in writing, in whole or in part, by Seller:

(a) Representations and Warranties of Purchaser. The representations and warranties of Purchaser set forth in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing as though made at and as of the Closing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct as of such earlier date), in each case, except for such failure to be so true and correct that, individually or in the aggregate, has not had, or would not reasonably be expected to have, a material adverse effect on the ability of Purchaser to consummate, or would not otherwise materially impair or prevent Purchaser from consummating, the transactions contemplated by this Agreement.

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

(c) Deliverables. Seller shall have been furnished with the documents or made the payments set forth in ~~Section 4.2(b)(i)~~Section 4.2(b)(i) (*Bring-down Certificate*), ~~4.2(b)(ii)~~Section 4.2(b)(ii) (*Incumbency Certificate*), ~~4.2(b)(vii)~~Section 4.2(b)(vii) (*Bid Direction Letter*) and Section 4.2(b)(viii) (*Cash Shortfall*).

Section 9.4 Waiver of Conditions. Upon the occurrence of the Closing, any condition set forth in this ~~Article IX~~ARTICLE IX that was not satisfied as of the Closing will be deemed to have been waived for all purposes by the party hereto have the benefit of such condition as of and after the Closing. None of Purchaser or Seller may rely on the failure of any condition set forth in this ~~Article IX~~ARTICLE IX, as applicable, to be satisfied if such failure was caused by such party's failure to perform any of its obligations under this Agreement, including its obligation to use its reasonable best efforts to consummate the transactions contemplated hereby as required under this Agreement.

ARTICLE X TERMINATION PROCEDURES

Section 10.1 Termination. This Agreement may be terminated and the Sale contemplated in this Agreement may be abandoned at any time prior to the Closing Date, notwithstanding the fact that any requisite authorization and approval of the Sale shall have been received, as follows:

(a) by the mutual written consent of Purchaser, on the one hand, and Seller, on the other hand;

(b) by Purchaser or Seller, if the Closing has not occurred on or prior to February 22, 2025 (the “**End Date**”) (or such later date as provided in the Bidding Procedures Order); *provided*, that Purchaser may agree to extend the End Date in its sole discretion; *provided, further*, that the right to terminate this Agreement under this Section 10.1(b) shall not

such acceleration or (ii) if the DIP Order or the DIP Term Sheet is modified, amended, reversed, stayed or vacated in any material respect without the consent of Purchaser;

(j) by Purchaser, if for any reason whatsoever, Purchaser is unable to Credit Bid as part of the Purchase Price, in any amount Purchaser deems fit up to the full amount of the DIP Obligations and the Pre-Petition Obligations for the Purchased Assets;

(k) by Purchaser, if the Sale Procedures Order (including the Sale Procedures) or the Sale Order is modified, amended, reversed, stayed or vacated in any material respect without the consent of Purchaser;

(l) by Purchaser, if a final version of the Seller Disclosure Schedule is not delivered by Seller to Purchaser by the Seller Disclosure Schedule Delivery Date as required by Section 7.14(a); or

(m) by Purchaser if the Sale Order has not been entered by the Bankruptcy Court on or before February 7, 2025, and, as of the time of such termination of this Agreement, the Sale Order has not been entered by the Bankruptcy Court.

In the event of termination of this Agreement as permitted by Section 10.1, this Agreement shall become void *ab initio* and of no further force and effect and no party hereto nor any of its Related Parties will have any Liability under this Agreement, except for the provisions of this sentence of Section 10.1, Section 10.2 (relating to Fees and Expenses) and ARTICLE XII, which shall remain in full force and effect; provided, that no such termination shall be deemed to release or relieve any party hereto from any Liability for any Fraud or Willful Breach by such party of the terms and provisions of this Agreement prior to the date of such termination. Nothing in this ~~Section 10.1~~ Section 10.1 will be deemed to impair the right of any party hereto to be entitled to specific performance or other equitable remedies to enforce specifically the terms and provisions of this Agreement.

Section 10.2 Fees and Expenses.

(a) Except as otherwise provided herein or therein, all fees and expenses incurred in connection with this Agreement and the other Transaction Documents shall be paid by the party incurring such expenses, whether or not the Sale is consummated, subject to any provision of the DIP Order providing for Seller's payment of the fees and expenses of Purchaser, the Agent, the DIP Lenders or the Pre-Petition Secured Lenders.

(b) This Section 10.2, and the rights and obligations created hereunder, shall survive termination of this Agreement.

