

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

VIRIDOS, INC.,¹

Debtor.

Chapter 11

Case No. 25-10697 (CTG)

Hearing Date: May 9, 2025 at 12:00 p.m.

Obj. Deadline: May 2, 2025 at 4:00 p.m.

**DEBTOR’S MOTION FOR ENTRY OF AN ORDER
(I) APPROVING THE BIDDING PROCEDURES IN CONNECTION
WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS,
(II) SCHEDULING AN AUCTION AND A SALE HEARING, (III) APPROVING
THE FORM AND MANNER OF NOTICE THEREOF, (IV) AUTHORIZING
THE DEBTOR TO ENTER INTO THE STALKING HORSE AGREEMENT,
(V) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT
OF CONTRACTS AND LEASES, AND (VI) GRANTING RELATED RELIEF**

The above-captioned debtor and debtor in possession, Viridos, Inc. (the “Debtor”) in the above-captioned Chapter 11 case (the “Chapter 11 Case”), moves (the “Motion”), pursuant to sections 105(a), 363, 364, 365, 503, and 507 title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 6004-1 and 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure (the “Local Rules”), for entry of an order, substantially in the form attached hereto as Exhibit A (the “Bidding Procedures Order”), (a) approving the proposed auction and bid procedures attached as Exhibit 1 to the Bidding Procedures Order (the “Bidding Procedures”) to be employed in connection with the proposed sale (the “Sale”) of substantially all of Debtor’s assets (the “Assets”); (b) approving the form and manner of notice thereof; (c) scheduling an auction (the “Auction”) if the Debtor receives two or more timely and acceptable

¹ The Debtor in this Chapter 11 Case and the last four digits of its U.S. taxpayer identification number is: Viridos, Inc. (3940). The Debtor’s corporate headquarters is located at: 11149 N. Torrey Pines Road, La Jolla, CA 92037.

Qualified Bids (as defined below) and scheduling a hearing to consider approval of the Sale (the “Sale Hearing”); (d) establishing procedures for the assumption and assignment of executory contracts, including notice of proposed cure amounts; and (e) granting related relief. At the Sale Hearing, the Debtor will seek entry of an order (the “Sale Order”)² (i) approving the asset purchase agreement with Breakthrough Energy Ventures II, L.P. or its designee (“BEV” or the “Stalking Horse Bidder” and such agreement, the “Stalking Horse Agreement”) or, if BEV is not the Successful Bidder, the purchase agreement of any other Successful Bidder declared at the Auction; (ii) approving the sale of all or substantially all of the Debtor’s assets to the Stalking Horse Bidder or such other Successful Bidder declared at the Auction, free and clear of liens, claims, and encumbrances, (iii) approving the assumption and assignment of contracts and leases, and (iv) granting related relief. In support of this Motion, the Debtor represents as follows:

PRELIMINARY STATEMENT

1. The Debtor commenced this Chapter 11 Case to implement one or more value maximizing transactions for some or substantially all of its assets. In order to finance such transactions, the Debtor has entered into a secured prepetition bridge financing and senior secured superpriority debtor-in-possession term loan credit facility (the “DIP Facility”) with BEV to fund this Chapter 11 Case and permit the sale of the Debtor’s assets to the highest and best bidder. To that end, the Debtor files this Motion seeking approval of the Stalking Horse Agreement with BEV, for the sale of substantially all of the Debtor’s Assets.

2. The Debtor and Rock Creek Advisors LLC, the Debtor’s proposed financial advisor, launched a sale and marketing process for the sale of the Assets (the “Sale Process”) on the Petition Date. Pursuant to the relief requested in this Motion, the Debtor proposes to continue

² The Debtor will file the form of Sale Order requested by the stalking Horse Bidder prior to the Bid Deadline.

its Sale Process on the timeline that aligns with the milestones set forth in the DIP Facility. Specifically, this Motion requests, and the Bidding Procedures³ provide, an approximate 55 day process to identify and assess any potential bidders that may emerge for the purchase of the Debtor's Assets, solicit final bids, and effectuate an orderly transition of the Debtor's Assets to the Stalking Horse Bidder if no better offer arises or, if one or more alternative acceptable bids are submitted for the purchase of the Assets, to hold an auction to determine the highest and best bid for the Assets and transition the Debtor's Assets to the Successful Bidder selected at the Auction. If approved, the Bidding Procedures will provide sufficient time for the Debtor to market the Assets, receive and evaluate bids, and hold an auction to determine the highest or otherwise best bid(s) for the Debtor's Assets. Conversely, if the Bidding Procedures are not approved or there is any material delay to the proposed sale timeline, then the Debtor's ability to maximize value for the benefit of all stakeholders will be jeopardized.

3. Accordingly, the Debtor respectfully requests that this Court grant the relief requested herein.

JURISDICTION AND VENUE

4. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012.

5. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). In addition, the Debtor confirms its consent, pursuant to rule 9013-1(f) of the Local Rules, to the entry of a final order by the Court in connection with this Motion to the extent that it is later

³ All references to the Bidding Procedures herein are qualified in their entirety to the Bidding Procedures.

determined that the Court, absent consent of the parties, cannot enter a final order or judgment in connection herewith consistent with Article III of the United States Constitution.

6. Venue of the Chapter 11 Case and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The bases for the relief requested herein are sections 105, 363, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9014, and Local Rule 6004-1.

BACKGROUND

8. On April 14, 2025 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

9. The Debtor continues to operate and manage its business as a debtor in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee, examiner, or statutory creditors’ committee has been appointed in this Chapter 11 Case.

10. A detailed description of the Debtor and its business, and the facts and circumstances supporting this Motion and the Chapter 11 Case, are set forth in greater detail in the *Declaration of Eric Moellering in Support of Debtor’s Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”). In further support of the Motion, the Debtor submits the *Declaration of Brian Ayers in Support of the Debtor’s Motion for Entry of an Order (I) Approving the Bidding Procedures in Connection with the Sale of Substantially All of the Debtor’s Assets, (II) Scheduling an Auction and Sale Hearing, (III) Approving the Form and Manner of Notice Thereof, (IV) Authorizing the Debtor to Enter into the Stalking Horse Agreement (V) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (VI) Granting Related Relief* (the “Ayers Declaration”) and *Declaration of Eric Moellering in Support of the Debtor’s Motion for Entry of an Order (I) Approving the Bidding Procedures in Connection with the Sale of*

Substantially All of the Debtor's Assets, (II) Scheduling an Auction and Sale Hearing, (III) Approving the Form and Manner of Notice Thereof, (IV) Authorizing the Debtor to Enter into the Stalking Horse Agreement (V) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (VI) Granting Related Relief (the "Moellering Declaration") filed contemporaneously herewith.

RELIEF REQUESTED

11. By this Motion, the Debtor requests, pursuant to Bankruptcy Code sections 105, 363, 364, 365, 503 and 507, Bankruptcy Rules 2002, 6004, 6006, 9006, 9007 and 9014, and Local Rule 6004-1, the immediate entry of an order (a) establishing the Bidding Procedures; (b) scheduling the Auction if the Debtor receives two or more timely and acceptable Qualified Bids (as defined below) and scheduling the Sale Hearing; (c) approving the form and manner of notice thereof, including the notice of the Sale and Sale Hearing attached to the Bid Procedures Order as Exhibit 2; (d) authorizing the Debtor to enter into the Stalking Horse Agreement and approving the Expense Reimbursement (as defined herein); (e) establishing procedures relating to the assumption and assignment of executory contracts; (f) granting related relief.

12. At the Sale Hearing, the Debtor will seek entry of an order (a) approving the Stalking Horse Agreement or the purchase agreement with another Successful Bidder; (b) authorizing the Sale of the Assets to the Stalking Horse Bidder or any other Successful Bidder declared at the Auction, if necessary, free and clear of liens, claims, interests and encumbrances; (c) authorizing the assumption and assignment of certain executory contracts; and (d) granting related relief.

13. The Debtor reserves the right to file and serve any supplemental pleading or declaration that the Debtor deems appropriate or necessary in its reasonable business judgment,

including any pleading summarizing the competitive bidding and sale process and the results thereof, in support of its request for entry of the Sale Order before the Sale Hearing.

The Proposed Sale Process

I. The Proposed Schedule.

14. Pursuant to the Bidding Procedures, the Debtor will solicit the highest or otherwise best bids for its Assets according to the following proposed schedule, subject to Court approval and availability:

Event	Date
Contract Assumption Objection Deadline	Objections to (i) the potential assumption and assignment of any contract to the Stalking Horse Bidder including the ability of the Stalking Horse Bidder to provide adequate assurance of future performance and (ii) the proposed cure amount to be paid in connection with the assumption and assignment of any contract shall be filed and served no later than May 22, 2025, at 4:00 p.m. (prevailing Eastern Time) (the “ <u>Contract Assumption Objection Deadline</u> ”); <i>provided</i> that, to the extent any Assumed Contract Counterparty is added to the Assumption Notice after the initial notice is served, such new Assumed Contract Counterparty shall have ten (10) days from the date of service of a supplemental notice of contract assumption to object to the propose cure amount and assignment to the Successful Bidder.
Bid Deadline	May 29, 2025 at 4:00 p.m. (prevailing Eastern Time).
Sale Objection Deadline	May 29, 2025 at 4:00 p.m. (prevailing Eastern Time).
Auction	June 2, 2025 at 10:00 a.m. (prevailing Eastern Time).
Post-Auction Notice Deadline	As soon as reasonably practicable after closing the Auction, if any, and in any event not less than 24 hours after closing the Auction, the Debtor shall file and serve a notice identifying the Successful Bidder and Back-Up Bidder.
Post-Auction Objection Deadline	June 3, 2025 at 4:00 p.m. (prevailing Eastern Time).
Sale Hearing	June 5, 2025 at _____.
Closing Outside Date	June 8, 2025

15. The proposed timeline provides the Debtor with an opportunity to conduct a thorough postpetition market test of the Stalking Horse Bid and pursue the highest or otherwise best offer(s) for its Assets without unduly burdening its estate.

II. The Bidding Procedures

16. In order to optimally and expeditiously solicit, receive, and evaluate bids in a fair and accessible manner, the Debtor proposes the Bidding Procedures, attached as Exhibit 1 to the Bidding Procedures Order to govern the Sale and Auction process. The Debtor designed the Bidding Procedures to encourage all entities to put their best bids forward and to maximize the value of the Debtor's estate. The following describes the salient points of the Bidding Procedures and discloses certain information required pursuant to Local Rule 6004-1.⁴

- **Bid Requirements.** Any bid by a Qualified Bidder must be submitted in writing and, as determined by the Debtor, in its reasonable business judgment, satisfy the following requirements (as further stated in the Bidding Procedures):

Assets and Purchase Price: Each Bid must be a bid to purchase some or all of the Assets and must clearly state which liabilities of the Debtor the Qualified Bidder agrees to assume. Each Bid must clearly set forth the Purchase Price to be paid, including and identifying separately any cash and non-cash components.

Deposit: Each Bid must be accompanied by a cash deposit in the amount equal to ten percent (10%) of the aggregate cash purchase price of the Bid, such amount to be held in an interest-bearing escrow account to be identified and established by the Debtor (each, a "Deposit").

Transaction Documents: Each Bid must include duly executed, non-contingent transaction documents necessary to effectuate the transactions contemplated in the Bid (the "Bid Documents"), which shall include a schedule of assumed contracts (the "Assumed Contracts") to the extent applicable to the Bid, and a copy of the Purchase Agreement clearly marked to show all changes requested by the Qualified Bidder (including those related to the Purchase Price and Assets to be acquired by such Qualified Bidder), as well as all other material documents integral to such Bid.

⁴ To the extent that there is any inconsistency between the terms of the Bidding Procedures and the summary of such terms in this Motion, the terms of the Bidding Procedures shall control. Capitalized terms used but not otherwise defined in this summary shall have the meanings ascribed to such terms in the Bidding Procedures.

Sources of Financing: The Bid must indicate the source(s) of cash consideration, including proposed funding commitments, sufficient to demonstrate proof of financial capacity to close the proposed transaction, and confirm that such consideration is not subject to any contingencies (other than the closing of the transaction subject of the Bid, the execution of definitive documentation relating to the financing, and other conditions customary for acquisition credit facilities, but in any event excluding any condition or contingency related to due diligence on the part of the financing source or lack of disruptions in the financial markets).

Structure: The Bid must identify the proposed structure for undertaking the Sale, including the specific Assets of the Debtor to be purchased, the proposed steps to accomplish such acquisition, and any financial, legal, or tax considerations upon which the Bid's proposed structure relies.

Tax Structure: The Bid must specify whether it is intended to be structured in a tax-free manner or if any incremental tax liabilities will be incurred by the Debtor under the Bid.

- **Bid Deadline.** Each bid must be transmitted via email (in .pdf or similar format) or other means so as to be *actually received* by the Debtor and advisors to the Debtor, on or before **May 29, 2025, at 4:00 p.m. (ET)** (the "Bid Deadline").
- **The Auction.** If the Debtor receives at least one Qualified Bid in addition to the Stalking Horse Bid, the Debtor will conduct the Auction.
- **Back-Up Bidder.** Notwithstanding anything in the Bidding Procedures to the contrary, if the Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Qualified Bid at the Auction, as determined by the Debtor in the exercise of its reasonable business judgment, shall be required to serve as a back-up bidder (the "Back-Up Bidder"), and by submitting a Qualified Bid and participating in the Auction, each Qualified Bidder is deemed to agree to be the Back-Up Bidder if so designated by the Debtor (the "Back-Up Bid").
- **Highest or Otherwise Best Bid.** When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtor may consider the following factors (in addition to any other factors that the Debtor deems appropriate): (i) any changes to the Purchase Agreement requested by the Qualified Bidder, including in regards to the type and amount of Assets sought to be purchased, obligations to be assumed, and any additional obligations imposed against the Debtor thereunder; (ii) the amount and nature of the total purchase consideration; (iii) the likelihood of the Bidder's ability to close a transaction and the timing thereof; (iv) the net economic effect of any changes to the value to be received by the Debtor's estate from the transaction contemplated by the Bid Documents; (v) the timing of Bidder's proposed closing; and (vi) the tax consequences of such Qualified Bid.

- **Reservation of Rights.** The Debtor reserves the right to modify the Bid Procedures in its reasonable business judgment in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, additional customary terms and conditions on the sale of the Assets, including cancelling the Auction or the Sale.

17. Importantly, the Bidding Procedures recognize the Debtor's fiduciary obligations to maximize sale value, and, as such, do not impair the Debtor's ability to consider all qualified bid proposals, and, as noted, preserve the Debtor's right to modify the Bidding Procedures as necessary or appropriate to maximize value for the Debtor's estate.

III. Form and Manner of Sale Notice

18. The Auction shall take place at **10:00 a.m. (prevailing Eastern Time) on June 2, 2025**, either via videoconference or at the offices of Womble Bond Dickinson (US), LLP, 1313 N. Market Street, Suite 1200, Wilmington, DE 19801, or such other date and time as selected by the Debtor.

19. Within two (2) business days after the entry of the Bidding Procedures Order, the Debtor (or its agent) will serve the notice annexed to the Bidding Procedures Order as Exhibit 2, (the "Sale Notice") by first-class mail upon: (a) the U.S. Trustee; (b) any statutory committee (if appointed); (c) counsel to the Stalking Horse Bidder and DIP Lender; (d) all parties known by the Debtor to assert a lien on any of the Assets; (e) all entities reasonably known to have expressed an interest in a transaction with respect to any of the Assets during the past twelve (12) months; (f) the United States Attorney's Office for the District of Delaware; (g) the Internal Revenue Service; (h) the state and local taxing authorities where the Debtor is formed or operate or that otherwise have an interest in the Assets; (i) the offices of the attorneys general for the states in which the Debtor operates; (j) all other governmental agencies with an interest in the Sale and transactions proposed thereunder; (k) the office of the secretary of state in the states in which the Debtor operates or is organized; (l) all environmental authorities having jurisdiction over any of the

Assets; (m) all other parties known or reasonably believed to have asserted an interest in the Assets; (n) the Assumption Notice Parties; (o) the Debtor's insurance carriers; (p) all known creditors of the Debtor; (q) all registered holders of equity interests in the Debtor (who shall be served by electronic mail); and (r) any party that has requested notice pursuant to Bankruptcy Rule 2002.

20. In addition, as soon as reasonably practicable, but in no event later than one (1) business day after entry of the Bidding Procedures Order, the Debtor will also post the Sale Notice on the website maintained by the Debtor's claims and noticing agent, Stretto, Inc., located at <https://cases.stretto.com/viridos/>. The Debtor submits that such posting and servicing of the Sale Notice constitute sufficient and proper notice of the proposed Sale to any other interested parties whose identities are unknown to the Debtor.

21. The Debtor further submits that notice of this Motion and the related hearing to consider entry of the Bidding Procedures Order, together with servicing and posting of the Sale Notice on the claim's agent's website, constitutes good and adequate notice of the Auction and the proceedings with respect thereto in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002. The Debtor proposes that no other or further notice of the Auction shall be required. Accordingly, the Debtor requests that the Court approve the form and manner of the notice.

IV. Assumption Procedures

22. The procedures set forth below regarding the assumption and assignment of the executory contracts and unexpired leases proposed to be assumed by the Debtor pursuant to Section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder (or another Successful Bidder, if applicable) pursuant to Section 365(f) of the Bankruptcy Code in connection with the Sale (the "Assumption Procedures") are hereby approved to the extent set forth herein.

These Assumption Procedures shall govern the assumption and assignment of all of the Assumed Contracts to be assumed and assigned in connection with the Sale, subject to the payments necessary to cure any defaults arising under any such Assumed Contracts.

- (a) On or prior to **May 12, 2025**, the Debtor shall serve on all non-Debtor Assumed Contract Counterparties to any Assumed Contract (the “Assumption Notice Parties”) that may be assumed by the Debtor and assigned to the Stalking Horse Bidder or other Successful Bidder after the results of the Auction, which notice shall be substantially in the form attached hereto as Exhibit 3 (a “Assumption Notice”). The Assumption Notice shall inform each recipient of the timing and procedures relating to such assumption and assignment, and, to the extent applicable, (i) the title of the executory contract or unexpired lease, as applicable, (ii) the name of the counterparty to the executory contract or unexpired lease, as applicable, (iii) the Debtor’s good faith estimate of the cure amount (if any) required in connection with the executory contract or unexpired lease, as applicable, (iv) the identity of the Stalking Horse Bidder (as assignee, if applicable), and (v) the Contract Assumption Objection Deadline and Post-Auction Objection Deadline (as defined below). The presence of an Assumed Contract on the Assumption Notice does not constitute an admission that such Assumed Contract is an executory contract or unexpired lease, and the presence of an Assumed Contract on any notice shall not prevent the Debtor from subsequently withdrawing such request for assumption or rejecting such Assumed Contract any time before such Assumed Contract is actually assumed and assigned pursuant to the Sale Order.
- (b) Although the Debtor has informed the Court that they intend to make a good faith effort to identify all Assumed Contracts that may be assumed and assigned in connection with a Sale, the Debtor may discover certain executory contracts and unexpired leases inadvertently omitted from the list of Assumed Contracts, or Successful Bidders may identify other executory contracts and/or unexpired leases that they desire to assume and assign in connection with the Sale. Accordingly, the Debtor has the right, but only in accordance with the Stalking Horse Agreement, or as otherwise agreed to by the Debtor and the Successful Bidder, at any time after the service of the Assumption Notice and before the closing of a Sale, to (i) supplement the list of Assumed Contracts with previously omitted executory contracts or unexpired leases, (ii) remove Assumed Contracts from the list of executory contracts and unexpired leases ultimately selected as Assumed Contracts that a Successful Bidder proposes to be assumed and assigned to it in connection with a Sale, and/or (iii) modify the previously stated cure amount associated with any Assumed Contract. In the event the Debtor exercises any of these reserved rights, the Debtor will promptly serve a supplemental notice of contract assumption (a “Supplemental Assumption Notice”) on each of the Assumed Contract Counterparties to such Assumed Contracts and their counsel of

record, if any; provided, however, the Debtor may not add an executory contract to the list of Assumed Contracts that has been previously rejected by the Debtor by order of the Court. Each Supplemental Assumption Notice will include the same information with respect to listed Assumed Contracts as was included in the Assumption Notice.

- (c) To the extent any Assumed Contract Counterparty is added to the Assumption Notice after the initial notice is served, such new Assumed Contract Counterparty shall receive notice of the addition and the Debtor's proposed cure amount through service of a Supplemental Assumption Notice, and that party shall have ten (10) days from the date of such notice to object to the proposed cure amount and assignment to the Successful Bidder.
- (d) Objections, if any, to (i) the cure amount set forth on the Assumption Notice or (ii) the possible assignment of its executory contract or unexpired lease to the Stalking Horse Bidder, including the ability of the Stalking Horse Bidder to provide adequate assurance of future performance (each, an "Assumed Contract Objection") **must** (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules and the Local Rules, and (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Bankruptcy Court and served on the following parties so as to be actually received on or before **May 22, 2025 at 4:00 p.m. (prevailing Eastern Time)** (the "Contract Assumption Objection Deadline"): (a) counsel for the Debtor, Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, DE 19801, Attn: Morgan L. Patterson (morgan.patterson@wbd-us.com); (b) counsel for the Stalking Horse Bidder and DIP Lender, Greenberg Traurig, LLP, One Vanderbilt Avenue, New York, NY 10017, Attn: Jeffrey M. Wolf (jeffrey.wolf@gtlaw.com) and Brian E. Greer (greerb@gtlaw.com); (c) any statutorily appointed committee; (d) and the U.S. Trustee, Timothy J. Fox, Jr. (Timothy.Fox@usdoj.gov) (the "Objection Notice Parties").
- (e) If a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object (a "Post-Auction Objection") solely to (i) the identity of a Successful Bidder or (ii) the ability of the Successful Bidder to provide adequate assurance of future performance under the Assumed Contract shall be **4:00 p.m. (prevailing Eastern Time) on June 3, 2025**⁵ (the "Post-Auction Objection Deadline"), provided, however, that the deadline to object to the proposed cure amount shall not be so extended.
- (f) If an Assumed Contract Counterparty does not timely file and serve an Assumed Contract Objection by the Contract Assumption Objection Deadline

⁵ If the Auction is cancelled, the Debtor will promptly file a Notice of Successful Bidder identifying the Stalking Horse Bidder as the Successful Bidder

or a Post-Auction Objection by the Post-Auction Objection Deadline, then that party shall be forever barred from objecting to (i) the Debtor's proposed cure amount, (ii) the assumption and assignment of that party's executory contract or unexpired lease (including the adequate assurance of future performance), (iii) the related relief requested in the Motion, and (iv) the Sale. Such party shall be forever barred and estopped from objecting to the cure amount, the assumption and assignment of that party's executory contract or unexpired lease (including the adequate assurance of future performance), the relief requested in the Motion, whether applicable law excuses such counterparty from accepting performance by, or rendering performance to, the Stalking Horse Bidder or the Successful Bidder, as applicable, for purposes of Section 365(c)(1) of the Bankruptcy Code and from asserting any additional cure or other amounts against the Debtor and the Stalking Horse Bidder or Successful Bidder, as applicable, with respect to such party's executory contract or unexpired lease.