ARTICLE XI NO SURVIVAL OF REPRESENTATIONS AND WARRANTIES AND CERTAIN COVENANTS

Section 11.1 No Survival of Representations and Warranties and Certain Covenants. None of the representations and warranties of Seller or Purchaser contained in ARTICLE V and ARTICLE VI hereof, respectively, including the Seller Disclosure Schedule or

any certificate or instrument delivered in connection herewith at or prior to the Closing, and none of the covenants contained in ARTICLE VII to be performed on or prior to the Closing shall survive the Closing such that no Action or claim for breach of any such representation, warranty, covenant or agreement, detrimental reliance or other right or remedy (whether in contract, in tort or at law or in equity) may be brought with respect thereto after the Closing. The parties' respective covenants and agreements set forth herein that by their specific terms contemplate performance after Closing shall survive the Closing indefinitely unless otherwise set forth herein; *provided*, that nothing herein shall limit the wind-down and liquidation of Seller following the Closing. The parties hereto acknowledge and agree, on their own behalf and on behalf of their respective Related Parties that the agreements contained in this ~~Section 11.1~~Section 11.1 (a) require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing for five years and (b) are an integral part of the transactions contemplated hereby and that, without the agreements set forth in this ~~Section 11.1~~Section 11.1, none of the parties hereto would enter into this Agreement.

ARTICLE XII MISCELLANEOUS

Section 12.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Bankruptcy Code and, to the extent not inconsistent with the Bankruptcy Code, the laws of the State of New York, without giving effect to conflict of laws principles thereof to the extent that the application of the laws of another jurisdiction would be required thereby.

Section 12.2 Jurisdiction; Forum; Service of Process; Waiver of Jury. With respect to any Action (whether in contract, tort or otherwise) arising out of or relating to this Agreement or the transaction contemplated hereby, Seller, on the one hand, and Purchaser, on the other hand, hereby irrevocably:

(a) consents to the exclusive jurisdiction of the Bankruptcy Court, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement. After Seller is no longer subject to the jurisdiction of the Bankruptcy Court, Seller, on the one hand, and Purchaser, on the other hand, irrevocably submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York, or in the event (but only in the event) that such United States District Court also does not have jurisdiction over such dispute, any New York State court sitting in the Borough of Manhattan ("**Selected Courts**") for any Action arising out of or relating to this Agreement or the other Transaction Documents and the transactions contemplated hereby and thereby (and agrees not to commence any Action relating hereto or thereto except in such courts) and waives any objection to venue being laid in the Selected Courts whether based on the grounds of forum non conveniens or otherwise;

(b) consents to service of process in any Action by the mailing of copies thereof by registered or certified mail, postage prepaid, or by recognized international express carrier or delivery service, to Seller, on the one hand, or Purchaser, on the other hand, at their respective addresses referred to in Section 12.5 hereof; *provided, however*, that nothing herein

anything to the contrary herein, the parties hereto and each of their respective employees, representatives or other agents, are permitted to disclose to any and all Persons, without limitations of any kind, the tax treatment and tax structure of the transactions and all materials of any kind (including opinions or other tax analyses) that are or have been provided to such parties related to such tax treatment and tax structure; *provided, however*, that the foregoing permission to disclose the tax treatment and tax structure does not permit the disclosure of any information that is not relevant to understanding the tax treatment or tax structure of the transactions (including the identity of any party and the amounts paid in connection with the transactions); *provided, further, however*, that the tax treatment and tax structure shall be kept confidential to the extent necessary to comply with applicable Laws. Notwithstanding the foregoing, Purchaser shall not be restricted from making any public announcements or issuing any press releases or other statements after the Closing regarding the transactions contemplated by this Agreement (including that Purchaser and its Affiliates that are affiliated with investment funds shall not be restricted from disclosing the transactions or their terms, as applicable, to any of their respective investors or financing sources or potential investors or financing sources). Notwithstanding anything to the contrary herein, for so long as the Agent is subject to periodic public filing requirements under the rules and regulations promulgated by the Securities and Exchange Commission, Purchaser and the Agent shall be permitted to disclose the nature and existence of their investment pursuant hereto in accordance with such rules and regulations.