- (g) Where an Assumed Contract Counterparty to an Assumed Contract timely files an (i) Assumed Contract Objection asserting a higher cure amount than the amount listed in the Assumption Notice or (ii) Assumed Contract Objection or Post-Auction Objection, as applicable, objecting to the possible assignment of that Assumed Contract Counterparty's executory contract or unexpired lease, and the parties are unable to consensually resolve the dispute, the amount (if any) to be paid under Section 365 of the Bankruptcy Code or, as the case may be, the Debtor's ability to assign the executory contract or unexpired lease to the Successful Bidder shall be determined at the Sale Hearing or such later date as fixed by the Court. To the extent an Assumed Contract Objection or Post-Auction Objection shall be pending as of the date of the closing of any Sale, the Assumed Contract subject to such objection shall not be deemed assumed and assigned, as between the Debtor and the Successful Bidder, as of the closing of the Sale until such time as (i) the amount (if any) to be paid under Section 365 of the Bankruptcy Code or (ii) the Debtor's ability to assign the Assumed Contract to the Successful Bidder is determined by the Court. Upon a determination by the Court (i) of the amount (if any) to be paid under Section 365 of the Bankruptcy Code with respect to any Assumed Contract, the Successful Bidder may elect to (a) pay such amount and have the Assumed Contract assigned to it or (b) remove such Assumed Contract as an Assumed Contract or (ii) that any Assumed Contract is nonassignable, such Assumed Contract shall be removed as an Assumed Contract. Any Assumed Contract subsequently removed as an Assumed Contract, either in accordance with the preceding sentence or pursuant to an agreement with the contract counterparty, shall no longer be deemed assumed and assigned to the Successful Bidder, as between the Successful Bidder and the Debtor, as of the date such Assumed Contract is removed as an Assumed Contract.
- (h) The payment of the applicable cure amount by the Debtor or Stalking Horse Bidder (or other Successful Bidder), as applicable, shall (i) effect a cure of all

defaults existing thereunder and (ii) compensate for any actual pecuniary loss to such counterparty resulting from such default.

V. Summary of Material Terms of the Stalking Horse Agreement, and the Expense Reimbursement.

23. The Debtor also requests approval of the terms of the Stalking Horse Agreement. Pursuant to the Stalking Horse Agreement, the Stalking Horse Bidder proposes to acquire substantially all of the Debtor's Assets for aggregate consideration of: (i) a "credit bid" pursuant to section 363(k) of the Bankruptcy Code of up to \$6,500,000.00 in principal outstanding under the DIP Facility and the Prepetition Secured Note plus all interest, fees and expenses due thereunder constituting Prepetition Loan Obligations or DIP Obligations; (ii) the assumption of Assumed Liabilities; and (iii) the payment of cure costs, subject to higher or otherwise better bids (collectively, the "Purchase Price" and such bid the "Stalking Horse Bid"). Additionally, in recognition of the Stalking Horse Bidder's expenditure of time, energy, and resources, the Debtor also seeks to offer the Stalking Horse Bidder the Expense Reimbursement.

24. The following chart summarizes the terms and conditions of the Stalking Horse Agreement attached to the Motion as Exhibit B.⁶

MATERIAL TERMS OF THE STALKING HORSE AGREEMENT	
Seller	Viridos, Inc.
Buyer	Breakthrough Energy Ventures II, L.P. or its designee
Purchase Price	(i) A credit bid by the Purchaser of up to \$6,500,000.00 in principal outstanding under the DIP Facility and the Prepetition Secured Note plus all interest, fees and expenses due thereunder constituting Prepetition Loan Obligations or DIP Obligations pursuant to Section 363(k) of the Bankruptcy Code; and (j) The assumption by Purchaser of the Assumed Liabilities, including cure costs.

⁶ This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Stalking Horse Agreement, the Stalking Horse Agreement shall govern in all respects. All references to schedules or sections in the following summary shall refer to schedules or sections of the Stalking Horse Agreement. Terms used but not defined in this summary description have the meaning ascribed to such term as in the Stalking Horse Agreement.

Purchased Assets	The Stalking Horse Bidder is purchasing the Purchased Assets set forth on <u>Schedule 1</u> to the Stalking Horse Agreement
Sale to Insider Local Rule 6004-1(b)(iv)(A)	The Stalking Horse Bidder is an “insider” of the Debtor as defined in Section 101(31) of the Bankruptcy Code.
Agreements With Management Local Rule 6004-1(b)(iv)(B)	No agreements exist between management and the buyer.
Releases Local Rule 6004- 1(b)(iv)(C)	The Stalking Horse Agreement does not contain any provisions pursuant to which an entity is being released or claims against any entity are being waived or otherwise satisfied.
Private Sale/No Competitive Bidding Local Rule 6004- 1(b)(iv)(D)	The Stalking Horse Agreement requires the Debtor to sell the Debtor’s Assets pursuant to certain bidding procedures to be employed, as reflected in the Bidding Procedures Order. Debtor, including through its representatives, may solicit inquiries, proposals or offers from third parties in connection with any alternative transaction pursuant to the terms of the Bidding Procedures Order. <i>See § 1.13 of the Stalking Horse Agreement.</i>
Closing Date Local Rule 6004-1(b)(iv)(E)	The Stalking Horse Agreement provides for an “Outside Date” on the earlier of (i) June 8, 2025 and (ii) three Business Days following entry of the order approving the Sale. <i>See § 1.7 of the Stalking Horse Agreement:</i>
Good Faith Deposit Local Rule 6004-1(b)(iv)(F)	The Stalking Horse Bidder shall be considered a Qualified Bidder and shall not be required to provide a Deposit. <i>See Bidding Procedures ¶ 4.</i>
Use of Proceeds Local Rule 6004-1(b)(iv)(H)	A Qualified Bid, other than the Stalking Horse Bid, must provide for indefeasible payment, in full, in cash of all DIP Obligations and Prepetition Loan Obligations (each as defined in the DIP Order). <i>See Bidding Procedures ¶ 3 (xiv).</i>
Record Retention Local Rule 6004- 1(b)(iv)(J)	The Debtor will have reasonable access to its books and records to enable it to administer its bankruptcy case.
Sale of Avoidance Actions Local Rule 6004-1(b)(iv)(K)	Purchased Assets include all claims and causes of action available to Debtor including (i) avoidance actions under Chapter 5 of the Bankruptcy Code (including Sections 544, 545, 547, 548, 549, 550 and 553) or any similar actions under any other applicable law and (ii) claims and causes of action against (1) any of Debtor’s vendors, suppliers, employees, customers or trade creditors in regards or related to the Purchased Assets; (2) any of Debtor’s counterparties under any Designated Contracts and (3) any affiliates of any of the foregoing parties listed in clauses (i)

	and (ii). <i>See</i> Schedule 1 of the Stalking Horse Agreement.
Requested Findings as to Successor Liability Local Rule 6004-1(b)(iv)(L)	The Stalking Horse Agreement requires Debtor to seek entry of an order approving the Sale that includes, among other things, a determination that the Stalking Horse Bidder is not a successor or alter ego of Debtor and grant the Stalking Horse Bidder the protection of Section 363(m) of the Bankruptcy Code. <i>See</i> § 1.13(g) of the Stalking Horse Agreement:
Credit Bidding Local Rule 6004-1(b)(iv)(N)	The Stalking Horse Bidder is entitled to pay the Purchase Price under the Stalking Horse Agreement in the form of a credit bid constituting the Prepetition Loan Obligations and the DIP Obligations pursuant to Section 363(k) of the Bankruptcy Code. <i>See</i> § 4 of the Bidding Procedures.
Relief from Bankruptcy Rule 6004(h) Local Rule 6004-1(b)(iv)(O)	As set forth below, the Debtor believes that the Sale should be consummated as soon as practicable to preserve and maximize value for creditors.
No-Shop or No-Solicitation Provisions Local Rule 6004-1(c)(i)(C)(1)	The Stalking Horse Agreement does not include any limitations on the Debtor's ability or right to solicit higher or otherwise better bids.
Break-Up/Topping Fees and Expense Reimbursement Local Rule 6004-1(c)(i)(C)(2)	The Stalking Horse Bidder shall be entitled to expense reimbursement for reasonable and documented out-of-pocket costs and expenses (including fees and expenses of counsel) incurred by the Stalking Horse Bidder in connection with the negotiation, diligence, execution, performance and enforcement of the Stalking Horse Agreement. <i>See</i> Stalking Horse Agreement § 1.13(i).
Bidding Increments Local Rule 6004-1(c)(i)(C)(3)	At the Auction, any Overbid after the Baseline Bid shall be made in increments of at least \$100,000. The Initial Overbid Amount shall be the Stalking Horse Bid plus the Expense Reimbursement plus \$250,000. <i>See</i> Bidding Procedures p. 11.
Treatment of Break-Up and Topping Fees and Expense Reimbursement at Auction. Local Rule 6004-1(c)(i)(C)(4)	The Stalking Horse Bidder will receive credit for the Expense Reimbursement when valuing its bid <i>vis a vis</i> other bidders. <i>See</i> Bidding Procedures p. 11.

BASIS FOR RELIEF

I. The Bidding Procedures Are Fair, Appropriate, and In the Best Interests of the Debtor and Its Stakeholders

25. The Bidding Procedures are specifically designed to promote what courts have deemed to be the paramount goal of any proposed sale of property of a debtor's estate: maximizing the value of sale proceeds received by the estate. *See Burtch v. Ganz (In re Mushroom Co.)*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that a debtor "had a fiduciary duty to protect and maximize the estate's assets"); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (recognizing that main goal of any proposed sale of property of a debtor's estate is to maximize value). Courts uniformly recognize that procedures established for the purpose of enhancing competitive bidding are consistent with the fundamental goal of maximizing the value of a debtor's estate. *See Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 537 (3d Cir. 1999) (noting that bidding procedures that promote competitive bidding provide a benefit to a debtor's estate); *Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (observing that sale procedures "encourage bidding and . . . maximize the value of the debtor's assets").

26. The Bidding Procedures provide for an orderly, uniform, and appropriately competitive process through which interested parties may submit offers to purchase the Assets. Given the case timeline negotiated with BEV, the Debtor, with the assistance of its advisors, has structured the Bidding Procedures to promote active bidding by interested parties for the Assets, and to confirm the highest or otherwise best officer reasonably available for the Assets. The Bidding Procedures will allow the Debtor to conduct any Auction in a fair and transparent manner

that will encourage participation by financial capable bidders with demonstrated ability to consummate a timely sale or sales.

27. Accordingly, the Bidding Procedures should be approved because they are aligned with the circumstances of these Chapter 11 Case and are reasonable, appropriate, and in the best interests of the Debtor, its estates, and all parties in interest.

II. Approval of the Sale Is Warranted Under Section 363 of the Bankruptcy Code

28. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of a debtor’s estate, courts have approved the authorization of a sale of a debtor’s assets if such sale is based upon the sound business judgment of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephen Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983).

29. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was provided to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. *See In re Decora Indus., Inc.*, No. 00-4459 (JJF), 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (citing *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)). Where a debtor demonstrates a valid business justification for a decision, it is presumed that “in making a

business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. at 656. At any Sale Hearing, the Debtor intends on showing that any sale satisfies the sound business judgment standard.

(i) The Debtor Has Demonstrated a Sound Business Justification for the Sale of Assets

30. A sound business purpose for the sale of a debtor’s assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of creditors and interest holders. *See, e.g., Cumberland Farms Dairy, Inc. v. Abbotts Dairies of Penn., Inc. (In re Abbotts Dairies of Penn., Inc.)*, 788 F.2d 143 (3d Cir. 1986); *Lionel Corp.*, 722 F.2d at 1063; *Food Barn Stores*, 107 F.3d at 564-65 (recognizing the paramount goal of any proposed sale of property of estate is to maximize value).

31. As set forth above and in the First Day Declaration, the Ayers Declaration and the Moellering Declaration, a strong business justification exists for the sale of the Assets as described herein. In light of the Debtor’s financial condition, an orderly and expeditious Sale of the Assets is critical to maximizing the value of the Debtor’s estate and recoveries for the Debtor’s economic stakeholders. Moreover, the proposed Sale process timeline is appropriate it is required under the DIP Facility, without which, the Debtor would not be able to fund the Sale process. In addition, the compressed timeline is appropriate in light of the nature of the Assets and the targeted marketing process.

(ii) The Sale Noticing and Objection Procedures Are Appropriate and Comply With Bankruptcy Rules 2002 and 6004

32. Bankruptcy Rules 2002 and 6004 require the Debtor to notify creditors of a proposed sale, provide a description of the assets being sold, and disclose the time and place of the

Auction, the terms and conditions of any proposed Sale transaction and any objection deadlines. *See* Fed. R. Bankr. P. 2002(a), 2002(c), and 6004(a). The Sale Notice and related objection procedures set forth above are reasonably calculated to provide all of the Debtor's known creditors and other parties in interest with adequate and timely notice of all of the key dates, deadlines, and other material information related to the Sale Process. Accordingly, the Debtor requests that the Court approve the sale notice and related objection procedures, including the Sale Notice, substantially in the form attached to the Bidding Procedures as Exhibit 2, and find that no other or further notice of the Bidding Procedures, the Auction, or the Sale Hearing is necessary or required.

(iii) The Proposed Sale Will Yield a Fair and Reasonable Purchase Price for the Assets

33. The Debtor believes that any Sale transaction governed by the Bidding Procedures will yield a fair and reasonable purchase price for the relevant Assets. Given the targeted marketing process, the Debtor submits that the Bidding Procedures are well tuned to facilitate a competitive bidding process in light of the Debtor's financial situation.

34. The Debtor constructed the Bidding Procedures to promote transparency, good faith, and fairness throughout the Sale Process. The Bidding Procedures provide an appropriate framework for the Debtor to review, analyze, and compare bids for the Assets, and to engage with bidders on an arm's length basis to work to improve the quality of their bids for the benefit of all parties in interest. Any Sale governed by the Bidding Procedures will serve the important objectives of obtaining not only a fair and reasonable purchase price, but also the highest and best value for the Assets.

(iv) The Bidding Procedures Ensure that the Sale Process Is Conducted in Good Faith and that the Successful Bidder Is Entitled to the Protections Afforded by Section 363(m) of the Bankruptcy Code

35. Section 363(m) of the Bankruptcy Code is designed to protect the sale of a debtor's assets to a good-faith purchaser. Specifically, section 363(m) provides the following:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) embodies “[the] policy of not only affording finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely.” *Abbotts Dairies*, 788 F.2d 143, 147 (3d Cir. 1986)); *see also Reloeb Co. v. LTV Corp. (In re Chateaugay Corp.)*, No. 92 Civ. 7054 (PKL), 1993 U.S. Dist. LEXIS 6130, at *9 (S.D.N.Y. May 10, 1993); *Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal.”).

36. While the Bankruptcy Code does not define “good faith,” the Third Circuit has held that “the phrase encompasses one who purchases in ‘good faith’ and for ‘value.’” *Abbotts Dairies*, 788 F.2d at 147 (to constitute lack of good faith, a party’s conduct in connection with the sale must usually amount to fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders); *see also In re Bedford Springs Hotel, Inc.*, 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); *In re Perona Bros., Inc.*, 186 B.R. 833, 839 (D.N.J. 1995).

37. In other words, a party would have to show fraud or collusion between the Debtor and bidders to demonstrate a lack of good faith. *See Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) (“[t]ypically, the misconduct that would destroy a [buyer]’s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders”). Due to the absence of a bright-line test for good faith, the determination is based on the facts of each case, with a focus on the “integrity of [a bidder’s] conduct in the course of the sale proceedings.” *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1998 (7th Cir. 1978)).

38. As set forth above, the Bidding Procedures are designed to produce a fair and transparent competitive bidding process that will yield the highest or otherwise best value for the Assets. Any asset purchase agreement with a Successful Bidder, including the Stalking Horse Agreement, executed by the Debtor will be (or was) negotiated at arm’s-length and in good faith at each stage of the negotiations.

39. The Debtor submits that, regarding the Stalking Horse Bidder, the Debtor will seek a finding that such Stalking Horse Bidder is a “good faith purchaser” within the meaning of section 363(b) of the Bankruptcy Code. Further, each Bidder must confirm that it has not engaged in any collusion with respect to the Bidding Procedures, the Auction, or any Sale. Any purchase agreement with a Successful Bidder executed by the Debtor will be negotiated at arm’s length and in good faith. As such, the Debtor will request a finding that any Successful Bidder is a good-faith purchaser and is entitled to the full protections afforded under section 363(m) of the Bankruptcy Code.

40. Based on the foregoing, the Debtor submits that it has demonstrated that any proposed Sale is a sound exercise of the Debtor's business judgment and should be approved as a good faith transaction.

III. A Sale Free and Clear of Liens, Claims, Interests, and Encumbrances Is Appropriate Under Section 363(f) of the Bankruptcy Code

41. In the interest of attracting the best offers, the Court should authorize the Debtor to sell the Assets free and clear of any and all liens, claims, interests, and other encumbrances (other than permitted encumbrances or assumed liabilities in any relevant purchase agreement), in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, interests, and encumbrances attaching to the proceeds of the applicable Sale. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances if any one of the following conditions is satisfied:

- a. applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- b. such entity consents;
- c. such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see also In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

42. Section 363(f) of the Bankruptcy Code is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. §

105(a); *see also Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of claims] is within the court’s equitable powers when necessary to carry out the provisions of [the Bankruptcy Code].”).

43. The Debtor anticipates that any Sale transaction they elect to pursue will satisfy one or more of the requirements under section 363(f) of the Bankruptcy Code to permit a “free and clear” sale of the applicable Assets. Here, the Assets are subject to the prepetition liens of BEV, whose interest will be adequately protected by such liens attaching to the proceeds of the Sale. Additionally, any parties with junior liens on the assets can be compelled to accept a money satisfaction of their interests, but also would likely be adequately protected by such liens attaching to the proceeds of the applicable Sale. Moreover, the Bidding Procedures require the Debtor to send the Sale Notice to all purported lienholders. If such lienholders do not object to the proposed Sale, then their consent should be presumed. Accordingly, the Debtor requests that, unless a party asserting a prepetition lien, claim, or encumbrance on any of the Assets timely objects, such party shall be deemed to have consented to any Sale approved at the Sale Hearing. *See Hargave v. Twp. of Pemberton*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to a sale motion, a creditor is deemed to consent to the relief requested therein).

44. Based on the foregoing, the Debtor requests that the Court authorize the sale of the Assets free and clear of any liens, claims, interests, and encumbrances, in accordance with section 363(f) of the Bankruptcy Code, subject to such liens, claims, interests, and encumbrances (other than permitted encumbrances or assumed liabilities in any relevant purchase agreement), to the fullest extent permitted by section 363(f) of the Bankruptcy Code.

IV. The Debtor's Assumption and Assignment of Executed Contracts and Unexpired Leases Is Appropriate Under Section 365 of the Bankruptcy Code

45. To the extent the Stalking Horse Bidder or another Successful Bidder purchases the Debtor's Assets, the Debtor requests relief under section 365 of the Bankruptcy Code. Section 365(a) of the Bankruptcy Code provides that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Courts employ the business judgment standard in determining whether to approve a debtor's decision to assume or reject an executory contract or unexpired lease. *See, e.g., In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (assumption or rejection of lease "will be a matter of business judgment by the bankruptcy court"); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that a debtor's decision to assume or reject executory contract is governed by business judgment standard and may only be overturned if decision is product of bad faith, whim, or caprice). The "business judgment" test in this context only requires that a debtor demonstrate that assumption or rejection of an executory contract or unexpired lease benefits the estate. *See Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989).

46. Assumption of any Assumed Contract is an exercise of the Debtor's sound business judgment because the transfer of such Assumed Contracts in connection with a Sale is necessary to the Debtor's ability to obtain the best value for the Assets. Given that consummation of the Sale is critical to the Debtor's efforts to maximize value for its estate and stakeholders, the Debtor's assumption of Assumed Contracts is an exercise of sound business judgment and, therefore, should be approved.

47. The consummation of any Sale involving the assignment of Assumed Contracts will be contingent upon the Debtor's compliance with the applicable requirements of section 365

of the Bankruptcy Code. Section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Assumed Contracts be cured or that the Debtor provides adequate assurance that such defaults will be promptly cured. *See* 11 U.S.C. § 365(b)(1). The Debtor's assumption and assignment of Assumed Contracts will be contingent upon payment of the cure costs and effective only upon the closing of the applicable Sale. As set forth above, the Debtor proposes to file with the Court and serve on each counterparty to the Debtor's universe of executory contracts and unexpired leases the Assumption Notice, which will set forth the Debtor's good faith calculations of cure amounts with respect any such contracts or unexpired leases listed on such Assumption Notice, and the procedures by which such counterparty may object to the assumption and assignment of its contract or unexpired lease at the Sale Hearing or at a separate hearing scheduled prior to closing.

48. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract or unexpired lease if "adequate assurance of future performance by the assignee of such contract or lease is provided." 11 U.S.C. § 365(f)(2). The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *See Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (citation omitted); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean an absolute assurance that debtor will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (finding that, "[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance"). Among other things, adequate assurance may be provided by evidencing the assignee's financial health and experience in managing the type of enterprise or property assigned.

See In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when the prospective assignee of a lease has financial resources and has expressed willingness to devote sufficient funding to the business to give it a strong likelihood of succeeding).

49. The Bidding Procedures expressly specify that any Qualified Bid that includes the assumption and assignment of any Assumed Contracts must include with information regarding the bidder's ability to perform any Assumed Contracts that it wishes for the Debtor to assume and assign. The Assumption Procedures require the Debtor to furnish all available adequate assurance information to the relevant Assumed Contract Counterparties to provide such Assumed Contract Counterparties ample opportunity to review such information and object if they so choose. To the extent necessary, the Debtor will present facts at the Sale Hearing to show the financial wherewithal, willingness and ability of the Stalking Horse Bidder or Successful Bidder to perform under any Assumed Contracts that it wishes for the Debtor to assume and assign. In light of the foregoing, the Debtor's assumption and assignment of any Assumed Contracts in accordance with the Assumption Procedures would satisfy the requirements of section 365 of the Bankruptcy Code and should be approved.

V. The Expense Reimbursement Should Be Approved

50. The Stalking Horse APA provides for the reimbursement by the Debtor of all reasonable and documented out-of-pocket costs and expenses (including fees and expenses of counsel) incurred by the Stalking Horse Bidder in connection with the negotiation, diligence, execution, performance and enforcement of the Stalking Horse Agreement (the "Expense Reimbursement").

51. The Debtor believes that the Expense Reimbursement is an essential prerequisite for the Stalking Horse Bidder to enter into the Stalking Horse APA. In addition, the Debtor believes that the presence of the Stalking Horse Bidder will set a floor for the value of the Assets and attract other potential buyers to bid for such assets, thereby maximizing the realizable value of the Assets for the benefit of the Debtor's estates, its creditors, and all other parties in interest.

52. Approval of the Expense Reimbursement is governed by standards for determining the appropriateness of bid protections in the bankruptcy context. Courts have identified at least two instances in which bid protections may benefit the estate. First, a break-up or expense reimbursement fee may be necessary to preserve the value of a debtor's estate if assurance of the fee "promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *In re O'Brien Envtl. Energy, Inc.*, 181 F.3d at 533. Second, if the availability of a break-up fee or expense reimbursement was to induce a bidder to research the value of the debtor and convert the value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth. *See id.*; *see also In re Reliant Energy Channel View LP*, 594 F.3d 200, 206–08 (3d Cir. 2010) (reasoning that a break-up fee should be approved if it is necessary to entice a party to make the first bid or if it would induce a stalking horse purchaser to remain committed to a purchase).

53. In *O'Brien*, the Third Circuit reviewed the following nine factors set forth by the lower court as relevant in deciding whether to award a break-up fee or expense reimbursement:

- a. the presence of self-dealing or manipulation in negotiating the break-up fee;
- b. whether the fee harms, rather than encourages, bidding;
- c. the reasonableness of the break-up fee relative to the purchase price;
- d. whether the unsuccessful bidder placed the estate property in a "sale configuration mode" to attract other bidders to the auction;

- e. the ability of the request for a break-up fee to serve to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders or attract additional bidders;
- f. the correlation of the fee to a maximum value of the debtor's estate;
- g. the support of the principal secured creditors and creditors' committees of the break-up fee;
- h. the benefits of the safeguards to the debtor's estate; and
- i. the substantial adverse impact of the break-up fee on unsecured creditors, where such creditors are in opposition to the break-up fee.

See In re O'Brien Envtl. Energy, Inc., 181 F.3d at 536.

54. Although none of the factors is dispositive, an application of the facts to several of such factors supports the approval of the Expense Reimbursement in this case. In particular, the Expense Reimbursement is necessary to preserve the value of the Debtor's estate because it will enable the Debtor to secure an adequate floor for the Assets—a clear benefit to the Debtor's estate.

55. Moreover, there has been no showing of any self-dealing or manipulation of any kind in the negotiation of the Expense Reimbursement. Rather, the Expense Reimbursement is the result of good faith, arm's-length negotiations between the Debtor and the Stalking Horse Bidder. The Debtor believes that the agreement to pay the Expense Reimbursement is reasonable and necessary to induce the Stalking Horse Bidder to enter into the transactions encompassed by the Stalking Horse Agreement.

56. Further, the Stalking Horse Bidder would not have agreed to act as a stalking horse without the Expense Reimbursement, given the substantial time and expense that it incurred in connection with entering into definitive documentation and the risk that it will be outbid at the Auction. Without the Expense Reimbursement, the Debtor might lose the opportunity to obtain the highest or otherwise best offer for the Assets, may have lost the financing for this Chapter 11 Case, and would certainly lose the downside protection that will be afforded by the existence of the Stalking Horse Bidder. *See, e.g., In re Enjoy Technology, Inc.*, Case No. 22-10580 (Bankr. D.

Del. July 26, 2022) [D.I. 199] (approving break-up fee and expense reimbursement). Additionally, without the floor established by the Stalking Horse Bidder, the bids received at Auction for the Assets could be substantially lower than the bid offered by the Stalking Horse Bidder.

57. Pursuant to the Bidding Procedures, any bidder that wishes to participate in the Auction must submit an offer that is higher or otherwise better than the bid of the Stalking Horse Bidder, which would be used to fund the Expense Reimbursement. The bid of the Stalking Horse Bidder attracts additional bidders because, among other things, additional bidders will be able to save considerable time and expense because they can use many of the documents that the Stalking Horse Bidder heavily negotiated, including the Stalking Horse Agreement and the schedules thereto, in making their bid. In sum, if the Assets are sold to a Successful Bidder other than the Stalking Horse Bidder, the Sale likely will be the result of the Stalking Horse Bidder's crucial role as an initial bidder generating interest in the Assets and establishing a minimum acceptable price and offer against which other parties can bid.

58. Finally, the Debtor believes that the Expense Reimbursement is appropriate when compared to bid protections approved in other cases in this District.⁷ Accordingly, the Debtor

⁷ See, e.g., *In re Am. Eagle Del. Holding Co., LLC*, No. 22-10028 (JKS) [D.I. 146] (approving a breakup fee of 3% of the cash consideration of the stalking horse bid plus expense reimbursements equal to a maximum of 1.25% of the cash consideration of the stalking horse bid capped at \$50,000); *In re Ector Cnty. Energy Ctr., LLC*, No. 22-10320 (JTD) (Bankr. D. Del. May 6, 2022) [D.I. 136] (approving breakup fee of 3% of cash consideration of the stalking horse bid plus expense reimbursements equal to a maximum of 0.5% of the cash consideration of the stalking horse bid); *In re BHCosmetics Holdings, LLC*, No. 22-10050 (CS) (Bankr. D. Del. Jan. 28, 2022) [D.I. 90] (approving breakup fee equal to 4% of the cash consideration of the stalking horse bid plus expense reimbursements equal to a maximum of approximately 3.5% of the cash consideration of the stalking horse bid); *In re Gorham Paper & Tissue, LLC*, No. 20-12814 (KBO) (Bankr. D. Del. Nov. 19, 2020) [D.I. 112] (approving break-up fee in an amount equal to approximately 3.4% of cash purchase price and expense reimbursement up to an amount equal to approximately 1.1% of cash purchase price); *In re Brooks Bros. Grp., Inc.*, Case No. 20-11785 (CSS) (Bankr. D. Del. Aug. 3, 2020) [D.I. 285] (authorizing a break-up fee of 3% and an expense reimbursement capped at \$1 million, for total bid protections of up to 3.3%); *In re Lucky Brand Dungarees, LLC*, Case No. 20-11768 (CSS) (Bankr. D. Del. July 30, 2020) [D.I. 251] (authorizing an expense reimbursement capped at \$1 million and a break-up fee of 3% of the sum of the purchase price, credit bid, value of standby letters of credit, and \$7 million of assumed liabilities, for total bid protections of approximately 3.5%); *In re Templar Energy LLC*, Case No. 20-11441 (BLS) (Bankr. D. Del. June 29, 2020) [D.I. 130] (authorizing break-up fee of 3% of the cash component of the stalking horse purchase price and expense reimbursement up to \$350,000, for total bid protections of approximately 3.5%).

submits that the Expense Reimbursement is reasonable under the circumstances of this Chapter 11 Case and should be approved.

WAIVER OF BANKRUPTCY RULES 6004(A), 6004(H) AND 6006(D)

59. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Bankruptcy Rule 6006(d) further provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d). The Debtor requests that the Sale Order be effective immediately upon its entry by providing that the fourteen-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

60. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Comm. Notes to Fed. R. Bankr. P. 6004(h) & 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the fourteen-day stay period, the leading treatise on bankruptcy suggests that the fourteen-day stay should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to procedure.” 10 COLLIER ON BANKRUPTCY ¶ 6004.10 (15th rev. ed. 2006). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *Id.*

61. The Debtor believes that the Sale should be consummated as soon as practicable to preserve and maximize value. Accordingly, the Debtor requests that any Sale Order approving the

sale of the Assets and the assumption and assignment of the Assumed Contracts be effective immediately upon entry of such order and that the fourteen-day stay under Bankruptcy Rules 6004(h) and 6006(d) be waived.

NOTICE

62. Notice of this Motion has been given to: (a) the DIP Lender; (b) any statutorily appointed committee; (c) all parties who have expressed a written interest in some or all of the Assets; (d) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or interest in the Assets; (e) the Office of the United States Trustee for the District of Delaware; (f) the Securities and Exchange Commission; (g) the Debtor's 20 largest unsecured creditors; and (h) the Internal Revenue Service. In light of the nature of the relief requested, the Debtor submits that no further notice is necessary.

NO PRIOR REQUEST

63. No prior request for the relief sought in this Motion has been made to this or any other Court in connection with this Chapter 11 Case.

CONCLUSION

WHEREFORE, the Debtor requests that the Court: (i) enter the Bidding Procedures Order, substantially in the form attached as Exhibit A, (ii) at the conclusion of the Sale Hearing, enter the Sale Order, substantially in the form to be filed with the Court; and (iii) grant such other relief as is necessary.

Dated: April 17, 2025
Wilmington, Delaware

WOMBLE BOND DICKINSON (US) LLP

/s/ Morgan L. Patterson
Matthew P. Ward (DE Bar No. 4471)
Morgan L. Patterson (DE Bar No. 5388)
Marcy J. McLaughlin Smith (DE Bar No. 6184)
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Proposed Counsel to the Debtor

EXHIBIT A

Bidding Procedures Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

VIRIDOS, INC.,¹

Debtor.

Chapter 11
Subchapter V

Case No. 25-10697(CTG)

Docket No. ____

**ORDER (I) APPROVING BIDDING PROCEDURES IN CONNECTION
WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS,
(II) SCHEDULING AN AUCTION AND A SALE HEARING, (III) APPROVING
THE FORM AND MANNER OF NOTICE THEREOF, (IV) AUTHORIZING
THE DEBTOR TO ENTER INTO THE STALKING HORSE AGREEMENT,
(V) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT
OF CONTRACTS AND LEASES, AND (VI) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtor and debtor in possession (the “Debtor”) for entry of an order (this “Order”) (i) authorizing and approving the Bidding Procedures attached hereto as Exhibit 1 (the “Bidding Procedures”) in connection with the sale (the “Sale”) of substantially all of the Debtor’s assets (the “Assets”), (ii) scheduling an auction and hearing to consider the Sale of the Assets, (iii) approving the form and manner of notice thereof, (iv) authorizing the Debtor to enter into the Stalking Horse Agreement (as defined below), (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale (collectively, the “Assumed Contracts”), and (vi) granting related relief, all as more fully set forth in the Motion; and upon the Moellering Declaration, the Ayers Declaration and other testimony and evidence submitted by the Debtor in support of the Motion; and this Court having reviewed the Motion and having heard the statements in support of

¹ The Debtor in this Chapter 11 Case and the last four digits of its U.S. taxpayer identification number is: Viridos, Inc. (3940). The Debtor’s corporate headquarters is located at: 11149 N. Torrey Pines Road, La Jolla, CA 92037.

² Capitalized terms used as defined terms herein but not otherwise defined shall have the meanings ascribed to them in the Motion or the Bidding Procedures, as applicable. In the event there is a conflict between this Order and the Motion, this Order shall control and govern.

the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined the legal and factual bases set forth in the Motion and at the Hearing establish good and sufficient cause for the relief granted in this Order,

IT IS HEREBY FOUND THAT:

A. 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 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.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012.

C. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Debtor has confirmed its consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by this Court in connection with the Motion, to the extent it is later determined this Court, absent the consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

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

E. The bases for the relief requested in the Motion are Sections 105, 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, and Local Rules 2002-1, 6004-1, and 9013-1(m).

F. Notice of the Motion has been given to (a) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”); (b) the United States Attorney for the District of

Delaware; (c) the Internal Revenue Service; (d) the offices of the attorneys general for the states in which the Debtor is formed or operate; (e) counsel any statutorily appointed committee; (f) counsel to the Stalking Horse Bidder and DIP Lender; (g) the offices of the attorneys general for the states in which the Debtor operate; (h) the Securities and Exchange Commission; (i) all parties known by the Debtor to assert a lien on any of the Assets; and (j) all parties entitled to notice pursuant to Local Rules 2002-1(b).

G. Notice of the Motion, including the relief sought therein, and the Hearing was good and sufficient under the circumstances, and such notice complied with all applicable requirements under the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice need be provided. A reasonable opportunity to object or be heard regarding the relief provided in this Order has been afforded to all parties in interest.

H. The Debtor has articulated good and sufficient reasons for this Court to (i) approve the Bidding Procedures, (ii) schedule the bid deadlines and the Auction and the Sale Hearing, (iii) approve the form and manner of notice of the Auction and Sale Hearing, (iv) approve procedures for the assumption and assignment of the Assumed Contracts, including notice of the proposed cure amounts, and (v) authorize the Debtor to enter into a Stalking Horse Agreement, in the exercise of the Debtor's reasonable business judgment. The entry of this Order is in the best interests of the Debtor, its estate, creditors, and other parties in interest.

I. The Bidding Procedures attached hereto as Exhibit 1 are reasonable, appropriate and were negotiated at arm's length, in good faith, and without collusion. The Bidding Procedures are reasonably designed to attract value-maximizing proposals beneficial to the Debtor, its estate, its creditors, and other parties in interest. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).

J. The Debtor has demonstrated sound business justifications for entry into that certain Asset Purchase Agreement, a copy of which is attached as Exhibit B to the Motion (the “Stalking Horse Agreement”), by and among the Debtor and the Stalking Horse Bidder, which represents the highest or otherwise best offer the Debtor has received to date as a result of its efforts to market the Assets for sale.

K. The Debtor has articulated good and sufficient business reasons for the Court to approve the Expense Reimbursement (as defined in the Stalking Horse Agreement, the “Expense Reimbursement”) and to authorize the Debtor to pay the Expense Reimbursement to the Stalking Horse Bidder in accordance with the terms and conditions of the Stalking Horse Agreement and this Order. The Expense Reimbursement set forth in Section 1.13(i) of the Stalking Horse Agreement is: (1) an actual and necessary cost and expense of preserving the Debtor’s estate within the meaning of section 503(b) and 507(a)(2) of the Bankruptcy Code; (2) commensurate to the real and substantial benefits conferred upon the Debtor’s estate by the Stalking Horse Bidder; (3) fair, reasonable, and appropriate, including in light of the commitments that have been made and the efforts that have been and will be expended by the Stalking Horse Bidder; and (4) a condition to and necessary to induce the Stalking Horse Bidder to continue to pursue the Sale and to continue to be bound by the Stalking Horse Agreement.

L. Moreover, the Expense Reimbursement is an essential inducement and condition of the Stalking Horse Bidder’s entry into, and continuing obligations under, the Stalking Horse Agreement. Absent approval of the Expense Reimbursement, the Stalking Horse Bidder is unwilling to remain obligated to consummate the Sale or otherwise be bound under the Stalking Horse Agreement (including the obligation to maintain its committed offer while such offer is subject to higher or otherwise better offers as contemplated by the Bidding Procedures). The

Expense Reimbursement induced the Stalking Horse Bidder to submit a bid that will serve as a minimum, or floor, bid in the Sale on which the Debtor, its creditors, and other bidders can rely, and which encourages and facilitates the Auction process with respect to the Sale. The Stalking Horse Bidder has thus provided a material benefit to the Debtor and its creditors by increasing the likelihood that the best possible purchase price for the Sale will be realized. Accordingly, the Expense Reimbursement is reasonable and appropriate and represent the best method for maximizing value for the benefit of the Debtor's estate.

M. The Debtor's performance of certain pre-closing obligations contained in the Stalking Horse Agreement represents a reasonable exercise of the Debtor's sound business judgment.

N. The Sale Notice, substantially in the form attached hereto as Exhibit 2 (the "Sale Notice"), regarding the Sale of the Assets by Auction and Sale Hearing and the manner of distribution thereof required hereby, is reasonably calculated to provide interested parties with timely and proper notice of the proposed Sale, including, without limitation: (i) the date, time, and place of the Auction (if one is held), (ii) the Bidding Procedures and certain dates and deadlines related thereto, (iii) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing, (iv) reasonably specific identification of the Assets for Sale, (v) instructions for promptly obtaining a copy of the Stalking Horse Agreement, (vi) a description of the Sale as being free and clear of all liens, claims, interests, and other encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity and priority to the sale proceeds, (vii) the commitment by the Stalking Horse Bidder to assume certain Assumed Liabilities disclosed in the Stalking Horse Agreement, and (viii) notice of the proposed assumption and assignment of Assumed Contracts to the Stalking Horse Bidder

(or such other Assumed Contracts to another Successful Bidder arising from the Auction, if any) and the rights, procedures, and deadlines for objecting thereto. No other or further notice of the Sale shall be required.

O. The Motion, the Sale Notice, the Assumption Notice, this Order, and the Assumption Procedures (as defined below) set forth herein are appropriate and reasonably calculated to provide any Assumed Contract Counterparties with proper notice of the intended assumption and assignment of their Assumed Contracts, the procedures in connection therewith, and any cure amounts relating thereto.

P. Neither the filing of the Motion, entry of this Order, the solicitation of bids or the conducting of the Auction in accordance with the Bidding Procedures nor any other actions taken by the Debtor in accordance therewith shall constitute a Sale of the Assets, which Sale will only take place, if at all, following the Sale Hearing.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. All objections, statements, and reservations of rights with respect to the relief set forth herein that have not been withdrawn, waived, or settled, as announced to the Court at the Hearing on the Motion, by stipulation filed with the Court, or expressly set forth herein are overruled.

A. The Bidding Procedures

3. The Bidding Procedures, attached hereto as Exhibit 1, shall govern the submission, receipt, and analysis of all bids relating to the proposed Sale and any party desiring to submit a higher or better offer for the Assets must comply with the terms of the Bidding Procedures and this Order. The Bidding Procedures shall also govern the terms on which the Debtor will proceed with the Auction and/or Sale pursuant to the Stalking Horse Agreement.

4. The Stalking Horse Bidder shall be deemed a Qualified Bidder pursuant to the Bidding Procedures for all purposes.

5. The following dates and deadlines regarding competitive bidding are hereby established (subject to modification in accordance with the Bidding Procedures):

Event	Date
Contract Assumption Objection Deadline	Objections to (i) the potential assumption and assignment of any contract to the Stalking Horse Bidder including the ability of the Stalking Horse Bidder to provide adequate assurance of future performance and (ii) the proposed cure amount to be paid in connection with the assumption and assignment of any contract shall be filed and served no later than May 22, 2025, at 4:00 p.m. (prevailing Eastern Time) (the “ <u>Contract Assumption Objection Deadline</u> ”); <i>provided</i> that, to the extent any Assumed Contract Counterparty is added to the Assumption Notice after the initial notice is served, such new Assumed Contract Counterparty shall have ten (10) days from the date of service of a supplemental notice of contract assumption to object to the propose cure amount and assignment to the Successful Bidder.
Bid Deadline	May 29, 2025 at 4:00 p.m. (prevailing Eastern Time).
Sale Objection Deadline	May 29, 2025 at 4:00 p.m. (prevailing Eastern Time).
Auction	June 2, 2025 at 10:00 a.m. (prevailing Eastern Time).
Post-Auction Notice Deadline	As soon as reasonably practicable after closing the Auction, if any, and in any event not less than 24 hours after closing the Auction, the Debtor shall file and serve a notice identifying the Successful Bidder and Back-Up Bidder.
Post-Auction Objection Deadline	June 3, 2025 at 4:00 p.m. (prevailing Eastern Time).
Sale Hearing	June 5, 2025 at _____.
Closing Outside Date	June 8, 2025

B. Entry into Stalking Horse Agreement

6. The Debtor’s entry into the Stalking Horse Agreement is hereby approved; provided that for the avoidance of doubt, approval and consummation of the transactions

contemplated by the Stalking Horse Agreement shall be subject to the terms and conditions herein and the entry of an order approving the Sale of the Assets and the satisfaction or waiver of the other conditions to closing on the terms set forth in the Stalking Horse Agreement.

7. The Expense Reimbursement is hereby approved and are afforded administrative expense super-priority status pursuant to Section 503(b) and 507(b) of the Bankruptcy Code. If the Expense Reimbursement becomes payable as a result of an alternative transaction, the Expense Reimbursement shall be paid at the closing of the alternative transaction as a condition to, and from the proceeds of, such alternative transaction.

8. To the extent that any order in these cases (including any order confirming a chapter 11 plan) or any order entered after any conversion of these cases to cases under chapter 7 of the Bankruptcy Code alters, conflicts with, or derogates from the provisions of this Order, the provisions of this Order shall control. The Debtor's obligations under this Order and the portions of the Stalking Horse Agreement pertaining to the Expense Reimbursement shall survive termination of the Stalking Horse Agreement and confirmation of any plan of reorganization and discharge of claims thereunder and shall be binding upon the Debtor or the reorganized Debtor, as the case may be after the effective date of a confirmed plan in the Debtor's case, and any trustee appointed after any conversion of these cases to cases under chapter 7 of the Bankruptcy Code.

C. The Auction

9. As further described in the Bidding Procedures, if a Qualified Bid, other than the Stalking Horse Agreement, is received by the Bid Deadline, the Debtor will conduct the Auction at **10:00 a.m. (prevailing Eastern Time) on June 2, 2025**, or such later time on such day or other place as the Debtor shall notify all Qualified Bidders who have submitted Qualified Bids. The Debtor is authorized, subject to the terms of this Order and the Bidding Procedures, to take actions reasonably necessary to conduct and implement the Auction.

10. If the Debtor does not receive a Qualified Bid (other than the Stalking Horse Agreement): (i) the Debtor shall cancel the Auction, (ii) the Stalking Horse Agreement shall be deemed the Successful Bid for the Assets, and (iii) the Debtor shall seek approval of the Stalking Horse Agreement as the Successful Bid at the Sale Hearing.

11. Only Qualified Bidders (including, for the avoidance of doubt, the Stalking Horse Bidder) shall be entitled to make any Qualified Bids at the Auction.

12. The Debtor and its advisors shall direct and preside over the Auction and the Auction shall be transcribed or videotaped.

13. Each Qualified Bidder (including, for the avoidance of doubt, the Stalking Horse Bidder) participating in the Auction will be required to confirm on the record at the Auction (a) it has not engaged in any collusion with respect to the Sale or bidding (including it has no agreement with any other Bidder or Qualified Bidder to control the price) and (b) its Qualified Bid is the good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

14. The Stalking Horse Bidder shall be deemed to be a Qualified Bidder and is not required to make any Deposit. To the fullest extent permissible under Section 363(k) of the Bankruptcy Code and the DIP Orders,³ the Stalking Horse Bidder may credit bid, in its sole and absolute discretion, any of the DIP Obligations and, if applicable, the Prepetition Loan Obligations (each, as defined in the DIP Orders).

15. In the event of a competing Qualified Bid, all Qualified Bidders shall be entitled, but not obligated, to submit Overbids.

³ “DIP Orders” means that certain *Interim Order (I) Authorizing the Debtor to (A) Obtain Postpetition Financing and (B) Use of Cash Collateral, (II) Granting Adequate Protection to the Prepetition Lender, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [D.I. ____] and the final order with respect to such relief.

16. Absent further order of this Court, any Potential Bidder shall be precluded from submitting any further bids if such Potential Bidder fails to deliver a Qualified Bid by the Bid Deadline. Subject to the Debtor's selection of the Successful Bidder at the Auction, if an Auction occurs, upon the closing of the Auction, absent further order of this Court, all non-Successful Bidders shall be precluded from submitting any further bids and shall not have any further access to due diligence information, the members of the Debtor's management team, or the Debtor's employees.

17. The Debtor may: (i) determine which Qualified Bid (including the Stalking Horse Agreement) is the highest or otherwise best offer; (ii) reject at any time before the entry of the Sale Order any Bid (other than the Stalking Horse Agreement) that, in the discretion of the Debtor, is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or the Bidding Procedures, or (c) contrary to the best interest of the Debtor, its estate, its creditors, interest holders, or other parties in interest; and (iii) at or before the conclusion of the Auction may impose such other terms and conditions upon Qualified Bidders (other than the Stalking Horse Bidder) as the Debtor reasonably determines to be in the best interest of the Debtor' estate.

18. No person or entity, other than the Stalking Horse Bidder, shall be entitled to any break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and, by submitting a Bid, such person or entity must disclaim any right to receive a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation in connection with the Auction and the Sale, whether by virtue of section 503(b) of the Bankruptcy Code or otherwise.