Section 12.12 Specific Performance. Seller and Purchaser agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached, including if any of the parties fails to take any action required of it hereunder to consummate the transactions contemplated by this Agreement. It is accordingly agreed that (a) Seller or Purchaser will be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the parties' respective covenants, obligations and agreements under this Agreement that survive the Closing, without the requirement of posting a bond or other security, and without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement, and (b) the right of specific performance and other equitable relief is an integral part of the transactions contemplated by this Agreement and without that right, neither Seller nor Purchaser would have entered into this Agreement. The remedies available to the parties hereto pursuant to this Section 12.12 will be in addition to any other remedy to which they were entitled at law or in equity, and the election to pursue an injunction or specific performance will not restrict, impair or otherwise limit any party from seeking to collect or collecting damages. In no event will this ~~Section 12.12~~Section 12.12 be used, alone or together with any other provision of this Agreement, to require any Seller to remedy any breach of any representation or warranty of any Seller made herein.

Section 12.13 Non-Recourse. All Actions, claims, obligations, liabilities, or causes of action that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to this Agreement, the negotiation, execution or performance of this Agreement (including any representation or warranty made in connection with or as an inducement to this Agreement) or the transactions contemplated hereby may be made only against (and are those solely of) the Persons that are expressly identified as parties to this Agreement. No other Person, including any of their Affiliates, directors, officers, employees,

EXHIBIT C

FORM OF BID DIRECTION LETTER

[See Attached]

EXHIBIT D

FORM OF RELEASE

(a) Effective from and after the Closing, each of (i) the Seller, (ii) the Purchaser, (iii) the Pre-Petition Secured Lenders, (iv) the DIP Lenders, (v) Ares Capital Corporation, (vi) ACF Finco I LP, (vii) Carlin Adrianopoli, (viii) Alan Carr, (ix) Alan Boyko, and (x) John Sacksteder (each, a “**Mutual Releasing Party**”) conclusively, absolutely, unconditionally, irrevocably, and forever releases and discharges, as of the Closing Date, each and every Mutual Released Party, from any and all Claims or causes of action whatsoever (including any derivative claims), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, direct or indirect, existing or hereinafter arising, whether in law or equity, whether sounding in tort or contract, whether arising under federal or state statutory or common law, or any other applicable international foreign, or domestic law, rule, statute, regulation, treaty, right, duty, requirement or otherwise, that the Mutual Releasing Party or its Related Party or any other Persons claiming under or through them would have been legally entitled to assert in his/her or its own right (whether individually or collectively) or on behalf of any Person, based on or relating to, or in any manner arising from, in whole or in part, (1) the Purchased Assets, the Assumed Liabilities, or the Business, (2) the funding, providing, purchase, sale, ownership, or rescission of the purchase or sale of any equity security of the Seller, (3) the subject matter of, or the transactions, events, circumstances, acts, or omissions giving rise to, any such Claim or cause of action, including, without limitation, the negotiation, formulation, preparation, or implementation of this Agreement, (4) the formulation, preparation, negotiation, or the entry into, this Agreement or (5) subject to the occurrence of the Closing Date, the consummation of the Restructuring Transaction, in the case of each of the foregoing (1)-(5), such matter involves, arises from, or relates to the Business, this Agreement, or the Restructuring Transaction and is based upon an act, omission, transaction, agreement, event, or other occurrence taking place on or before the Closing; *provided* that, notwithstanding anything in this Agreement to the contrary, nothing shall affect, limit, or otherwise impair any rights that remain in effect from and after the Closing to enforce this Agreement and the obligations contemplated by the Restructuring Transaction; *provided, further* that, notwithstanding anything in this Agreement to the contrary, nothing shall affect, limit, or otherwise impair any rights under the Pre-Petition Credit Agreement, the DIP Term Sheet, or the DIP Order. Each of the Mutual Releasing Parties expressly acknowledges and agrees, with respect to the Claims released in this Section 12.6, that it waives, to the fullest extent permitted by applicable law, any and all provisions, rights, and benefits conferred by any applicable U.S. federal or state law limiting a release or discharge of any unknown Claims, including under Section 1542 of the California Civil Code, which states that “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party” or analogous applicable state or federal law or regulation, any principle of U.S. common law, or any other applicable law in any relevant jurisdiction for the Seller, that would otherwise limit a release or discharge of any unknown Claims pursuant to this Section 12.6. Furthermore, each of the Mutual Releasing Parties hereby absolutely, unconditionally, and irrevocably covenants and agrees with and in favor of each Mutual Released Party that, from and after the

Summary report:	
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~~Table moves from~~	0
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Embedded Excel	0
Format changes	0
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