D. Assumption and Assignment Notices & Procedures

19. The procedures set forth below regarding the assumption and assignment of the

executory contracts and unexpired leases proposed to be assumed by the Debtor pursuant to Section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder (or another Successful Bidder, if applicable) pursuant to Section 365(f) of the Bankruptcy Code in connection with the Sale (the “Assumption Procedures”) are hereby approved to the extent set forth herein. These Assumption Procedures shall govern the assumption and assignment of all of the Assumed Contracts to be assumed and assigned in connection with the Sale, subject to the payments necessary to cure any defaults arising under any such Assumed Contracts.

20. On or prior to May 12, 2025, the Debtor shall serve on all non-Debtor Assumed Contract Counterparties to any Assumed Contract (the “Assumption Notice Parties”) that may be assumed by the Debtor and assigned to the Stalking Horse Bidder or other Successful Bidder after the results of the Auction, which notice shall be substantially in the form attached hereto as Exhibit 3 (a “Assumption Notice”). The Assumption Notice shall inform each recipient of the timing and procedures relating to such assumption and assignment, and, to the extent applicable, (i) the title of the executory contract or unexpired lease, as applicable, (ii) the name of the counterparty to the executory contract or unexpired lease, as applicable, (iii) the Debtor’s good faith estimate of the cure amount (if any) required in connection with the executory contract or unexpired lease, as applicable, (iv) the identity of the Stalking Horse Bidder (as assignee, if applicable), and (v) the Contract Assumption Objection Deadline and Post-Auction Objection Deadline (as defined below). The presence of an Assumed Contract on the Assumption Notice does not constitute an admission that such Assumed Contract is an executory contract or unexpired lease, and the presence of an Assumed Contract on any notice shall not prevent the Debtor from subsequently withdrawing such request for assumption or rejecting such Assumed Contract any time before such Assumed Contract is actually assumed and assigned pursuant to the Sale Order.

21. Although the Debtor has informed the Court that they intend to make a good faith effort to identify all Assumed Contracts that may be assumed and assigned in connection with a Sale, the Debtor may discover certain executory contracts and unexpired leases inadvertently omitted from the list of Assumed Contracts, or Successful Bidders may identify other executory contracts and/or unexpired leases that they desire to assume and assign in connection with the Sale. Accordingly, the Debtor has the right, but only in accordance with the Stalking Horse Agreement, or as otherwise agreed to by the Debtor and the Successful Bidder, at any time after the service of the Assumption Notice and before the closing of a Sale, to (i) supplement the list of Assumed Contracts with previously omitted executory contracts or unexpired leases, (ii) remove Assumed Contracts from the list of executory contracts and unexpired leases ultimately selected as Assumed Contracts that a Successful Bidder proposes to be assumed and assigned to it in connection with a Sale, and/or (iii) modify the previously stated cure amount associated with any Assumed Contract. In the event the Debtor exercises any of these reserved rights, the Debtor will promptly serve a supplemental notice of contract assumption (a “Supplemental Assumption Notice”) on each of the Assumed Contract Counterparties to such Assumed Contracts and their counsel of record, if any; provided, however, the Debtor may not add an executory contract to the list of Assumed Contracts that has been previously rejected by the Debtor by order of the Court. Each Supplemental Assumption Notice will include the same information with respect to listed Assumed Contracts as was included in the Assumption Notice.

22. To the extent any Assumed Contract Counterparty is added to the Assumption Notice after the initial notice is served, such new Assumed Contract Counterparty shall receive notice of the addition and the Debtor’s proposed cure amount through service of a Supplemental Assumption Notice, and that party shall have ten (10) days from the date of such notice to object

to the proposed cure amount and assignment to the Successful Bidder.

23. Objections, if any, to (i) the cure amount set forth on the Assumption Notice or (ii) the possible assignment of its executory contract or unexpired lease to the Stalking Horse Bidder, including the ability of the Stalking Horse Bidder to provide adequate assurance of future performance (each, an “Assumed Contract Objection”) **must** (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules and the Local Rules, and (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Bankruptcy Court and served on the following parties so as to be actually received on or before **May 22, 2025 at 4:00 p.m. (prevailing Eastern Time)** (the “Contract Assumption Objection Deadline”): (a) counsel for the Debtor, Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, DE 19801, Attn: Morgan L. Patterson (morgan.patterson@wbd-us.com); (b) counsel for the Stalking Horse Bidder and DIP Lender, Greenberg Traurig, LLP, One Vanderbilt Avenue, New York, NY 10017, Attn: Jeffrey M. Wolf (jeffrey.wolf@gtlaw.com) and Brian E. Greer (greerb@gtlaw.com); (c) counsel for any statutory committee appointed; (d) and the U.S. Trustee, Timothy J. Fox, Jr. (Timothy.Fox@usdoj.gov) (the “Objection Notice Parties”).

24. If a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object (a “Post-Auction Objection”) solely to (i) the identity of a Successful Bidder or (ii) the ability of the Successful Bidder to provide adequate assurance of future performance under the Assumed Contract shall be **4:00 p.m. (prevailing Eastern Time) on June 3, 2024⁴** (the “Post-Auction Objection Deadline”), provided, however, that the deadline to object

⁴ If the Auction is cancelled, the Debtor will promptly file a Notice of Successful Bidder identifying the Stalking Horse Bidder as the Successful Bidder

to the proposed cure amount shall not be so extended.

25. If an Assumed Contract Counterparty does not timely file and serve an Assumed Contract Objection by the Contract Assumption Objection Deadline or a Post-Auction Objection by the Post-Auction Objection Deadline, then that party shall be forever barred from objecting to (i) the Debtor's proposed cure amount, (ii) the assumption and assignment of that party's executory contract or unexpired lease (including the adequate assurance of future performance), (iii) the related relief requested in the Motion, and (iv) the Sale. Such party shall be forever barred and estopped from objecting to the cure amount, the assumption and assignment of that party's executory contract or unexpired lease (including the adequate assurance of future performance), the relief requested in the Motion, whether applicable law excuses such counterparty from accepting performance by, or rendering performance to, the Stalking Horse Bidder or the Successful Bidder, as applicable, for purposes of Section 365(c)(1) of the Bankruptcy Code and from asserting any additional cure or other amounts against the Debtor and the Stalking Horse Bidder or Successful Bidder, as applicable, with respect to such party's executory contract or unexpired lease.

26. Where an Assumed Contract Counterparty to an Assumed Contract timely files an (i) Assumed Contract Objection asserting a higher cure amount than the amount listed in the Assumption Notice or (ii) Assumed Contract Objection or Post-Auction Objection, as applicable, objecting to the possible assignment of that Assumed Contract Counterparty's executory contract or unexpired lease, and the parties are unable to consensually resolve the dispute, the amount (if any) to be paid under Section 365 of the Bankruptcy Code or, as the case may be, the Debtor's ability to assign the executory contract or unexpired lease to the Successful Bidder shall be determined at the Sale Hearing or such later date as fixed by the Court. To the extent an Assumed

Contract Objection or Post-Auction Objection shall be pending as of the date of the closing of any Sale, the Assumed Contract subject to such objection shall not be deemed assumed and assigned, as between the Debtor and the Successful Bidder, as of the closing of the Sale until such time as (i) the amount (if any) to be paid under Section 365 of the Bankruptcy Code or (ii) the Debtor's ability to assign the Assumed Contract to the Successful Bidder is determined by the Court. Upon a determination by the Court (i) of the amount (if any) to be paid under Section 365 of the Bankruptcy Code with respect to any Assumed Contract, the Successful Bidder may elect to (a) pay such amount and have the Assumed Contract assigned to it or (b) remove such Assumed Contract as an Assumed Contract or (ii) that any Assumed Contract is nonassignable, such Assumed Contract shall be removed as an Assumed Contract. Any Assumed Contract subsequently removed as an Assumed Contract, either in accordance with the preceding sentence or pursuant to an agreement with the contract counterparty, shall no longer be deemed assumed and assigned to the Successful Bidder, as between the Successful Bidder and the Debtor, as of the date such Assumed Contract is removed as an Assumed Contract.

27. The payment of the applicable cure amount by the Debtor or Stalking Horse Bidder (or other Successful Bidder), as applicable, shall (i) effect a cure of all defaults existing thereunder and (ii) compensate for any actual pecuniary loss to such counterparty resulting from such default.

E. Notice of the Sale Process

28. The Sale Notice and the Assumption Notice, in substantially the forms as annexed to this Order as Exhibit 2 and Exhibit 3 are hereby approved.

29. Within two (2) business days after the entry of this Order, the Debtor (or its agent) shall serve the Sale Notice by first-class mail upon: (a) the U.S. Trustee; (b) any statutorily appointed committee; (c) counsel to the Stalking Horse Bidder and DIP Lender; (d) all parties known by the Debtor to assert a lien on any of the Assets; (e) all entities reasonably known to have

expressed an interest in a transaction with respect to any of the Assets during the past twelve (12) months; (f) the United States Attorney's Office for the District of Delaware; (g) the Internal Revenue Service; (h) the state and local taxing authorities where the Debtor is formed or operate or that otherwise have an interest in the Assets; (i) the offices of the attorneys general for the states in which the Debtor operate; (j) all other governmental agencies with an interest in the Sale and transactions proposed thereunder; (k) the office of the secretary of state in the state in which the Debtor operates or is organized; (l) all environmental authorities having jurisdiction over any of the Assets; (m) all other parties known or reasonably believed to have asserted an interest in the Assets; (n) the Assumption Notice Parties; (o) the Debtor's insurance carriers; (p) all known creditors of the Debtor; (q) all registered holders of equity interests in the Debtor; and (r) any party that has requested notice pursuant to Bankruptcy Rule 2002.

30. In addition, as soon as reasonably practicable, but in no event later than one (1) business day after entry of this Order, the Debtor will also post the Sale Notice on the website maintained by the Debtor's claims and noticing agent, Stretto, Inc., located at <https://cases.stretto.com/viridos>. Such servicing and posting of the Sale Notice constitute proper notice of the Sale to any other interested parties whose identities are unknown to the Debtor.

F. The Sale Hearing

31. The Sale Hearing shall be held on **June 5, 2025 at _____ a.m./p.m. (prevailing Eastern Time)**.

32. The Debtor shall seek entry of an order of the Court at the Sale Hearing approving and authorizing the Sale of the Assets to the Stalking Horse Bidder or any such other party that is the Successful Bidder at the Auction. Upon entry of this Order, the Debtor is authorized to perform any obligation intended to be performed prior to the Sale Hearing or entry of the Sale Order with respect thereto. The Sale Hearing may be adjourned from time to time without further notice other

than such announcement being made in open court or a notice of adjournment filed on the Court's docket.

G. Objections to the Sale

33. Objections, if any, to the relief requested in the Motion relating to the Sale (each, a "Sale Objection") must: (i) be in writing and specify the nature of such objection, (ii) comply with the Bankruptcy Rules and the Local Rules, (iii) be filed with the Court no later than **4:00 p.m. (prevailing Eastern Time) on May 29, 2025**; and (iv) be served upon the Objection Notice Parties; provided that, if the Successful Bidder that prevails at the Auction is not the Stalking Horse Bidder, the deadline to object solely to (i) the identity of a Successful Bidder or (ii) the ability of the Successful Bidder to provide adequate assurance of future performance under the Assumed Contract shall be the Post-Auction Objection Deadline.

34. A party's failure to timely file a Sale Objection in accordance with this Order shall forever bar the assertion, at the applicable Sale Hearing or otherwise, of any objection to the relief requested in the Motion, or to the consummation of the Sale and the performance of the related transactions, including the transfer of the Assets to the Successful Bidder, free and clear of all liens, claims, interests, and encumbrances pursuant to Section 363(f) of the Bankruptcy Code, and shall be deemed to be a "consent" for purposes of Section 363(f) of the Bankruptcy Code.

H. Other Relief Granted

35. Nothing in this Order, the Stalking Horse Agreement, or the Motion shall be deemed to or constitute the assumption or assignment of an executory contract or unexpired lease.

36. The requirements of Bankruptcy Rules 6004(h) and 6006(d) are waived.

37. The Debtor is hereby authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

38. The Debtor is authorized to take all actions necessary to effectuate the relief granted

pursuant to this Order in accordance with the Motion.

39. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry, notwithstanding any provision in the Bankruptcy Rules or the Local Rules to the contrary, and the Debtor may, in its discretion and without further delay, take any action and perform any act authorized under this Order.

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

Exhibit 1

Bidding Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

VIRIDOS, INC.,¹

Debtor.

Chapter 11

Case No. 25-10697 (CTG)

BIDDING PROCEDURES

In the exercise of its good faith reasonable business judgment, the above-captioned debtor and debtor in possession (the “Debtor”) has executed an Asset Purchase Agreement (the “Stalking Horse Agreement”) with Breakthrough Energy Ventures II, L.P. or its assignee (the “Stalking Horse Bidder”), pursuant to which the Stalking Horse Bidder proposes to (i) purchase, acquire, and take assignment and delivery of the Purchased Assets (as defined in the Stalking Horse Agreement) and (ii) assume certain Assumed Liabilities (as defined in the Stalking Horse Agreement). Under the Stalking Horse Agreement, the Stalking Horse Bidder is entitled to an expense reimbursement for reasonable and documented out-of-pocket costs and expenses (including fees and expenses of counsel) incurred by the Stalking Horse Bidder in connection with the negotiation, diligence, execution, performance and enforcement of the Stalking Horse Agreement (the “Expense Reimbursement”). The Stalking Horse Bidder is also the DIP Lender.

On May [●], 2025, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an order [D.I. [●]] (the “Bidding Procedures Order”) approving, among other things, these bidding procedures (the “Bidding Procedures”).

These Bidding Procedures set forth the process by which the Debtor is authorized to conduct the auction (the “Auction”) for the sale (the “Sale”) of the Assets. Subject to the entry of the Sale Order (as defined below), the Sale may be implemented pursuant to the terms and conditions of the Stalking Horse Agreement, as the same may be amended pursuant to the terms thereof, subject to the receipt of higher or otherwise better Bids (as defined below) in accordance with these Bidding Procedures. Pursuant to the Bidding Procedures, the Debtor will determine the highest or otherwise best offer for the Sale of substantially all of the Debtor’s assets (the “Assets”).

¹ The Debtor in this Chapter 11 Case and the last four digits of its U.S. taxpayer identification number is: Viridos, Inc. (3940). The Debtor’s corporate headquarters is located at: 11149 N. Torrey Pines Road, La Jolla, CA 92037.

I. Important Dates

Event	Date
Contract Assumption Objection Deadline	Objections to (i) the potential assumption and assignment of any contract to the Stalking Horse Bidder including the ability of the Stalking Horse Bidder to provide adequate assurance of future performance and (ii) the proposed cure amount to be paid in connection with the assumption and assignment of any contract shall be filed and served no later than May 22, 2025, at 4:00 p.m. (prevailing Eastern Time) (the “ <u>Contract Assumption Objection Deadline</u> ”); <i>provided</i> that, to the extent any Assumed Contract Counterparty is added to the Assumption Notice after the initial notice is served, such new Assumed Contract Counterparty shall have ten (10) days from the date of service of a supplemental notice of contract assumption to object to the propose cure amount and assignment to the Successful Bidder.
Bid Deadline	May 29, 2025 at 4:00 p.m. (prevailing Eastern Time).
Sale Objection Deadline	May 29, 2025 at 4:00 p.m. (prevailing Eastern Time).
Auction	June 2, 2025 at 10:00 a.m. (prevailing Eastern Time).
Post-Auction Notice Deadline	As soon as reasonably practicable after closing the Auction, if any, and in any event not less than 24 hours after closing the Auction, the Debtor shall file and serve a notice identifying the Successful Bidder and Back-Up Bidder.
Post-Auction Objection Deadline	June 3, 2025 at 4:00 p.m. (prevailing Eastern Time).
Sale Hearing	June 5, 2025 at _____.
Closing Outside Date	June 8, 2025

II. Marketing Process**1. Contact Parties**

The Debtor and its advisors have conducted and will continue to conduct an extensive marketing process. Rock Creek Advisors has a list of “Contact Parties” who will receive a copy of the “Information Package.” The list of Contact Parties will encompass those parties whom the Debtor believe may be interested in pursuing a Sale, or whom the Debtor reasonably believe may have the financial resources to consummate such a transaction.

The Debtor may distribute to each Contact Party an “Information Package,” which is

comprised of: (a) a cover letter; (b) a copy of these Bidding Procedures; and (c) a copy of the Stalking Horse Agreement.

2. Access to Diligence Materials

To receive due diligence information, including full access to the Debtor's electronic data room (the "Data Room") and to additional non-public information regarding the Debtor (collectively, the "Diligence Materials"), any party interested in submitting a bid, other than the Stalking Horse Bidder (each a "Potential Bidder"), must deliver the following documents (collectively, the "Preliminary Bid Documents") by email to (a) the Debtor, care of its financial advisor, Rock Creek Advisors LLC, Attn: James Gansman (jgansman@rockcreekfa.com) and Brian Ayers (bayers@rockcreekfa.com) and (b) counsel for the Debtor, Womble Bond Dickinson (US) LLP, Attn: Morgan L. Patterson (morgan.patterson@wbd-us.com) (collectively, the "Bid Recipients"):

- (i) an executed and signed "Acceptable Confidentiality Agreement," which shall mean a confidentiality agreement in form and substance mutually agreeable by the Debtor and the Potential Bidder;
- (ii) identification of the Potential Bidder and any principals and representatives thereof who are authorized to appear and act on its behalf for all purposes regarding the contemplated Sale;
- (iii) evidence of the Potential Bidder's financial capacity to close a proposed transaction, which shall include financial statements of the Potential Bidder, including current audited and unaudited financial statements or other financial information of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, current audited and unaudited financial statements or other financial information of the Potential Bidder's equity holder or other financial backer, or such other form of financial disclosure and evidence acceptable to the Debtor and its advisors in their reasonable discretion, demonstrating such Potential Bidder's ability to close the proposed transaction, to finance going concern operations to the extent contemplated, and to provide adequate assurance of future performance to counterparties to any executory contracts and unexpired leases to be assumed by the Potential Bidder; and
- (iv) evidence by the Potential Bidder of its ability to obtain any regulatory approvals necessary to consummate a sale of the Assets.

Promptly after a Potential Bidder delivers Preliminary Bid Documents to the Bid Recipients, the Debtor will assess the adequacy of the evidence of its financial capacity and notify the Potential Bidder whether such Potential Bidder has submitted acceptable Preliminary Bid Documents so that the Potential Bidder may proceed to conduct due diligence and ultimately submit a Bid and participate in the Auction, as applicable. All due diligence requests must be directed to counsel to the Debtor.

The Debtor and its advisors will coordinate all reasonable requests from Potential Bidders

for additional information and due diligence access. The Debtor may decline to provide such information to Potential Bidders who, in the Debtor's business judgment, have not established, or who have raised doubt, that such Potential Bidder intends in good faith or has the capacity to consummate a sale transaction for all or substantially all of the Debtor's Assets.

For any Potential Bidder who is a competitor of the Debtor or is affiliated with any competitor of the Debtor, the Debtor reserves the right to withhold any Diligence Materials that the Debtor determines are business-sensitive or otherwise not appropriate for disclosure to such Potential Bidder at such time.

No due diligence will continue after the Bid Deadline (defined below). The Debtor shall provide the Stalking Horse Bidder with access to all material due diligence materials, management presentations, on-site inspections, and other information provided to any Potential Bidder or Qualified Bidder that were not previously made available to the Stalking Horse Bidder concurrently with the provision of such information or materials to such Potential Bidder or Qualified Bidder, as applicable.

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtor or its advisors regarding such Potential Bidder and its contemplated Transaction.

3. Auction Qualification Process

To be eligible to participate in the Auction, each offer, solicitation, or proposal (each, a "Bid"), and each party submitting such a Bid (each, a "Bidder"), must be determined by the Debtor to satisfy each of the following conditions:

- (i) Stalking Horse Bidder. The Stalking Horse Bidder shall be deemed to be a Qualified Bidder and the Stalking Horse Agreement shall be deemed to be a Qualified Bid (the "Stalking Horse Bid").
- (ii) Bid Deadline. The Debtor must receive a Bid in writing, on or before **May 29, 2025, at 4:00 p.m. (prevailing Eastern Time)** or such later date as may be agreed to by the Debtor (the "Bid Deadline"). Bids must be sent to the Bid Recipients by the Bid Deadline to be considered.
- (iii) Form and Contents. All Bids shall be in the form of an irrevocable offer letter from a person or persons that the Debtor, in its reasonable discretion taking into account its fiduciary duties, deem financially able to consummate the purchase of the Assets, which letter states and includes:
- (iv) Marked Agreement. Each Bid must state that the Bidder irrevocably offers to purchase the Assets upon the terms and conditions set forth in a duly executed non-contingent and attached complete asset purchase agreement, which shall be in substantially the same form as the Stalking Horse Agreement, prepared and executed by the Bidder (an electronic version in Word format and blacklined against the Stalking Horse Agreement), together with its exhibits and schedules, including terms relating to price and the time of closing (the "Proposed

Agreement”);

- (A) Assets. Each Bid must be for all of the Assets in the Stalking Horse Bid and must identify any additional Assets to be acquired that are not included in the Stalking Horse Bid.
- (B) Purchase Price. Each Bid must clearly set forth the terms of any proposed Sale, including and identifying separately any cash and non-cash components of the proposed consideration for the Sale, such as certain liabilities to be assumed by the Bidder as part of the Sale (the “Purchase Price”);
- (C) Overbid. Each Bid (a) must propose a purchase price equal to or greater than the sum of (i) the value of the Stalking Horse Agreement, as determined by the Debtor; plus (ii) the Expense Reimbursement; plus (iii) \$250,000.00 (items (ii) and (iii) the “Initial Overbid Amount”, and (b) must obligate the Bidder to pay, to the extent provided in the Agreement, all amounts which the Stalking Horse Bidder under the Agreement has agreed to pay, including any assumed liabilities (as set forth in the Stalking Horse Agreement);
- (D) Committed Financing. To the extent that a Bid is not accompanied by evidence of the Bidder’s capacity to consummate the Sale set forth in its Bid with cash on hand, each Qualified Bid must include evidence of committed financing that demonstrates that the Bidder has received sufficient non-contingent and binding debt and/or equity funding commitments to satisfy the Bidder’s Purchase Price and other obligations under its Bid. Such funding commitments or other financing acceptable to the Debtor must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtor;
- (E) Contingencies; No Financing or Diligence Outs. A Bid shall not be conditioned on a Bidder obtaining, or the sufficiency of, financing or any internal approval, or on the outcome or review of due diligence, which must be completed before the Bid Deadline, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, none of which shall be more expansive than those set forth in the Stalking Horse Bid;
- (F) Identity. Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Bidder if such Bidder is an entity formed for the purpose of consummating the proposed Sale contemplated by such Bid), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals,

equity holders, or financial backers be associated with any Bid. Each Bid must also include contact information for the specific person(s) and counsel the Debtor's advisors should contact regarding such Bid;

- (G) Authorization. Each Bid must contain evidence that the Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtor) acceptable to the Debtor with respect to the submission of its Bid and the consummation of the Sale contemplated in such Bid;
- (H) Substantial Contribution Waiver. Each Bid must contain an express waiver, effective upon submission of the Bid, of any substantial contribution claims by the Bidder;
- (I) Expenses; Disclaimer to Fees. Each Bid must disclaim any right to receive a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Bidder will be permitted to request, or be granted by the Debtor, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, substantial contribution, or any other similar form of compensation, and by submitting a Bid any Bidder is waiving any assertion or request for reimbursement on any basis, including under Section 503(b) of the Bankruptcy Code;
- (J) Consummation. Each Bid must include a statement or evidence reflecting (i) that the Bidder is prepared to consummate the transaction upon entry of an order of the Bankruptcy Court approving the Sale to the Successful Bidder (the "Sale Order") and consummation shall not be contingent on obtaining requisite government, regulatory, or other third-party approvals, (ii) that the Bidder has made or will make as soon as reasonably practicable all necessary filings with respect to any regulatory, antitrust and other laws and pay the fees associated therewith; and (iii) the Bidder's plan and ability to obtain all requisite governmental, regulatory, or other third-party approvals and the proposed timing for the Bidder to undertake the actions required to obtain such approvals;
- (K) Irrevocability. Each Bid must include a statement that, (i) such Bidder's offer is irrevocable until the conclusion or cancellation of the Auction and (ii) in the event the Bidder becomes the Successful Bidder or the Back-Up Bidder (as defined below), such Bidder's offer is irrevocable until two (2) business days after the closing of the sale of the Assets;
- (L) Actual Value. Each Bid must state the proposed actual value of such Bidder's Bid to the Debtor's estate, and support for how the value of any non-cash consideration was determined;
- (M) Assumed Contracts and Leases. Each Bid must identify any and all

executory contracts and unexpired leases of the Debtor that the Bidder wishes to be assumed pursuant to a Sale. A Bid must specify that the Bidder will be responsible for any cure costs associated with such assumption, and include a good faith estimate of such cure costs (which estimate shall be provided by the Debtor);

- (N) Employees; Business Plan. Each Bid must detail the treatment of the employees of the Debtor and whether the Bidder intends to continue the Debtor's businesses as currently operated or what modifications it intends to make;
- (O) Damages. Each Bid must provide that the Debtor has the right to pursue all available damages in the event of the Bidder's breach of, or failure to perform under, the Proposed Agreement;
- (P) Consent to Jurisdiction. Each Bidder must submit to the exclusive jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to Debtor's qualification of Bids, the Auction, the construction and enforcement of these Bidding Procedures, the Sale documents, and the closing of the sale, as applicable; and
- (Q) Other Information. Each Bid must contain such other information as may be reasonably requested by the Debtor.
- (v) Same or Better Terms. Each Bid shall be based on the Stalking Horse Bid and must exceed the Stalking Horse Bid in relation to the Assets by the Initial Overbid Amount. Each Bid must be on terms that are not more burdensome than the terms of the Stalking Horse Bid, as determined by the Debtor, and considering, among other factors, the scope and manner of the proposed Sale.
- (vi) Corporate Authority. Written evidence reasonably acceptable to the Debtor demonstrating appropriate corporate authorization to consummate the proposed transaction; provided, however, if the Bidder is an entity specially formed for the purpose of effectuating the transaction, then the Bidder must furnish written evidence reasonably acceptable to the Debtor of the approval of the transaction by the equity holder(s) of such Bidder.
- (vii) Adequate Assurance. All Bids must provide for adequate working capital financing to finance going concern operations to the extent contemplated, and to provide adequate assurance of future performance to counterparties to executory contracts and unexpired leases to be assumed by the Bidder.
- (viii) Back-Up Bidder. Each Bidder must acknowledge that by submitting a Bid, the Bidder agrees to be a Back-Up Bidder, should the Bid be so selected.
- (ix) Proof of Financial Ability to Perform. All Bidders must provide written evidence the Debtor reasonably conclude demonstrates the Bidder has the necessary financial ability to close the Sale and provide adequate assurance of future performance

under all contracts to be assumed and assigned in such Sale. Such information should include, inter alia, the following: (a) contact names and numbers for verification of financing sources; (b) written evidence of the Bidder's internal resources and proof of any debt or equity funding commitments that are needed to close the transaction; (c) the Bidder's current financial statements (audited if they exist); (d) a description of the Bidder's pro forma capital structure; and (e) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtor demonstrating such Bidder has the ability to close the transaction.

- (x) As Is, Where Is. The sale of the Assets shall be on an "as is, where is" and "with all defects" basis and without representations or warranties of any kind, nature, or description by the Debtor, its agents or estate, except to the extent set forth in the Proposed Agreement of the Successful Bidder.
- (xi) Free and Clear. Except as otherwise provided in the Proposed Agreement, all of the Debtor's right, title, and interest in and to the Assets to be acquired shall be sold free and clear of all liens, claims, charges, security interests, restrictions, and other encumbrances of any kind or nature thereon and there against (collectively, the "Transferred Liens"), with such Transferred Liens to attach to the proceeds of the sale.
- (xii) Good Faith Deposit. Each Bid must be accompanied by a cash deposit in the amount of 10% of the total Purchase Price to be held in an escrow account to be identified and established by the Debtor (the "Deposit").
- (xiii) Binding Effect. By submitting its Bid, each Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bidding Procedures and to refrain from submitting a Bid or seeking to reopen the Auction after conclusion of the Auction.
- (xiv) Repayment of DIP Obligations. A Bid by a Bidder must provide for indefeasible payment, in full, in cash of all DIP Obligations and Prepetition Loan Obligations (each as defined in the DIP Orders) (the "Required Closing Payment") as of the closing date.
- (xv) Time Frame for Closing. A Bid by a Bidder must be reasonably likely to be consummated, if selected as the Successful Bid, by June 8, 2025.

A Bid received before the Bid Deadline will be considered a "Qualified Bid" and each Bidder that submits a Qualified Bid will be considered a "Qualified Bidder" if the Debtor determines, in consultation with any official committee of unsecured creditors appointed in this case and its advisors (together, the "Consultation Parties"), that such Bid meets the requirements above.

No later than one day prior to the start of the Auction, the Debtor will notify each Bidder whether such party is a Qualified Bidder and shall provide each Qualified Bidder, including the Stalking Horse Bidder, with a copy of each Qualified Bid.

Upon determination that any Bid is not a Qualified Bid, the Debtor shall notify such Bidder of such determination forthwith, but in any event not later than the commencement of the Auction, and shall provide such bidder with the basis for such determination. In the event that such Bid is determined not to be a Qualified Bid, the Bidder shall have until the commencement of the Auction to modify its Bid to increase the purchase price or otherwise improve the terms of the Bid in order to comply with the requirements for Qualified Bids as set forth herein; provided that any Qualified Bid may be improved during the Auction only as set forth in these Bidding Procedures. To the extent there is any dispute regarding whether a Bidder is a Qualified Bidder, such dispute may be raised with the Bankruptcy Court on an expedited basis prior to the commencement of the Auction. If any Bid is determined not to be a Qualified Bid, the Debtor will refund such Bidder's Deposit promptly after the Bid Deadline.

Between the date that the Debtor notify a Bidder that it is a Qualified Bidder and the date of the Auction, the Debtor may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtor, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase its Purchase Price, or otherwise improve the terms of the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; provided that any Qualified Bid may be improved at the Auction as set forth in these Bidding Procedures. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures. The Stalking Horse Bidder shall be deemed a Qualified Bidder at all times, the Stalking Horse Agreement shall be a Qualified Bid; and the Stalking Horse Bidder shall be authorized to improve (including by increasing its Purchase Price) its bid at any time prior to, during or through the conclusion of the Auction.

Prior to the Auction, the Debtor, its advisors, and the Consultation Parties will evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtor's reasonable business judgment in consultation with the Consultation Parties, the highest or otherwise best bid (the "Baseline Bid") and the Bidder making such Baseline Bid, the "Baseline Bidder"), and shall notify the Stalking Horse Bidder and all Qualifying Bidders with Qualifying Bids of the Baseline Bid no later than the opening of the Auction.

4. Credit Bid

The Stalking Horse Bidder shall be deemed to be a Qualified Bidder and is not required to make any Deposit. To the fullest extent permissible under Section 363(k) of the Bankruptcy Code and the DIP Orders, the Stalking Horse Bidder may credit bid at the Auction, including as set forth in the Stalking Horse Agreement, in its sole and absolute discretion, any of the DIP Obligations and, to the extent applicable, the Prepetition Loan Obligations (each, as defined in the DIP Orders).

III. Auction

If one or more Qualified Bid is received by the Bid Deadline (other than the Stalking Horse Agreement), the Debtor will conduct the Auction to determine, in consultation with the Consultation Parties, the highest and otherwise best Qualified Bid. This determination shall take into account any factors the Debtor reasonably deem relevant to the value of the Qualified Bid to the estates, including, *inter alia*, the following non-exhaustive factors: (a) the amount and nature

of the consideration; (b) the proposed assumption of any liabilities and/or executory contracts or unexpired leases, if any, and the excluded assets and/or executory contracts or unexpired leases, if any; (c) the ability of the Qualified Bidder to close the proposed Sale and the conditions related thereto, and the timing thereof; (d) the proposed closing date and the likelihood, extent and impact of any potential delays in closing; (e) any liabilities or other negative impacts that may arise from a Bidder's proposed modification to the Debtor's businesses as currently operated; (f) any purchase price adjustments; (g) the impact of the transaction on any actual or potential litigation; (h) the net after-tax consideration to be received by the Debtor's estate; (i) the tax consequences of such Qualified Bid; and (j) the consent of the parties in interest and/or the cost and expense to the Debtor of resolving sale issues before closing (collectively, the "Bid Assessment Criteria").

If no Qualified Bids other than the Stalking Horse Bid are received prior to the Bid Deadline, then the Auction will not occur, the Stalking Horse Agreement may be deemed the Successful Bid, and, subject to the termination rights under the Stalking Horse Agreement, the Debtor will pursue entry of an order by the Bankruptcy Court authorizing the Sale to the Stalking Horse Bidder as soon as practicable.

Procedures for Auction

The Auction, if necessary, will take place on **June 2, 2025 at 10:00 a.m. (prevailing Eastern Time)** or such later time on such day or other place as the Debtor shall notify all Bidders who have submitted Qualified Bids. Only the Stalking Horse Bidder and other Qualified Bidders will be entitled to make any Bids at the Auction. The Stalking Horse Bidder and other Qualified Bidders participating at the Auction shall appear, or through a duly authorized representative, who also may appear at the Auction. Only the Debtor, the Stalking Horse Bidder, any participating Qualified Bidders, the DIP Lender, and any creditor of the Debtor, together with the professional advisors to each of the foregoing parties, may attend the Auction; provided that any of the Debtor's creditors must provide three (3) business days' written notice to counsel to the Debtor of their intent to attend the Auction.

1. The Debtor Shall Conduct the Auction

The Debtor and its professionals shall direct and preside over the Auction and the Auction shall be transcribed or videotaped. Prior to the commencement of the Auction, the Debtor shall determine, after consulting with the Consultation Parties, which of the Qualified Bids, at such time, is the highest or otherwise best bid for purposes of constituting the opening bid of the Auction, and shall promptly notify the Stalking Horse Bidder and all Qualified Bidders with Qualified Bids of such Baseline Bid.

All Bids made after the start of the Auction shall be Overbids (as defined below), and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all Bidders who have submitted Qualified Bids. The Debtor shall maintain a transcript of all bids made and announced at the Auction, including the Starting Bid and all Overbids.

2. Terms of Overbids

An "**Overbid**" is any Bid made at the Auction subsequent to the Debtor's

announcement of the Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

a. Minimum Overbid Increment

Any Overbid after the Baseline Bid shall be made in increments of at least \$100,000 (the “Minimum Overbid Increment”).

b. Treatment of Expense Reimbursement

When evaluating any bid submitted by a party other than the Stalking Horse Bidder, the value of such bid *vis-a-vis* a bid submitted by the Stalking Horse Bidder shall be reduced by the amount of the Expense Reimbursement.

c. Overbid Procedures

Upon the solicitation of each round of Overbids, the Debtor may announce a deadline (the “Overbid Round Deadline”), by which time any Overbids must be submitted to the Debtor.

After each Overbid Round Deadline, the Debtor shall determine whether an Overbid is higher or otherwise better than the Baseline Bid (as defined in the Bidding Procedures) in the initial Overbid round or, in subsequent rounds, the Overbid previously designated by the Debtor as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtor shall announce and describe to all Qualified Bidders present at the Auction the material terms of any new Overbid designated by the Debtor as the Prevailing Highest Bid, as well as the value attributable by the Debtor to such Prevailing Highest Bid.

Any Overbid to a Prevailing Highest Bid by any party must provide more value for the Debtor’s estate than any prior bid by (i) the Minimum Overbid Increment plus (ii) if the Prevailing Highest Bid was made by the Stalking Horse Bidder, the amount of the Expense Reimbursement.

d. Remaining Terms Are the Same as for Qualified Bids

Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth above; provided, the Bid Deadline shall not apply and no additional Deposit shall be required beyond the Deposit previously submitted by a Qualified Bidder; provided, however, that the Successful Bidder (other than the Stalking Horse Bidder) shall be required to make a representation at the end of the Auction that it will provide any additional deposit necessary so that its Deposit is equal to the amount of the Required Closing Payment. Any Overbid must include, in addition to the amount and form of consideration of the Overbid, a description of all changes (if any) requested by the Qualified Bidder to the Stalking Horse Agreement or a previously submitted Modified Purchase Agreement, in connection therewith (including any changes to the designated assigned contracts and leases and assumed liabilities). Any Overbid must remain open and binding on the Bidder until and unless the Debtor accept a higher Overbid.

To the extent not previously provided (which shall be determined by the Debtor) a Bidder submitting an Overbid must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtor) demonstrating such Bidder’s ability to close the transaction proposed by such Overbid; provided, however, this shall not apply to an Overbid by the Stalking Horse Bidder.

e. No Collusion; Good-Faith *Bona Fide* Offer

Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction (a) it has not engaged in any collusion with respect to the Sale or bidding (including it has no agreement with any other Bidder or Qualified Bidder to control the price) and (b) its Qualified Bid is the good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

f. Back-Up Bidder

Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the party with the second highest or otherwise second-best Qualified Bid (or Overbid) at the Auction, as determined by the Debtor after consulting with the Consultation Parties, in the exercise of its business judgment, shall be designated by the Debtor as backup bidder (the “Back-Up Bidder”). The Back-Up Bidder shall be required to keep its initial Qualified Bid (or if the Back-Up Bidder submitted one or more Overbids at the Auction, its final Overbid) (the “Back-Up Bid”) open and irrevocable until two (2) business days after the closing of the sale of the Assets (the “Outside Back-Up Date”). Following entry of the Sale Order, if the Successful Bidder fails to consummate an approved transaction because of a breach or failure to perform on the part of such Successful Bidder, the Debtor may designate the Back-Up Bidder to be the new Successful Bidder, and the Debtor will be authorized, but not required, to consummate the transaction with the Back-Up Bidder without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder’s Deposit, if any, shall be forfeited to the Debtor’s estate, and the Debtor specifically reserve the right to seek all available damages from the defaulting Successful Bidder. The closing date to consummate the transaction with the Back-Up Bidder shall be no later than the later of two (2) business days after the date the Debtor provide notice to the Back-Up Bidder that the Successful Bidder has failed to consummate a sale and the Debtor desires to consummate the transaction with the Back-Up Bidder. The Deposit, if any, of the Back-Up Bidder shall be held by the Debtor until two (2) business days after the closing of the Sale with the Successful Bidder; provided, however, in the event the Successful Bidder does not consummate the transaction as described above and the Debtor provides notice to the Back-Up Bidder, the Back-Up Bidder’s Deposit shall be held until the closing of the transaction with the Back-Up Bidder. In the event the Debtor fails to consummate a transaction with the Back-Up Bidder as described above, the Back-Up Bidder’s Deposit shall be forfeited to the Debtor’s estate, and the Debtor specifically reserves the right to seek all available damages from the defaulting Back-Up Bidder.

In the event that the Stalking Horse Bidder is not the Successful Bidder or Back-Up Bidder, and each of those parties fail to close on the Successful Bid and Back-Up Bid, at the election of the DIP Lender, and with the consent of the Stalking Horse Bidder, the Debtor shall proceed to close on a transaction with the Stalking Horse Bidder on the terms of its last Overbid submitted at the Auction.

3. Consent to Jurisdiction as Condition to Bidding

All Qualified Bidders, and all Bidders at the Auction, shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Stalking Horse Agreement, the Auction, or the construction and enforcement of any transaction documents.

4. Closing the Auction

The Auction shall continue until there is only one Qualified Bid that the Debtor determines in its reasonable business judgment after consultation with its advisors and the Consultation Parties, is the highest or otherwise best Qualified Bid at the Auction (the “Successful Bid” and the Bidder submitting such Successful Bid, the “Successful Bidder”). In making this decision, the Debtor, in consultation with its advisors and the Consultation Parties, shall consider the Bid Assessment Criteria. Once the Successful Bid is declared, the Auction shall be adjourned, if necessary, to allow the Successful Bidder to submit fully executed transaction documents memorializing the terms of the Successful Bid and (if the Successful Bidder is not the Stalking Horse Bidder) top its Deposit up to the amount of the Required Closing Payment.

The Auction shall close when the Successful Bidder submits fully executed sale and transaction documents memorializing the terms of the Successful Bid and, if applicable, increases its Deposit up to the amount of the Required Closing Payment.

Promptly following the Debtor’s selection of the Successful Bid and the conclusion of the Auction, the Debtor shall announce the Successful Bid and Successful Bidder. The Debtor will file a notice identifying the Successful Bidder and Back-Up Bidder (the “Post-Auction Notice”) as soon as reasonably practicable after closing the Auction, if any, and in any event not more than 24 hours following closing the Auction.

The Debtor shall not consider any Bids submitted after the conclusion of the Auction.

IV. Procedures for Determining Cure Amounts and Adequate Assurance for Assumed Contract Counterparties to Assumed Contracts

On or prior to May 12, 2025, the Debtor shall send a notice to each counterparty to an executory contract or unexpired lease (each an “Assumed Contract Counterparty”) setting forth the Debtor’s calculation of the cure amount, if any, that would be owing to such Assumed Contract Counterparty if the Debtor decided to assume or assume and assign such executory contract or unexpired lease, and alerting such Assumed Contract Counterparty that its contract may be assumed and assigned to the Successful Bidder (the “Assumption Notice”), a copy of which is attached to the Bidding Procedures Order as Exhibit 3. Any Assumed Contract Counterparty that objects to the cure amount set forth in the Assumption Notice or the possible assignment of its executory contract or unexpired lease to the Stalking Horse Bidder, including the ability of the Stalking Horse Bidder to provide adequate assurance of future performance, must file an objection (an “Assumed Contract Objection”) on or before **4:00 p.m. prevailing Eastern Time on May 22, 2025**, which Assumed Contract Objection must be served on: (a) counsel for the Debtor, Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, DE 19801, Attn: Morgan L. Patterson (morgan.patterson@wbd-us.com); (b) counsel for the Stalking Horse Bidder and DIP Lender, Greenberg Traurig, LLP, One Vanderbilt Avenue, New York, NY 10017, Attn: Jeffrey M. Wolf (jeffrey.wolf@gtlaw.com) and Brian E. Greer (greerb@gtlaw.com); (c) any statutorily appointed committee; and (d) the Office of the United States Trustee for the District of Delaware, Timothy J. Fox, Jr. (timothy.fox@usdoj.gov) (the “Objection Notice Parties”), and filed with the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801. If an Assumed Contract Counterparty does not timely file and

serve an Assumed Contract Objection, that party will be forever barred from objecting to (a) the Debtor's proposed cure amount, or (b) the assignment of that party's executory contract or unexpired lease to the Stalking Horse Bidder.

If the Successful Bidder that prevails at the Auction is not the Stalking Horse Bidder, the deadline to object solely to (a) the identity of a Successful Bidder or (b) the ability of the Successful Bidder to provide adequate assurance of future performance under the Assumed Contract (each, a "Post-Auction Objection") shall be the Post-Auction Objection Deadline (defined below). Each Post-Auction Objection must be served on the Objection Notice Parties and filed with the Clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801, so it is actually received no later than **4:00 p.m. prevailing Eastern Time on June 3, 2025** (the "Post-Auction Objection Deadline"). If a Post-Auction Objection is not filed, parties will be forever barred from objecting to the identity of the Successful Bidder or to the assignment of that party's executory contract or unexpired lease to the Successful Bidder.

Where an Assumed Contract Counterparty to an Assumed Contract files a timely Assumed Contract Objection asserting a higher cure amount than the amount listed in the Assumption Notice, or timely files an Assumed Contract Objection or Post-Auction Objection, as applicable, to the possible assignment of that Assumed Contract Counterparty's executory contract or unexpired lease including the Successful Bidder's ability to provide adequate assurance of future performance, and the parties are unable to consensually resolve the dispute, the amount to be paid (if any) under Section 365 of the Bankruptcy Code or, as the case may be, the Debtor's ability to assign the executory contract or unexpired lease to the Successful Bidder will be determined at the Sale Hearing or at a later date as fixed by the Bankruptcy Court.

V. Sale Hearing

The Sale Hearing shall be **June 5, 2025, at __:__ .m. (prevailing Eastern Time)**. Objections, if any, to the relief requested in the Motion relating to the Sale (each, a "Sale Objection") must: (a) be in writing and specify the nature of such objection, (b) comply with the Bankruptcy Rules and the Local Rules, (c) be filed with the Bankruptcy Court no later than **4:00 p.m. (prevailing Eastern Time) on May 29, 2025**, and (d) served on the Objection Notice Parties.

VI. Return of Good Faith Deposits

The Deposits of all Qualified Bidders shall be held in one or more escrow accounts by the Debtor, but shall not become property of the Debtor's estates absent further order of the Bankruptcy Court. The Deposits of any Qualified Bidder that is neither the Successful Bidder nor the Back-Up Bidder shall be returned to such Qualified Bidder not later than two (2) business days after the Sale Hearing. The Deposit of the Back-Up Bidder shall be returned to the Back-Up Bidder two (2) business days after the closing of the Sale with the Successful Bidder; provided, however, in the event the Successful Bidder does not consummate the transaction as described above and the Debtor provides notice to the Back-Up Bidder, the Back-Up Bidder's Deposit shall be held until the closing of the transaction with the Back-Up Bidder. Upon the return of the Deposits, their respective owners shall receive any and all interest that will have accrued thereon. If the Successful Bidder timely closes the winning transaction, its Deposit shall be credited towards its purchase price.

VII. Reservation of Rights

The Debtor reserves its right to modify these Bidding Procedures in its reasonable business judgment, after consulting with the Consultation Parties, in any manner that will best promote the goals of the bidding process, at or prior to the Auction, subject to the rights of the Stalking Horse Bidder. Notwithstanding the foregoing and subject in all respects to the Stalking Horse Agreement, the Debtor may not impair or modify the Stalking Horse Bidder's rights and obligations under the Stalking Horse Agreement.

Exhibit 2

Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

VIRIDOS, INC.,¹

Debtor.

Chapter 11

Case No. 25-10697 CTG)

**NOTICE OF SALE BY AUCTION, SALE HEARING,
AND DESIGNATION OF STALKING HORSE BIDDER**

PLEASE TAKE NOTICE that on April 17, 2025, the above-captioned debtor and debtor in possession (the “Debtor”) filed the *Debtor’s Motion for Entry of an Order (I) Approving the Bidding Procedures in Connection With the Sale of Substantially All of the Debtor’s Assets, (II) Scheduling an Auction and a Sale Hearing, (III) Approving the Form and Manner of Notice Thereof, (IV) Authorizing the Debtor to Enter into the Stalking Horse Agreement, (V) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (VI) Granting Related Relief* [Docket No. •] (the “Motion”)² with the United States Bankruptcy Court for the District of Delaware (the “Court”) seeking, among other things, entry of an order (the “Sale Order”) authorizing and approving: (a) the sale of substantially all of the Debtor’s assets (the “Assets”) free and clear of liens, claims, encumbrances, and other interests, with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the sale proceeds, subject to higher or otherwise better offers (the “Sale”); and (b) authorizing the assumption and assignment of executory contracts and unexpired leases (collectively, the “Assumed Contracts”). Please note that all capitalized terms used but not defined herein shall have the meanings set forth in the Motion.

PLEASE TAKE FURTHER NOTICE that the Debtor is soliciting offers for the purchase of the Debtor’s Assets consistent with the Bidding Procedures (the “Bidding Procedures”) approved by the Court by entry of an order May __, 2025 [Docket No. __] (the “Bidding Procedures Order”). **All interested bidders should carefully read the Bidding Procedures and Bidding Procedures Order.** To the extent that there are any inconsistencies between this notice and the Bidding Procedures or Bidding Procedures Order, the Bidding Procedures or Bidding Procedures Order, as applicable, shall govern in all respects.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bid Procedures Order, Breakthrough Energy Ventures II, L.P. (“BEV”) has been designated as the Stalking Horse Bidder pursuant to the Stalking Horse Agreement, dated as of April __, 2025 (the “Stalking Horse”).

¹ The Debtor in this Chapter 11 Case and the last four digits of its U.S. taxpayer identification number is: Viridos, Inc. (3940). The Debtor’s corporate headquarters is located at: 11149 N. Torrey Pines Road, La Jolla, CA 92037.

² Capitalized terms not otherwise defined herein shall have the same meaning as in the Motion.

Agreement”).

PLEASE TAKE FURTHER NOTICE that the Stalking Horse Agreement seeks approval of the sale of substantially all of Debtor’s Assets to BEV, for a credit bid of up to \$6,500,000.00 in principal outstanding under the DIP Facility and the Prepetition Secured Note plus all interest, fees and expenses due thereunder constituting Prepetition Loan Obligations or DIP Obligations pursuant to Section 363(k) of the Bankruptcy Code, plus the assumption of certain liabilities (the “Stalking Horse Bid”).

PLEASE TAKE FURTHER NOTICE that, consistent with Local Rule 6004-1(b), the Debtor discloses the following terms regarding the Stalking Horse Agreement:

MATERIAL TERMS OF THE STALKING HORSE AGREEMENT	
Seller	Viridos, Inc.
Buyer	Breakthrough Energy Ventures II, L.P. or its designee
Purchase Price	(a) A credit bid by the Purchaser of up to \$6,500,000.00 in principal outstanding under the DIP Facility and the Prepetition Secured Note plus all interest, fees and expenses due thereunder constituting Prepetition Loan Obligations or DIP Obligations pursuant to Section 363(k) of the Bankruptcy Code; and (b) The assumption by Purchaser of the Assumed Liabilities, including cure costs.
Purchased Assets	The Stalking Horse Bidder is purchasing the Purchased Assets set forth on Schedule 1 to the Stalking Horse Agreement
Sale to Insider Local Rule 6004-1(b)(iv)(A)	The Stalking Horse Bidder is an “insider” of the Debtor as defined in Section 101(31) of the Bankruptcy Code.
Agreements With Management Local Rule 6004-1(b)(iv)(B)	No agreements exist between management and the buyer.
Releases Local Rule 6004- 1(b)(iv)(C)	The Stalking Horse Agreement does not contain any provisions pursuant to which an entity is being released or claims against any entity are being waived or otherwise satisfied.
Private Sale/No Competitive Bidding Local Rule 6004- 1(b)(iv)(D)	The Stalking Horse Agreement requires the Debtor to sell the Debtor’s Assets pursuant to certain bidding procedures to be employed, as reflected in the Bidding Procedures Order. Debtor, including through its representatives, may solicit inquiries, proposals or offers from third parties in connection with any alternative transaction pursuant to the terms of the Bidding Procedures Order. <i>See § 1.13 of the Stalking Horse Agreement.</i>

Closing Date Local Rule 6004-1(b)(iv)(E)	The Stalking Horse Agreement provides for an “Outside Date” on the earlier of (i) June 8, 2025 and (ii) three Business Days following entry of the order approving the Sale. <i>See § 1.7 of the Stalking Horse Agreement:</i>
Good Faith Deposit Local Rule 6004-1(b)(iv)(F)	The Stalking Horse Bidder shall be considered a Qualified Bidder and shall not be required to provide a Deposit. <i>See Bidding Procedures ¶ 4.</i>
Use of Proceeds Local Rule 6004-1(b)(iv)(H)	A Qualified Bid, other than the Stalking Horse Bid, must provide for indefeasible payment, in full, in cash of all DIP Obligations and Prepetition Loan Obligations (each as defined in the DIP Order). <i>See Bidding Procedures ¶ 3 (xiv).</i>
Record Retention Local Rule 6004- 1(b)(iv)(J)	The Debtor will have reasonable access to its books and records to enable it to administer its bankruptcy case.
Sale of Avoidance Actions Local Rule 6004-1(b)(iv)(K)	Purchased Assets include all claims and causes of action available to Debtor including (i) avoidance actions under Chapter 5 of the Bankruptcy Code (including Sections 544, 545, 547, 548, 549, 550 and 553) or any similar actions under any other applicable law and (ii) claims and causes of action against (1) any of Debtor’s vendors, suppliers, employees, customers or trade creditors in regards or related to the Purchased Assets; (2) any of Debtor’s counterparties under any Designated Contracts and (3) any affiliates of any of the foregoing parties listed in clauses (i) and (ii). <i>See Schedule 1 of the Stalking Horse Agreement.</i>
Requested Findings as to Successor Liability Local Rule 6004-1(b)(iv)(L)	The Stalking Horse Agreement requires Debtor to seek entry of an order approving the Sale that includes, among other things, a determination that the Stalking Horse Bidder is not a successor or alter ego of Debtor and grant the Stalking Horse Bidder the protection of Section 363(m) of the Bankruptcy Code. <i>See § 1.13(g) of the Stalking Horse Agreement:</i>
Credit Bidding Local Rule 6004-1(b)(iv)(N)	The Stalking Horse Bidder is entitled to pay the Purchase Price under the Stalking Horse Agreement in the form of a credit bid constituting Prepetition Loan Obligations and DIP Obligations pursuant to Section 363(k) of the Bankruptcy Code. <i>See § 4 of the Bidding Procedures.</i>
Relief from Bankruptcy Rule 6004(h) Local Rule 6004-1(b)(iv)(O)	As set forth below, the Debtor believes that the Sale should be consummated as soon as practicable to preserve and maximize value for creditors.

No-Shop or No-Solicitation Provisions Local Rule 6004-1(c)(i)(C)(1)	The Stalking Horse Agreement does not include any limitations on the Debtor's ability or right to solicit higher or otherwise better bids.
Break-Up/Topping Fees and Expense Reimbursement Local Rule 6004-1(c)(i)(C)(2)	The Stalking Horse Bidder shall be entitled to expense reimbursement for reasonable and documented out-of-pocket costs and expenses (including fees and expenses of counsel) incurred by the Stalking Horse Bidder in connection with the negotiation, diligence, execution, performance and enforcement of the Stalking Horse Agreement. <i>See Stalking Horse Agreement § 1.13(i).</i>
Bidding Increments Local Rule 6004-1(c)(i)(C)(3)	At the Auction, any Overbid after the Baseline Bid shall be made in increments of at least \$100,000. The Initial Overbid Amount shall be the Stalking Horse Bid plus the Expense Reimbursement plus \$250,000.00. <i>See Bidding Procedures p. 11.</i>
Treatment of Break-Up and Topping Fees and Expense Reimbursement at Auction. Local Rule 6004-1(c)(i)(C)(4)	The Stalking Horse Bidder will receive credit for the Expense Reimbursement when valuing its bid <i>vis a vis</i> other bidders. <i>See Bidding Procedures p. 11.</i>

PLEASE TAKE FURTHER NOTICE that, if the Debtor receives qualified competing bids within the requirements and time frame specified by the Bid Procedures, the Debtor will conduct an auction (the "Auction") of the Assets on **June 2, 2025, at 10:00 a.m. (ET)** at the offices of Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, DE 19801 (or at any other location as the Debtor may hereafter designate on proper notice).

PLEASE TAKE FURTHER NOTICE that the Debtor will seek approval of the Sale at a hearing scheduled to commence on or before **June 5, 2025 at 1:00 p.m. (ET)** (the "Sale Hearing") before the Honorable Craig T. Goldblatt, United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at Courtroom No. 7, 3rd Floor, 824 N. Market St., Wilmington, DE 19801.

PLEASE TAKE FURTHER NOTICE that, except as otherwise set forth in the Bid Procedures Order with respect to any objections to proposed cure amounts or the assumption and assignment of Assumed Contracts, objections to the relief requested in the Motion ***must***: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be **actually received** by **4:00 p.m. (ET) on or before May 29, 2025**, by the following parties (the "Notice Parties"):

Counsel to the Debtor	The Unsecured Creditors' Committee
Womble Bond Dickinson (US) LLP 1313 North Market Street, Suite 1200 Wilmington, Delaware 19801	

Attn: Matthew P. Ward Morgan L. Patterson Marcy J. McLaughlin Smith Matthew.ward@wbd-us.com Morgan.patterson@wbd-us.com Marcy.smith@wbd-us.com	
Counsel to the DIP Lender	The United States Trustee
Greenberg Traurig, LLP One Vanderbilt Avenue New York, NY 10017 Attn: Brian E. Greer, Jeffrey Wolf greerb@gtlaw.com jeffrey.wolf@gtlaw.com	Office of the United States Trustee for the District of Delaware J. Caleb Boggs Building 844 King Street, Suite 2207, Lockbox 35 Wilmington, Delaware 19801 Attn.: Timothy J. Fox

CONSEQUENCES OF FAILING TO TIMELY MAKE AN OBJECTION

ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER MAY BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS SET FORTH IN THE APPLICABLE PURCHASE AGREEMENT.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion, Bidding Procedures, and Bidding Procedures Order, as well as all related exhibits, including the proposed Sale Order, and additional information are available: (a) upon request to Debtor's counsel or (b) for a fee via PACER by visiting <https://ecf.deb.uscourts.gov/>.

Dated: [●], 2025
Wilmington, Delaware

WOMBLE BOND DICKINSON (US) LLP

/s/ [DRAFT]

Matthew P. Ward (DE Bar No. 4471)
Morgan L. Patterson (DE Bar No. 5388)
Marcy J. McLaughlin Smith (DE Bar No. 6184)
1313 North Market Street, Suite 1200
Wilmington, Delaware 19801
Telephone: (302) 252-4320
Facsimile: (302) 252-4330

Exhibit 3

Assumption Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

VIRIDOS, INC.,¹

Debtor.

Chapter 11

Case No. 25-10697 CTG)

NOTICE OF POTENTIAL CONTRACT ASSUMPTION AND ASSIGNMENT

PLEASE TAKE NOTICE that on April 17, 2025, the above-captioned debtor and debtor in possession (the “Debtor”) filed the *Debtor’s Motion for Entry of an Order (I) Approving the Bidding Procedures in Connection With the Sale of Substantially All of the Debtor’s Assets, (II) Scheduling an Auction and a Sale Hearing, (III) Approving the Form and Manner of Notice Thereof, (IV) Authorizing the Debtor to Enter into the Stalking Horse Agreement, (V) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (VI) Granting Related Relief* [Docket No. •] (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”) seeking, among other things, entry of an order (the “Sale Order”) authorizing and approving: (a) the sale of Debtor’s assets (the “Assets”) free and clear of liens, claims, encumbrances, and other interests, with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the sale proceeds, except as set forth in the Stalking Horse Agreement and subject to higher or otherwise better offers (the “Sale”); and (b) procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the “Assumed Contracts”). Please note that all capitalized terms used but not defined herein shall have the meanings set forth in the Motion.

PLEASE TAKE FURTHER NOTICE that on May __, 2025, the Court entered an order (the “Bidding Procedures Order”) granting certain of the relief sought in the Motion, including, among other things, approving: (a) the Bidding Procedures (the “Bidding Procedures”) for the Sale of the Assets; and (b) procedures for the assumption and assignment of the Assumed Contracts (the “Assumption Procedures”).

PLEASE TAKE FURTHER NOTICE that the Debtor will seek approval of the Sale at a hearing scheduled to commence on or before **June 5, 2025 at __:00 p.m. (ET)** (the “Sale Hearing”) before the Honorable Craig T. Goldblatt, United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at Courtroom No. 6, 824 N. Market St., 5th Floor, Wilmington, DE 19801.

¹ The Debtor in this Chapter 11 Case and the last four digits of its U.S. taxpayer identification number is: Viridos, Inc. (3940). The Debtor’s corporate headquarters is located at: 11149 N. Torrey Pines Road, La Jolla, CA 92037.

PLEASE TAKE FURTHER NOTICE that you are receiving this notice (the “**Assumption Notice**”) because you or one of your affiliates may be a counterparty to one or more of the contracts or leases with the Debtor as set forth on **Exhibit A** attached hereto (the “**Contract Schedule**”)². If the Court enters the Sale Order, the Debtor may assume and assign to the Stalking Horse Bidder (or to another Successful Bidder selected at the Auction, if any) or reject the contract or lease listed on the Contract Schedule, to which you are a counterparty, either as of the Closing Date or a later date pursuant to the Stalking Horse Purchase Agreement or the Successful Bidder Purchase Agreement.

PLEASE TAKE FURTHER NOTICE that the Debtor has determined that the cure amounts necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the contracts or leases (the “**Cure Amounts**”) are in the total amount as set forth on the Contract Schedule attached hereto as **Exhibit A**.

Obtaining Additional Information

Copies of the Motion, Bidding Procedures, and Bidding Procedures Order, as well as all related exhibits, including the proposed Sale Order, are available: (a) upon request to counsel to the Debtor, Morgan L. Patterson, Esq., morgan.patterson@wbd-us.com, or (b) for a fee via PACER by visiting <https://ecf.deb.uscourts.gov/>.

Filing Assumption and Assignment Objections

Pursuant to the Assumption Procedures, objections to the proposed assumption and assignment of an Assumed Contract, including any objection relating to the Cure Amount and/or adequate assurance of future performance (collectively, an “**Contract Objection**”), must: (a) be in writing; (b) state with specificity the nature of such objection and alleged Cure Amount, including applicable and appropriate documentation in support of such alleged Cure Amount; (c) comply with the Bankruptcy Rules and the Local Rules; (d) for Contract Objections to any Cure Amount set forth on **Exhibit A** attached hereto or to the assumption and assignment of an Assumed Contract to and/or adequate assurance of future performance by the Stalking Horse Bidder, be filed with the Court and served so as to be ***actually received*** by **May 22, 2025 at 4:00 p.m. (ET)**; and (e) for Contract Objections to the adequate assurance of future performance by a Successful Bidder other than the Stalking Horse Bidder, be filed with the Court and served so as to be ***actually received*** by **June 3, 2025 at 4:00 p.m. (ET)**.

Any timely filed Contract Objections made prior to the Sale Hearing, which is scheduled on or before **June 5, 2025 at 4:00 p.m. (ET)**, will be considered at the Sale Hearing, or another date agreed to by the parties, and must be served on the following parties:

Counsel to the Debtor	The Unsecured Creditors’ Committee
Womble Bond Dickinson (US) LLP 1313 North Market Street, Suite 1200 Wilmington, Delaware 19801	

² This Assumption Notice is being sent to counterparties to contracts that may be executory contracts. This Assumption Notice is not an admission by the Debtor that such contract is executory or unexpired

Attn: Matthew P. Ward Morgan L. Patterson Marcy J. McLaughlin Smith Matthew.ward@wbd-us.com Morgan.patterson@wbd-us.com Marcy.smith@wbd-us.com	
Counsel to the DIP Lender	The United States Trustee
Greenberg Traurig, LLP One Vanderbilt Avenue New York, NY 10017 Attn: Brian E. Greer, Jeffrey Wolf greerb@gtlaw.com jeffrey.wolf@gtlaw.com	Office of the United States Trustee for the District of Delaware J. Caleb Boggs Building 844 King Street, Suite 2207, Lockbox 35 Wilmington, Delaware 19801 Attn.: Timothy J. Fox

If any timely filed Contract Objection cannot be resolved by the Successful Bidder arising from the Auction, if any, and the objecting party, the Court shall resolve such Contract Objection prior to assumption and assignment of such designated contract or lease, and upon entry of an order by the Court resolving such Contract Objection, the assignment, if approved by the Court, shall be deemed effective as of the date such objecting party receives the Assumption Notice. To the extent that any Contract Objection cannot be resolved by the parties, such contract or lease shall be assumed and assigned only upon satisfactory resolution of the Contract Objection, to be determined in the reasonable discretion of the Successful Bidder arising from the Auction, if any, and until such time as the Contract Objection can be resolved, the contract or lease shall be conditionally assumed and assigned pending a resolution of the Contract Objection after notice and a hearing.

CONSEQUENCES OF FAILING TO TIMELY FILE AND SERVE AN OBJECTION

ANY COUNTERPARTY TO AN ASSUMED CONTRACT WHO FAILS TO TIMELY FILE AND SERVE AN OBJECTION TO THE PROPOSED ASSUMPTION AND ASSIGNMENT OF AN ASSUMED CONTRACT AND/OR THE CURE AMOUNT SET FORTH ON EXHIBIT A ATTACHED HERETO IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER AND THE ASSUMPTION PROCEDURES SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE ASSUMPTION AND ASSIGNMENT OF THE ASSUMED CONTRACT AND/OR THE CURE AMOUNT SET FORTH ON EXHIBIT A ATTACHED HERETO, INCLUDING ASSERTING ADDITIONAL CURE AMOUNTS WITH RESPECT TO THE ASSUMED CONTRACT RELATING TO ANY PERIOD PRIOR TO THE TIME OF ASSUMPTION AND ASSIGNMENT.

Dated: [●], 2025
 Wilmington, Delaware

WOMBLE BOND DICKINSON (US) LLP

/s/ [DRAFT]

Matthew P. Ward (DE Bar No. 4471)

Morgan L. Patterson (DE Bar No. 5388)

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Email: marcy.smith@wbd-us.com

Proposed Counsel to the Debtor

Exhibit A

Assumed Contracts⁵

Debtor	Counterparty	Description of Contract or Lease	Cure Amount

⁵ The presence of a contract or lease on this Exhibit A does not constitute an admission by the Debtor that such contract is an executory contract or such lease is an unexpired lease pursuant to section 365 of the such contract is an executory contract or such lease is an unexpired lease pursuant to section 365 of the Bankruptcy Code or any other applicable law, and the Debtor reserves all rights to withdraw any proposed assumption and assignment or to reject any contract or lease at any time before such contract or lease is assumed and assigned pursuant to an order of the Court.

EXHIBIT B

Stalking Horse Agreement

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”) is made and entered into on this 17th day of April, 2025 (the “**Execution Date**”), by and among Breakthrough Energy Ventures II, L.P. (“**BEV**”) a Delaware limited partnership or its designee (the “**Purchaser**”) and Viridos, Inc., a Delaware corporation (the “**Seller**”). Purchaser and Seller are referred to collectively herein as the “Parties.”

RECITALS

A. WHEREAS, on or about the date hereof, Seller intends to file a voluntary petition for relief (the “**Chapter 11 Case**”) pursuant to 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 Delaware (the “**Bankruptcy Court**”);

B. WHEREAS, pursuant to that certain Amended and Restated Secured Convertible Promissory Note dated as of April 8, 2025 (the “**Prepetition Secured Note**” and, collectively with the Security Agreement referenced in the Prepetition Credit Agreement (the “**Security Agreement**”) and any other agreements and documents executed or delivered in connection therewith, the “**Prepetition Loan Documents**”) by and between (a) Seller, as borrower and (b) BEV as secured lender, Seller incurred indebtedness and other obligations secured by substantially all of Seller’s assets (the “**Prepetition Loan Obligations**”) to BEV in the principal amount of \$2,250,000.00 plus interest, fees and expenses;

C. WHEREAS, the Parties entered into that certain DIP Credit Agreement, pursuant to which BEV agreed to provide Seller with a secured super-priority debtor-in-possession loan facility (the “**DIP Facility**”) in a maximum principal amount of \$4,250,00.00 plus interest, fees and expenses and any Prepetition Loan Obligations that are rolled-up into the DIP Facility (the “**DIP Roll-Up Loans**”) in accordance with the DIP Credit Agreement, the Interim DIP Order and Final DIP Order (each as hereafter defined) (the “**DIP Obligations**”);

D. WHEREAS, the Parties desire to engage in the transactions outlined herein (the “**Asset Sale**”) to sell, assign, transfer, deliver and convey to Purchaser, and Purchaser desires to purchase and acquire from the Seller, pursuant to Sections 363 and 365 of the Bankruptcy Code and on the terms and subject to the conditions set forth in this Agreement, the Purchased Assets (hereafter defined) in consideration of the Purchase Price (hereafter defined);

E. WHEREAS, Seller intends to seek entry of the Bidding Procedures Order (hereafter defined) by the Bankruptcy Court approving the Bidding Procedures (hereafter defined) for the sale of the Purchased Assets;

F. WHEREAS, Seller intends to seek the entry of the Sale Order (hereafter defined) by the Bankruptcy Court approving this Agreement and authorizing Seller to consummate the Asset Sale upon the terms and subject to the conditions set forth herein and in the Sale Order and this Agreement; and

G. WHEREAS, the board of directors, board of managers or other applicable governing body of the Seller has determined that it is advisable and in the best interests of Seller’s creditors, equity holders

and estate and the beneficiaries of such estate to consummate the Asset Sale provided for herein pursuant to the Sale Order and has approved this Agreement, subject to higher and better offers as contemplated by the Bidding Procedures.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing Recitals, which are expressly adopted herein as if fully set forth, and pursuant to the terms and provisions hereinafter set forth, the Parties agree as follows:

1.1 **Assets to be Purchased.** At the Closing, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and on the terms and subject to the conditions set forth in this Agreement, Purchaser agrees to purchase and acquire, and the Seller agrees to sell, assign, transfer, deliver and convey, all assets and properties of the Seller (except the Excluded Assets (hereinafter defined)), including but not limited to the assets and properties described on **Schedule 1** attached hereto (the “**Purchased Assets**”). The Purchased Assets shall be sold, assigned, transferred, delivered and conveyed by the Seller to Purchaser pursuant to the terms hereof and in accordance with the Sale Order. Purchaser shall have until the Closing to add or remove assets from the Purchased Assets on Schedule 1.

1.2 **Excluded Assets.** The Purchased Assets shall not include, and the Seller shall retain, the assets of the Seller identified on **Schedule 2** attached hereto (the “**Excluded Assets**”). Purchaser shall have until the Closing to add or remove assets from the Excluded Assets on Schedule 2.

1.3 **Liabilities.**

(a) **Assumed Liabilities.** Upon Closing (hereafter defined), Purchaser hereby assumes only the following liabilities and obligations of Seller (the “**Assumed Liabilities**”):

(i) All liabilities and obligations arising under the Designated Contracts (hereinafter defined) or arising from or relating to any use or ownership of any of the other Purchased Assets, in each case from and after the Closing Date;

(ii) All cure costs required to be paid pursuant to Section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Designated Contracts (the actual amount of any such costs, the “**Cure Costs**”), to the extent not paid and discharged prior to or at the Closing.

(b) **Excluded Liabilities.** Notwithstanding any provision in this Agreement to the contrary, Purchaser is assuming only the Assumed Liabilities and is not assuming, and shall not be deemed to have assumed, any other liabilities of Seller of whatever nature (whether arising prior to, at the time of, or subsequent to the Closing), whether absolute, accrued, contingent or otherwise, whether due or to become due and whether known or unknown or currently existing or hereafter arising or matured or unmatured, direct or indirect, and Seller shall be solely and exclusively liable for any and all such liabilities, including those liabilities set forth below:

(i) Any and all liabilities of Seller relating to or otherwise arising, whether before, on or after the Closing, out of, or in connection with, any of the Excluded Assets;

(ii) Any and all liabilities of Seller with respect to estimates, open orders, customer contracts, and purchase orders to Seller from its customers which are outstanding as of the Closing, except to the extent any of the same are Designated Contracts;

(iii) Any and all liabilities of Seller for any Taxes (hereafter defined), including, without limitation:

(A) Any Taxes owed by Seller and arising in connection with the consummation of the transactions contemplated by this Agreement or arising or related to any period(s) on or prior to the Closing (other than any transfer Taxes); and

(B) Any Taxes arising from or in connection with an Excluded Asset;

(iv) Any and all liabilities related to the Worker Adjustment and Retraining Notification (WARN) Act and any similar applicable state laws, in each case to the extent applicable, for any action resulting from employees' separation of employment prior to, on or after the Closing;

(v) Any and all liabilities of Seller to its equity holders respecting dividends, distributions in liquidation, redemptions of interests, option payments or otherwise;

(vi) Any and all liabilities relating to Claims (in each case, whether involving private parties, authorities, or otherwise) involving, against, or affecting any of the Purchased Assets or the Business, whether commenced, filed, initiated, or threatened before or after the Closing and which was or could have been asserted on or prior to the Closing or to the extent the basis of which arose or accrued on or prior to the Closing;

(vii) Any and all obligations of Seller arising and to be performed prior to the Closing which arise from or relate to the Business or the Purchased Assets, other than as expressly assumed by Purchaser herein;

(viii) Any and all liabilities of Seller related to accounts payable as of the Closing Date or indebtedness, including any intercompany indebtedness among Seller and its affiliates;

(ix) Any and all existing or future liabilities related to any of Seller's employees (including the Hired Employees (hereafter defined)) existing or arising prior to the Closing, including, without limitation, (A) any compensation or other remuneration owed thereto, (B) any employment benefit or plan provided to any of them prior to the Closing, and (C) obligations of Seller under or in connection with any severance arrangements, stay bonuses, retention bonuses, transaction bonuses and termination and sale or change of control arrangements and other compensation for employment or services that will be triggered by or become payable upon consummation of the transactions contemplated by this Agreement (including the employer portion of any associated payroll, social security, employment, unemployment or similar Taxes and any amounts to offset any excise Taxes imposed under law and any related income Taxes) (collectively, "**Change of Control Payments**");

(x) Any and all liabilities related to any acts or omissions by Seller or its affiliates, employees or agents prior to the Closing; and

(xi) Any and all liabilities of Seller or its predecessors arising out of any contract, agreement, permit, franchise or Claim that is not transferred to Purchaser because

of any failure to obtain any third-party or governmental consent(s) and/or approval(s) required for such transfer.

1.4 Purchase Price and Payment.

(a) Amount. In aggregate consideration (collectively, the “**Purchase Price**”) of the Asset Sale closing and the accompanying sale, assignment, transfer, delivery and conveyance of the Purchased Assets to Purchaser shall be composed of the following:

(i) A credit bid by the Purchaser of the Prepetition Loan Obligations and DIP Obligations pursuant to Section 363(k) of the Bankruptcy Code against obligations owed by Seller under the DIP Facility and the Prepetition Secured Note as of Closing (the “**Credit Bid**”); and

(ii) The assumption by Purchaser of the Assumed Liabilities.

(b) Payment Terms. In accordance with Section 1.4(a), the Purchase Price shall be satisfied at the Closing as to the amount of the Credit Bid by discharging Seller, and Seller shall be deemed to be discharged, from the obligations due under the DIP Facility and the Prepetition Secured Note in an aggregate amount equal to the amount of the Credit Bid.

(c) Purchase Price Allocation. Within thirty (30) days following the Closing Date, Purchaser shall prepare and deliver to Seller for its review and consideration a schedule (the “**Allocation Schedule**”) allocating the Purchase Price among the various assets comprising the Purchased Assets in accordance with Treasury Regulation 1.1060-1 (or any comparable provisions of state or local Tax law) or any successor provision. Seller shall have the right to review and raise any reasonable objections in writing to the Allocation Schedule during the thirty (30) day period after its receipt thereof. If Seller disagrees with or raises objections to the Allocation Schedule, Purchaser and Seller will negotiate in good faith to resolve such objections. To the extent Purchaser and Seller cannot resolve any such dispute, the dispute will be referred to a nationally recognized accounting firm to be mutually agreed on by Purchaser and Seller (the “**Accounting Firm**”) for resolution at the sole cost of Seller. Purchaser and Seller agree to file their respective IRS Form 8594 and all federal, state and local Tax returns in accordance with the Allocation Schedule (as agreed by the Parties or as resolved by the Accounting Firm) and agree not to take any position inconsistent with the Allocation Schedule in any Tax return, in any refund claim, in any litigation or otherwise, except as otherwise required by a “determination” as defined in Section 1313(a) of the Code (or corresponding provision of state or local law).

1.5 Designated Contract and Books and Records. No later than one day prior to the Auction, Purchaser shall designate the contracts and leases which must be assumed and assigned pursuant to Section 365 of the Bankruptcy Code to Purchaser by Seller at Closing (the “**Designated Contracts**”).

(a) Assumption and Assignment of Designated Contracts. Seller shall provide timely and proper written notice of the Sale Motion (hereafter defined) to all parties to any executory contracts or unexpired leases that may be Designated Contracts and take all other actions reasonably necessary to cause such contract or lease to be assumed by Seller and assigned to Purchaser pursuant to Section 365 of the Bankruptcy Code to the extent that such contracts or leases are Designated Contracts at Closing. The Sale Order shall provide that, as of and conditioned upon the occurrence of the Closing, Seller shall assume and assign or cause to be assigned to Purchaser, the Designated Contracts, each of which shall be identified by the name or appropriate description and date of the Designated Contracts (if available), the counterparty to the Designated Contract and the address of such counterparty for notice purposes, all included in a notice filed with the Bankruptcy Court. Such notice to Designated Contract counterparties shall also set forth Seller’s good faith estimate of the amounts necessary to cure any defaults under each of the Designated

Contracts as determined by Seller based on its books and records or as otherwise determined by the Bankruptcy Court. At the Closing, or as soon as reasonably practicable thereafter, Seller shall, pursuant to the Sale Order and the applicable assumption and assignment agreement, transfer and assign to Purchaser (the consideration for which is included in the Purchase Price), all Designated Contracts that may be assigned by Seller to Purchaser pursuant to Sections 363 and 365 of the Bankruptcy Code. Subject to entry of the Sale Order, at or prior to the Closing, (i) Purchaser shall pay all Cure Costs, (ii) following satisfaction of clause (i), the Seller shall assume such Designated Contracts and assign them to Purchaser in accordance with the provisions of Section 365 of the Bankruptcy Code and this Agreement, and (iii) following satisfaction of clause (ii), Purchaser shall in due course and in accordance with its respective terms pay and fully satisfy, discharge and perform all of the obligations under each Designated Contract pursuant to Section 365 of the Bankruptcy Code.

(b) A contract or lease shall not be a Designated Contract hereunder and shall not be assigned to, or assumed by, Purchaser to the extent that such contract or lease is rejected by Seller or terminated by Seller or any other party thereto, or terminates or expires by its terms, on or prior to such time as it is to be assumed by Purchaser as a Designated Contract hereunder and is not continued or otherwise extended upon assumption; provided, however, Seller shall not reject any contract or lease without the express written consent of Purchaser.

(c) Seller shall immediately (i) permit reasonable access to, and will make available to Purchaser and its representatives for inspection and review, the Premises, all facilities, Books and Records (hereafter defined), accounts and documents of or relating to Seller, as may be reasonably requested by Purchaser from time to time during normal business hours and upon reasonable prior written notice, and (ii) make the employees, accountants, attorneys and other advisors, agents and representatives of Seller available to the Purchaser and its representatives at time(s) convenient during normal business hours for the Purchaser and the other parties, to the extent it does not interfere with the operations of Seller in the ordinary course.

(d) Purchaser acknowledges and agrees that (i) Seller shall not be required to cure or pay any liabilities whatsoever related to or in connection with any Purchased Asset, including without limitation, the Designated Contracts and (ii) Seller shall not be required to obtain the consent of any contract counterparty to the Designated Contracts for the assignment thereof to Purchaser, but will cooperate in good faith to assist Purchaser, at Purchaser's expense, to obtain consent where such consent is necessary.

1.6 Employee Matters. Seller consents to Purchaser interviewing Seller's employees and to extending any offers of employment to such employees. Any such interviews shall be conducted at times and locations agreed upon by both Seller and Purchaser. Effective as of the Closing Date, Purchaser may make offers of employment to any of Seller's employees that Purchaser desires on such terms and conditions as Purchaser shall determine in its sole and absolute discretion, and subject to Purchaser's and its affiliates' standard onboarding processes. Immediately prior to Closing, Seller shall terminate the employment of all of Seller's employees who have accepted Purchaser's offer of employments (the "**Hired Employees**"). Purchaser shall be under no obligation to hire or offer to hire any employees of Seller.

1.7 Closing. The closing (the "**Closing**," also the "**Closing Date**") of the transactions contemplated by this Agreement shall take place on the earlier of (i) June 8, 2025 and (ii) three Business Days following the entry of the Sale Order or on such other date as Purchaser and Seller may agree (the "**Closing Date**"), by electronic exchange of executed documents.

1.8 Deliveries at Closing.

(a) Seller Deliveries. At the Closing, Seller shall deliver to Purchaser the following documents:

(i) A counterpart to a bill of sale and assignment and assumption agreement for the Purchased Assets (the “**Bill of Sale**”), in form and substance reasonably satisfactory to Purchaser and Seller, duly executed by Seller;

(ii) A certified copy of the docketed Sale Order;

(iii) Originals of the Designated Contracts, and if unavailable, true and correct copies thereof;

(iv) A counterpart to an intellectual property assignment agreement (“**IP Assignment Agreement**”), in form and substance reasonably satisfactory to Purchaser and Seller, duly executed by Seller.

(b) Purchaser Deliveries to Seller. At the Closing, Purchaser shall deliver to Seller:

(i) A counterpart of the Bill of Sale, duly executed by Purchaser;

(ii) A counterpart to the IP Assignment Agreement, duly executed by Purchaser; and

(iii) Evidence that Seller is discharged from the obligations due under the DIP Facility and the Prepetition Secured Note pursuant to Section 1.4(b).

1.9 Representations and Warranties of Seller. Seller warrants and represents to Purchaser, the following as of the date of this Agreement and as of the Closing Date:

(a) Power and Authority. Seller is duly organized and validly existing under the laws of the state of its organization, has the power to own its property and carry on its business, has the power and authority to execute and deliver this Agreement and to consummate the transactions provided for herein, subject to approval of the Bankruptcy Court in the Chapter 11 Case.

(b) Execution and Binding Agreement. This Agreement has been duly and validly executed and delivered by Seller and constitutes a valid and legal binding obligation of Seller enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting the rights and remedies of creditor generally and to general principles of equity.

(c) Title to the Purchased Assets. Seller is the legal owner of the Purchased Assets, free and clear of any Interests (as defined below) other than those disclosed to Purchaser or incurred consistent with the Seller’s ordinary course operations, in each case, except to the extent such failure to be the legal owner to such Purchased Assets would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(d) No Further Approvals. Subject to the entry of the Sale Order, and to Seller’s knowledge, information and belief, no consent, authorization, order or approval of, or filing or registration with, any governmental commission, board or other regulatory body of the United States or any state or

political subdivision thereof is required for or in connection with the consummation by Seller of the transactions contemplated by this Agreement, except for such consents, authorizations, order or approvals of, or filings or registrations, of which the failure to obtain or do would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(e) No Union. To the best of Seller's knowledge, information and belief, Seller: (i) is not party to or bound by any collective bargaining or similar agreement with any labor organization; (ii) has no employees that are represented by any labor organization; (iii) is not the subject of any complaint pending before the National Labor Relations Board or similar state or local labor agency by or on behalf of any employee of Seller; and (iv) has no knowledge of any union organizing activities among the employees of Seller.

(f) No Litigation. As of the date hereof, there are no known pending, or to the knowledge of Seller, threatened in writing, material Claims or litigation against Seller with respect to the Purchased Assets, except as already disclosed to Purchaser.

(g) Limitations on Representations and Warranties. THE SELLER HAS NOT MADE ANY REPRESENTATIONS, WARRANTIES OR STATEMENTS (INCLUDING BY OMISSION) OF ANY KIND OR NATURE EXPRESS OR IMPLIED (INCLUDING ANY RELATING TO THE FUTURE OR HISTORICAL FINANCIAL CONDITION, RESULTS OF OPERATIONS, PROSPECTS, ASSETS OR LIABILITIES OF SELLER OR THE QUALITY, QUANTITY OR CONDITION OF THE PURCHASED ASSETS) TO PURCHASER IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY AND SPECIFICALLY SET FORTH IN SECTION 1.9 OF THIS AGREEMENT (SUCH REPRESENTATIONS AND WARRANTIES, COLLECTIVELY, THE "**FOUR CORNERS REPRESENTATIONS**"). PURCHASER IS ACQUIRING THE PURCHASED ASSETS ON AN "AS IS, WHERE IS" BASIS AND, EXCEPT AS SPECIFICALLY SET FORTH IN THE FOUR CORNERS REPRESENTATIONS, NONE OF THE SELLER NOR ANY OTHER PERSON, WHETHER IN ANY INDIVIDUAL, CORPORATE OR ANY OTHER CAPACITY, IS MAKING ANY REPRESENTATIONS, WARRANTIES, OR OTHER STATEMENTS (INCLUDING BY OMISSION) OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING SELLER, THE PURCHASED ASSETS OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, OR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO (OR OTHERWISE ACQUIRED BY) PURCHASER.

1.10 Representations and Warranties of Purchaser. Purchaser warrants and represents to Seller that the following statements contained in this Section are true, correct and complete as of the date of this Agreement and shall be true, correct and complete as of the Closing Date:

(a) Power. Purchaser is duly organized and validly existing under the laws of the state of its organization and has the power to own its property and carry on its business.

(b) Authority. Purchaser has all necessary power to execute and deliver this Agreement and to consummate the transactions provided for herein. The execution and delivery of this Agreement by Purchaser and the performance by it of the obligations to be performed hereunder have been duly authorized by all necessary and appropriate action. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not and shall not conflict with, or result in a breach of, or constitute a default under the terms or conditions of Purchaser's entity documents and

agreements, any court or administrative order or process to which Purchaser is a party, any agreement or instrument to which Purchaser is a party or by which Purchaser is bound or any statute or regulation of any governmental agency.

(c) Execution and Binding Agreement. This Agreement has been duly and validly executed and delivered by Purchaser and constitutes a valid and legal binding obligation of Purchaser enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting the rights and remedies of creditor generally and to general principles of equity.

(d) Financial Capability. Purchaser has sufficient unrestricted cash on hand to pay all amounts required to be paid by Purchaser pursuant to the terms of this Agreement (whether payable before, at or after the Closing), and all of its and its affiliates and representatives' fees and expenses incurred in connection with the transactions contemplated by this Agreement. Purchaser has no reason to believe that such available cash shall not be available. In no event shall the receipt by, or the availability of any funds or financing to, Purchaser or any of its affiliates be a condition to Purchaser's obligation to consummate the transactions contemplated hereunder.

(e) Purchaser's Acknowledgement. Purchaser acknowledges and agrees, on behalf of itself and each of its affiliates, that it has conducted to its satisfaction an independent investigation and verification of the financial condition, results of operations, assets, liabilities, properties and projected operations of Seller, and, in making its determination to proceed with the transactions contemplated by this Agreement, Purchaser (i) has relied solely on the results of its own independent investigation and verification and the representations and warranties of Seller expressly and specifically set forth in the Four Corners Representations, and (ii) has not relied on the accuracy or completeness of any other information provided to (or otherwise acquired by) Purchaser. The representations and warranties of Seller expressly and specifically set forth in the Four Corners Representations, constitute the sole and exclusive representations, warranties, and statements (including by omission) of any kind of Seller in connection with the transactions contemplated by this Agreement, and all other representations, warranties, and statements (including by omission) of any kind or nature expressed or implied in connection with the transactions contemplated by this Agreement are specifically disclaimed by Seller including, for the avoidance of doubt, with respect to the accuracy or completeness of any other information provided to (or otherwise acquired by) Purchaser. Seller does not make or provide, and Purchaser and its affiliates hereby waive, any warranty or representation, express or implied, as to the quality, merchantability, fitness for a particular purpose, conformity to samples, or condition of the Purchased Assets or any part thereof. PURCHASER IS NOT RELYING ON ANY REPRESENTATIONS, WARRANTIES, OR OTHER STATEMENTS (INCLUDING BY OMISSION) OF ANY KIND WHATSOEVER, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER CONCERNING SELLER, THE PURCHASED ASSETS OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, OR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO (OR OTHERWISE ACQUIRED BY) PURCHASER.

1.11 Delivery and Condition of the Purchased Assets.

(a) Purchaser agrees that it is purchasing and shall take possession of the Purchased Assets, free and clear of all Interests (hereafter defined) on an **AS IS, WHERE IS** basis, with all faults of any kind or nature, including latent or patent defects, and without other representations and warranties, express, implied or statutory, written or oral, of any kind, nature or description except as expressly provided herein.

1.12 Operating Covenants. Between the Execution Date and the Closing, the parties hereby covenant and agree, as the case may be, in each case subject to the limitations posed by the Chapter 11 Case, as follows:

(a) Except as (i) required by applicable law, (ii) required by order of the Bankruptcy Court or restricted pursuant to the Bankruptcy Code, the DIP Orders (hereafter defined) or the DIP Credit Agreement, as the case may be, or (iii) expressly required by this Agreement, during the period from the date of this Agreement until the Closing (or such earlier date and time on which this Agreement is terminated pursuant to Section 1.17), unless Purchaser otherwise consents in writing, Seller shall (i) continue to operate their Business and the Purchased Assets in compliance with all laws and pay all of their respective post-petition obligations in the ordinary course of business in compliance with and as contemplated by the DIP Budget, (ii) use its commercially reasonable efforts to preserve substantially intact their goodwill and relationships with employees, suppliers, vendors, licensors, licensees, distributors, consultants, customers, and other Persons, in each case, having material relationships with Seller (other than making any payment of any pre-petition claim except as approved by the Bankruptcy Court and as contemplated in the DIP Budget), (iii) use commercially reasonable efforts not to take, or agree to or commit to assist any other Person in taking, any action (x) that would reasonably be expected to result in a failure of any of the conditions to the Closing or (y) that would reasonably be expected to impair the ability of Seller or Purchaser to consummate the Closing in accordance with the terms hereof or to materially delay such consummation, and (iv) shall make all post-petition payments related to Designated Contracts (other than Cure Costs) that become or became due or payable pursuant to the terms thereof to the extent provided in the DIP Budget.

(b) Seller agrees to maintain the Books and Records in a complete and accurate manner on a basis consistent with its past bookkeeping and accounting practices.

(c) Seller agrees to pay all sales Taxes payable by Seller that become due prior to Closing, as and when due, or as soon thereafter as is practicable, which may in any way affect or relate to the Purchased Assets.

1.13 Bankruptcy Actions

(a) Seller shall have commenced the Chapter 11 Case no later than April 14, 2025 (the actual date of the commencement of the Chapter 11 Case, the “**Petition Date**”).

(b) On or around the Petition Date, Seller shall file a motion with the Court (the “**Sale Motion**”) seeking approval to sell substantially all of Seller’s assets pursuant to the Bidding Procedures Order and to schedule a hearing to approve the sale (the “**Sale Hearing**”).

(c) Bidding Procedures. The bidding procedures to be employed with respect to this Agreement shall be those reflected in the Bidding Procedures Order. Seller, including through its representatives, is and may continue soliciting inquiries, proposals or offers from third parties in connection with any alternative transaction pursuant to the terms of the Bidding Procedures Order.

(d) From the date hereof until the earlier of (i) the termination of this Agreement in accordance with Section 1.17, and (ii) the Closing Date, Seller shall use commercially reasonable efforts to obtain entry by the Bankruptcy Court of the Sale Order.

(e) Seller and Purchaser shall (i) appear formally or informally in the Bankruptcy Court if reasonably requested by the other or required by the Bankruptcy Court in connection with the Asset Sale, and (ii) keep the other reasonably apprised of the status of material matters related to the

Agreement, including promptly furnishing the other with copies of all notices or other communications received by Seller from the Bankruptcy Court with respect to the Asset Sale.

(f) Seller and Purchaser acknowledge that this Agreement and the sale of the Purchased Assets are subject to higher and better bids and Bankruptcy Court approval. Seller must act in good faith and take reasonable steps to demonstrate that it has sought to obtain the highest or otherwise best price for the Purchased Assets, including giving notice thereof to the creditors of Seller and other interested parties, providing information about Seller and the Business to prospective bidders, entertaining higher and better offers from such prospective bidders, and, if additional qualified prospective bidders desire to bid for the Purchased Assets, conducting an Auction (hereinafter defined) as provided under the Bidding Procedures.

(g) Sale Order. At the Sale Hearing, Seller will seek the entry of an order, in form and substance acceptable to Purchaser (the “Sale Order”) with the assumption Purchaser is the successful bidder pursuant to the Bidding Procedures. The Sale Order shall include, among other findings and determinations: (i) approval of the Agreement pursuant to Sections 105, 363 and 365 of the Bankruptcy Code; (ii) a determination Purchaser is a good-faith buyer pursuant to Section 363(m) of the Bankruptcy Code; (iii) determinations that the Purchase Price constitutes fair saleable value and is reasonably equivalent value for the Purchased Assets; (iv) a determination that the Purchased Assets are being sold and conveyed to Purchaser free and clear of any and all liens, Claims, interests and encumbrances of any kind or nature (collectively, “Interests”); (v) find that Purchaser has provided adequate assurance (as that term is used in Section 365 of the Bankruptcy Code) of future performance in connection with the assumption of the Designated Contracts and (vi) a determination that Purchaser is not a successor or alter ego of Seller and grant Purchaser the protections of Section 363(m) of the Bankruptcy Code.

(h) Bankruptcy Filings. From and after the date hereof and until the Closing Date, Seller shall use commercially reasonable efforts to deliver to Purchaser, at least two (2) Business Days in advance (or as far in advance as reasonably practicable), drafts of any and all material pleadings, motions, notices, statements, schedules, applications, reports and other papers to be filed or submitted in connection with this Agreement for Purchaser’s prior review and comment, and such filings shall be acceptable to Purchaser to the extent they relate to the Purchased Assets, any Assumed Liabilities or any of Purchaser’s obligations hereunder; *provided that*, to the extent it is not practicable to so provide, Seller will provide copies as soon as possible and in any event prior to filing any such pleadings, motions, notices, statements, schedules, applications, reports and other papers to be filed or submitted in connection with this Agreement. Seller agrees to prosecute the entry of the Bidding Procedures Order and the Sale Order. If the entry of the Bidding Procedures Order or the Sale Order shall be appealed, Seller shall defend such appeal. Seller shall comply with all notice requirements (i) of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, or (ii) imposed by the Bidding Procedures Order or the Sale Order, in each case, in connection with any pleading, notice or motion to be filed in connection herewith.

(i) Expense Reimbursement and Auction. Seller agrees to seek approval by the Bankruptcy Court of expense reimbursement for reasonable and documented out-of-pocket costs and expenses (including fees and expenses of counsel) incurred by Purchaser in connection with the negotiation, diligence, execution, performance and enforcement of this Agreement (the “**Expense Reimbursement**”) which shall be payable by Seller by wire transfer of immediately available funds within three (3) Business Days following termination of this Agreement by Purchaser in accordance with Sections 1.17(a)(i), 1.17(a)(ii), 1.17(a)(iv), 1.17(a)(v), 1.17(a)(vi), 1.17(a)(vii) or 1.17(a)(x). The claim of Purchaser in respect of the Expense Reimbursement is and constitutes an allowed administrative expense claim against Seller under Sections 503 and 507(b) of the Bankruptcy Code in the Chapter 11 Case. Purchaser shall be entitled to bid the Expense Reimbursement at the Auction. Purchaser agrees to be the backup bidder at the Auction if it is the next highest bid to the successful bid.

1.14 Change of Name. Following the Closing, and in any event, within twenty (20) days thereafter, the Seller shall (a) discontinue the use of its current name (and any other trade names or “d/b/a” names currently utilized by Seller or the Business); (b) take such corporate and other actions necessary to change its company name to one that is not similar to, or confusing with, its current names, including preparing, executing and delivering to Purchaser any necessary filings required by the laws of the state of its organization and each other state in which it is authorized to do business (which is California), which filings shall be made by the Seller; provided, that the Seller shall thereafter provide evidence of such filings to the Purchaser; (c) shall not subsequently change its name to or otherwise use or employ any names that include the word “Viridos” or any other derivation of the name which could potentially lead to confusion of the assigned intellectual property, or other names used by the Seller or its affiliates prior to, or after, the Closing without the prior written consent of Purchaser; and (d) prepare and file a motion in connection with the Chapter 11 Case to cause the name of the Seller in the caption of the Chapter 11 Case to be changed to the new name of the Seller.

1.15 Tax Cooperation. Each of Purchaser, on the one hand, and the Seller, on the other hand, shall cooperate fully, as and to the extent reasonably requested, in connection with the preparation and filing of Tax returns and any audit, litigation or other proceeding with respect to Taxes and shall furnish or cause to be furnished to the other, upon request, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Business as is reasonably necessary for filing of all Tax returns, including any Claim for exemption or exclusion from the application or imposition of any Taxes, the preparation for any audit by any governmental authority and the prosecution or defense of any Claim relating to any Tax return.

1.16 Notification of Certain Matters. To the extent permitted by applicable law, Seller will give prompt written notice to Purchaser of (a) the existence of any material fact or circumstance, or the occurrence of any Material Adverse Event, of which it has knowledge that would reasonably be likely to cause any condition of a party hereunder to not be satisfied as of any date, (b) the receipt of any notice or other communication from a third party alleging, or any subsequent realization or discovery, that the consent of such third party is or may be required in connection with the transactions contemplated by this Agreement; (c) the receipt of any notice or other communication from any governmental authority in connection with the transactions contemplated by this Agreement, (d) the commencement of any claims with respect to this Agreement, or any of the assets subject to the purchase contemplated hereby, or (e) the existence of any other fact or circumstance, or the occurrence of any other event, of which it has knowledge that would reasonably be likely to prevent or materially delay the transactions contemplated by this Agreement.

1.17 Termination; Remedies.

(a) The Agreement may be terminated, in writing, prior to the Closing Date:

(i) by Purchaser if Seller accepts a higher or better bid for the Purchased Assets pursuant to the Bidding Procedures and closes such alternative transaction;

(ii) by Purchaser, if Seller shall have materially breached any representation or warranty, or failed to materially comply with any covenant or agreement applicable to Seller that in each case would, if occurring or continuing on the Closing Date, cause any such covenant or agreement not to be satisfied and such breach or failure to perform has not been cured on or prior to the date that is five (5) Business Days from the date that Seller is notified in writing by Purchaser of such breach or failure to perform; provided, however, that the right to terminate this Agreement under this Section 1.17(a)(ii) shall not be available to Purchaser if Purchaser is then in material breach of any representation, warranty, covenant or agreement contained in this Agreement;

(iii) by Seller, if Purchaser shall have materially breached any representation or warranty or failed to materially comply with any covenant or agreement applicable to Purchaser that in each case would, if occurring or continuing on the Closing Date, cause any such covenant or agreement not to be satisfied and such breach or failure to perform has not been cured on or prior to the date that is five (5) Business Days from the date that Purchaser is notified in writing by Seller of such breach or failure to perform; provided, however, that the right to terminate this Agreement under this Section 1.17(a)(iii) shall not be available to Seller if Seller is then in material breach of any covenant or agreement contained in this Agreement;

(iv) by Purchaser, if a motion is filed in the Chapter 11 Case seeking (i) to dismiss the Chapter 11 Case or convert the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code, or (ii) to appoint a trustee or examiner with expanded powers to operate or manage the financial affairs or reorganization of the Seller in the Chapter 11 Case, in either clauses (i) or (ii) which is not withdrawn or dismissed within 15 days from filing;

(v) by Purchaser, if an order of the Bankruptcy Court is entered (i) dismissing the Chapter 11 Case or converting the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code, or (ii) appointing a trustee or examiner with expanded powers to operate or manage the financial affairs or reorganization of the Seller in the Chapter 11 Case;

(vi) by Purchaser, upon occurrence of an Event of Default (as defined in the DIP Credit Agreement);

(vii) by Purchaser, if for any reason (including an Order of the Bankruptcy Court), Purchaser is legally prohibited, pursuant to Section 363(k) of the Bankruptcy Code or otherwise, to credit bid up to the full amount of the Credit Bid in satisfaction of any portion of the Purchase Price (other than the Cure Costs) as set forth in Section 1.4;

(viii) By mutual written consent of Seller and Purchaser;

(ix) By any party in the event that any Governmental Authority of competent authority and jurisdiction shall have issued an order or judgment or enacted a law that permanently enjoins or otherwise makes illegal or prohibits the Asset Sale pursuant to this Agreement; and

(x) By Purchaser or Seller, if the sale hereunder is not consummated by the Closing Date.

(b) Effects of Termination.

(i) Purchaser shall be entitled to the Expense Reimbursement if Purchaser terminates this Agreement pursuant to Sections 1.17(a)(i), 1.17(a)(ii), 1.17(a)(iv), 1.17(a)(v), 1.17(a)(vi), 1.17(a)(vii) or 1.17(a)(x) of this Agreement and if Seller terminates this Agreement pursuant to Section 1.17(x).

(ii) If this Agreement is terminated by the parties pursuant to Sections 1.17(a)(viii), or 1.17(a)(ix), all rights and obligations of the parties under this Agreement shall terminate without any liability of any party.

(iii) If this Agreement is terminated by Seller pursuant to Section 1.17(a)(iii), Seller shall have all rights and remedies available to it against Purchaser at law and in equity.

(iv) Nothing in this Agreement shall relieve any party from liability for Fraud (as determined by a court of competent jurisdiction pursuant to a final, non-appealable order) occurring prior to termination, in which case the aggrieved party shall be entitled to all rights and remedies available at law or in equity.

1.18 No Survival. The representations, warranties, covenants and agreements (other than those covenants and agreements that by their express terms are to be performed after the Closing) contained in this Agreement or in any document or certificate delivered pursuant hereto shall not survive beyond the Closing or termination of this Agreement and there shall be no liability in respect thereof, whether such liability has accrued prior to or after the Closing, on the part of any party hereto, its respective affiliates or any of their respective officers, directors, managers, agents or other representatives.

1.19 Limitation of Liability. No Party nor any of its respective affiliates, officers, directors, employees, agents, representatives, successors and assigns shall be liable to any other party or its respective affiliates, officers, directors, employees, agents, representatives, successors and assigns, whether in contract, tort, negligence, indemnity, strict liability or otherwise, for any punitive, special, indirect, incidental or consequential damages or for lost profits in connection with or arising out of or relating to the performance, nonperformance or breach of this Agreement or any obligations arising hereunder.

1.20 Miscellaneous

(a) Amendment and Severability. This Agreement may only be amended by a written agreement of Seller and Purchaser after the filing of the Chapter 11 Case. If any provision, clause or part of this Agreement or the application thereof under certain circumstances, is thought to be invalid, the remainder of this Agreement, or the application of each provision, clause or part under other circumstances, shall not be affected thereby.

(b) Governing Law. This Agreement shall be governed by and subject to the laws of the State of Delaware without regard to its conflicts of laws principles.

(c) Waiver. The failure of any party to insist, in any one or more instances, upon performance of any of the terms or conditions of this Agreement, shall not be construed as a waiver or relinquishment of any rights granted hereunder or the future performance of any such term, covenant or condition.

(d) Notices. Any notice to be given hereunder shall be deemed sufficient if in writing and delivered:

In the case of Purchaser, to:

Breakthrough Energy Ventures II, L.P.
250 Summer Street, Suite 402
Boston, MA 02210 Attention: Karl White
E-mail: Karl@b-t.energy

With copy to (which shall not constitute notice):

Greenberg Traurig, LLP
One Vanderbilt Avenue
New York, NY 10017
Attention: Brian E. Greer, Esq. and Jeffrey M. Wolf, Esq.
Email: greerb@gtlaw.com; Jeffrey.wolf@gtlaw.com

In case of the Seller to:

Viridos, Inc.
11149 North Torrey Pines Road
La Jolla, CA 92037
Attention: Eric Moellering
Email: emoellering@viridos.com

With copy to (which shall not constitute notice):

Womble Bond Dickinson
1313 North Market Street
Suite 1200
Wilmington, DE 19801
Attention: Matthew P. Ward, Esq. and Morgan L. Patterson, Esq.
Email: matthew.ward@wbd-us.com and morgan.patterson@wbd-us.com

To be effective, all notices must be sent to the addresses or email addresses specified above.

(e) Exclusive Jurisdiction. From and after the filing of the Chapter 11 Case, the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby. In all claims, actions, classes of action, suits and proceedings relating to the foregoing shall be filed and maintained only in the Bankruptcy Court and the parties hereby consent to the jurisdiction of the Bankruptcy Court.

(f) Enforcement. The Parties agree that all costs incurred to enforce the terms of this Agreement, including but not limited to reasonable attorneys' fees, shall be paid by the party found in violation of this Agreement, by a court of competent jurisdiction, to the non-violating party.

(g) Counterparts; Electronic Execution. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, provided that all such counterparts, in the aggregate, shall contain the signatures of all parties hereto. This Agreement may be executed electronically, by facsimile, emailed documents (including transmission of a pdf document) and the like.

(h) Further Assurances;

(i) From time to time from and after the Execution Date, including following Closing, the Seller and/or Purchaser, as the case may be, shall each execute, acknowledge and deliver such additional documents or instruments and take such other action as the Seller and/or

Purchaser, as the case may be, may reasonably request to more effectively accomplish the transactions contemplated by this Agreement.

(ii) If, after the Closing, the Seller is in possession of any Purchased Asset, then the Seller shall promptly remit, transfer, deliver or assign, or cause its applicable affiliate to remit, transfer, deliver or assign, such Purchased Asset to Purchaser or its designated affiliate (and Purchaser or its designated affiliate shall accept any such asset), for no additional consideration. Until the remittance, transfer, delivery or assignment of any such Purchased Asset is effected, the Seller shall use commercially reasonable efforts to, or shall cause its applicable affiliate to use commercially reasonable efforts to, preserve the value of, and hold in trust for the use and benefit of, Purchaser or its designated affiliate, such Purchased Asset and provide to Purchaser or its designated affiliate all of the benefits arising from such Purchased Asset and otherwise cause such Purchased Asset to be used as reasonably instructed by Purchaser or its designated affiliate.

(iii) If, after the Closing, the Purchaser or any of its affiliates receives funds relating to any Excluded Asset, then the Purchaser shall promptly remit, transfer, deliver or assign, or cause its applicable affiliate to remit, transfer, deliver or assign, such funds to Seller for no additional consideration. Until the remittance, transfer, delivery or assignment of any such funds is effected, the Purchaser shall, or shall cause its applicable affiliate to, preserve the value of, and hold in trust for the use and benefit of Seller, such funds and provide to the Seller all of the benefits arising from such funds and otherwise cause such funds to be used as reasonably instructed by Seller.

(i) Benefit. This Agreement shall be binding upon and inure to the benefit and burden of and shall be enforceable by each of the Parties and their respective successors and permitted assigns. This Agreement may not be assigned by the Purchaser prior to the Closing, provided, however, that Purchaser may assign this Agreement during, or after, the Closing without the written consent of the Seller.

(j) Confidentiality. The terms of this Agreement and its existence shall remain confidential until such time as when Court approval of the Asset Sale is sought. Notwithstanding the foregoing, prior to Closing, with the prior written consent of Seller, Purchaser shall be authorized to communicate with customers, vendors, employees, and other third parties. From and after the Closing, the Seller shall, and the Seller shall direct its affiliates and its and their respective employees, directors, officers, managers, advisors, agents and other representatives to, keep confidential and not use any information regarding the Purchased Assets, the Assumed Liabilities, the Business and Purchaser; provided, that such non-public information may be disclosed as and only to the extent, as reasonably determined by legal counsel, may require in connection with the Chapter 11 Case.

(k) Specific Performance. Each party agrees that in the event of a breach of this Agreement by such party, or by performance not in accordance with the specific terms of this Agreement, money damages will be inadequate, and the other party may have no adequate remedy at law. Accordingly, each party agrees that the other party shall have the right, in addition to any other rights and remedies existing in its favor, to enforce its rights and the other party's obligations hereunder not only by an action or actions for damages but also by an action or actions for equitable relief, including injunction and specific performance. If any such action is brought by a party to enforce this Agreement, each other party, as applicable, hereby waives the defense that there is an adequate remedy at law or the requirement for the posting of any bond or similar security.

(l) No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person other than parties hereto and their respective successors and permitted assigns;

provided, that at any time post-Closing BEV may designate and assign all of its rights hereunder to an entity to be formed by BEV, which shall then become the “Purchaser” hereunder.

(m) Expenses. Except as otherwise expressly provided herein, each of the parties hereto shall pay all of its own fees, costs and expenses (including fees, costs and expenses of legal counsel, investment bankers, brokers or other representatives and consultants and appraisal fees, costs and expenses) incurred in connection with the negotiation of this Agreement, and the consummation of the transactions contemplated hereby.

(n) Certain Definitions. The following terms have the meanings specified in this Section 1.19(n):

(i) “Auction” shall have the meaning ascribed to such term in the Bidding Procedures Order.

(ii) “Bidding Procedures” means the bidding procedures attached as Exhibit [] to the Bidding Procedures Order acceptable in form and substance to Purchaser, as may be amended and supplemented from time to time, and as approved by the Bankruptcy Court.

(iii) “Bidding Procedures Order” means an order entered by the Bankruptcy Court pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code in form and substance acceptable to Purchaser that, among other things: (a) authorizes and schedules the Auction, if any; (b) approves procedures for the submission of bids for the sale of the Purchased Assets; (c) schedules a hearing to consider approval of the Asset Sale; (d) approves the form and manner of notice of the Auction procedures and Sale Hearing; (e) approves the Expense Reimbursement; and (f) approves this Agreement as the stalking horse agreement.

(iv) “Business” means the business and operations of Seller as conducted immediately prior to the date hereof.

(v) “Business Day” means any day that is not a Saturday, Sunday or other day on which banks are required or authorized by law to be closed in the state of Delaware.

(vi) “Claim” means all actions, claims, counterclaims, suits, proceedings, rights of action, causes of action, liabilities, losses, damages, remedies, penalties, judgments, settlements, costs, expenses, fines, disbursements, demands, reasonable costs, fees and expenses of counsel, including in respect of investigation, interest, demands and actions of any nature or any kind whatsoever, known or unknown, disclosed or undisclosed, accrued or unaccrued, matured or unmatured, choate or inchoate, legal or equitable, and arising in tort, contract or otherwise, including any “claim” available under the Laws.

(vii) “DIP Budget” shall have the same meaning as the term “Approved Budget” as defined in the DIP Order.

(viii) “DIP Orders” means as of any date of determination (i) the Interim DIP Order that is anticipated to be entered by the Bankruptcy Court on or before April [●], 2025 in connection with the DIP Facility and in form and substance acceptable to Purchaser (the “Interim DIP Order”) and (ii) the Final DIP Order that is anticipated to be entered by the Bankruptcy Court on or before [●], 2025 in connection with the DIP Facility and in form and substance acceptable to Purchaser.

(ix) “**Fraud**” means an act in the making of a specific representation or warranty expressly set forth Sections 1.9 and 1.10 of this Agreement, committed by the party making such express representation or warranty, with intent to deceive another party, and to induce him, her or it to enter into this Agreement and requires: (a) an intentional false representation of material fact expressly set forth in the representations and warranties set forth in this Agreement; (b) actual knowledge that such representation is false (as opposed to any fraud claim based on constructive knowledge, negligent or reckless misrepresentation or a similar theory); (c) a specific intention to induce the party to whom such representation was made to act or refrain from acting in reliance upon it; (d) causing that party, in justifiable reliance upon such false representation and with ignorance to the falsity of such representation, to take or refrain from taking action; and (e) causing such party to suffer damage by reason of such reliance; provided, however that Fraud shall not include any equitable fraud, constructive fraud, promissory fraud, negligent misrepresentation, extracontractual fraud, unfair dealings or any tort (including any claim for fraud) based on negligence or recklessness. A claim for Fraud may only be made against the party committing such Fraud.

(x) “**Governmental Authority**” means any United States or foreign federal, state, provincial or local government or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision, and any supranational organization of sovereign states exercising such functions for such sovereign states.

(xi) “**knowledge of the Seller**” or “**Seller’s knowledge**” means the actual knowledge of Eric Moellering.

(xii) “**Loss**” means any and all liability, loss, damage, claim, expense, cost, fine, fee, penalty, obligation or injury including, without limitation, those resulting from any and all actions, suits, proceedings, demands, assessments, judgments, award or arbitration, together with reasonable costs and expenses including the reasonable attorneys’ fees and other legal costs and expenses relating thereto.

(xiii) “**Material Adverse Effect**” means any material change, effect, event, occurrence, state of facts or development that would reasonably be expected to be, or has been, materially adverse to the financial condition, results of operations, assets or liabilities of the Company, taken as a whole; provided, however, that none of the following shall be deemed, either alone or in combination, to constitute, and none of the following, nor any change, effect, event, occurrence, state of facts or development arising out, relating to, based upon, or in connection with, of any of the following, shall be taken into account in any respect in determining whether there has been, will be, would or could be, or could or would reasonably be expected to have or result in, a Material Adverse Effect: (a) any failure by the Seller to meet any internal or published projections, forecasts, or revenue or earnings predictions; (b) any adverse change, effect, event, occurrence, state of facts or development to the extent attributable to the announcement, pendency or consummation of the transactions contemplated by this Agreement (including any change, termination or disruption in landlord, vendor, supplier, distributor, partner or similar relationships, or any loss of employees); (c) any adverse change, effect, event, occurrence, state of facts or development attributable to conditions affecting (i) the industries in which the Seller participates (including industries from which the Seller obtains or purchases supplies or raw materials for use in its products or services, or fluctuating conditions or pricing resulting from cyclicity, seasonality, shortages or weather patterns affecting the Seller, including its customers and vendors), (ii) national, regional, local, international or global economies in general (including securities, financial, currency, banking, capital or credit markets of the United States or elsewhere in the world in general and including any disruption thereof and any decline in the price of any security or market index), or (iii) legal, regulatory or political requirements or conditions in the

United States or elsewhere in the world in general; (d) any adverse change, effect, event, occurrence, state of facts or development resulting from or relating to compliance with the terms of, or the taking of any action required or permitted by, this Agreement; (e) any adverse change, effect, event, occurrence, state of facts or development arising from or relating to any change in GAAP or other accounting requirements or principles or any change in applicable laws or the interpretation or enforcement of any of the foregoing; (f) any adverse change, effect, event, occurrence, state of facts or development arising in connection with hostilities, acts of war, sabotage, cyberattacks, data breaches, or terrorism (including cyber terrorism) or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions existing or underway; (g) the effect of any action taken by Purchaser or any of its affiliates with respect to the transactions contemplated hereby, or the financing thereof, or with respect to the Seller; (h) any adverse change, effect, event, occurrence, state of facts or development arising relating to actions required to be taken under applicable laws, contracts, or the interpretation or enforcement thereof; (i) disease outbreaks, epidemics, pandemics or public health emergencies; or (j) any “act of God”, weather, hurricanes, floods, earthquakes, droughts, heat-waves or any other natural disaster or man-made disaster or other local, regional, national or international calamity or other force majeure events, except, in the case of each of the foregoing clauses (c)(i), (e), (f), or (i) to the extent such change, effect, event occurrence, state of facts or development has had or would be reasonably be expected to have a disproportionate impact on the Seller compared to other participants engaged in the industry in which the Seller operates.

(xiv) “**Person**” means any individual, corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust or company (including any limited liability company or joint stock company) or other similar entity, including a governmental authority or entity.

(xv) “**Taxes**” means (a) all forms of taxation imposed by any governmental authority, including all United States federal, state or local and foreign taxation (including income, value added, occupation, real and personal property, social security (or similar), gross receipts, sales, use, ad valorem, franchise, profits, license, withholding, payroll, employment, unemployment, excise, severance, occupation, premium, windfall profits, estimated, alternative, add-on minimum and other taxes, charges, levies, duties, impositions, or other governmental assessments of any kind whatsoever, including stamp duty, customs and other import or export duties), (b) any interest, penalties or additions to tax with respect to any item described in the preceding clause and (z) any liability to indemnify, assume or succeed to the liability of another Person with respect to any item described in clauses (a) or (b), including as a result of being a member of any consolidated, combined, unitary or other similar Tax group or under any law or by equity, contract, agreement, assumption, transferee or successor liability.

(o) Interpretation. The Seller and Purchaser have participated jointly in the negotiation and drafting of this Agreement and the other agreements, documents and instruments executed and delivered in connection herewith with sophisticated counsel. In the event an ambiguity or question of intent or interpretation arises, this Agreement and the agreements, documents and instruments executed and delivered in connection herewith shall be construed as if drafted jointly by the Seller and Purchaser and no presumption or burden of proof shall arise favoring or disfavoring either the Seller or Purchaser by virtue of the authorship of any provisions of this Agreement and the agreements, documents and instruments executed and delivered in connection herewith. Except as otherwise explicitly specified to the contrary herein, (i) the word “including” shall mean “including without limitation” regardless of whether such words are included in some contexts but not others, (ii) the use in this Agreement of the masculine pronoun in reference to a party hereto shall be deemed to include the feminine or neuter, and vice versa, as the context may require, (iii) when calculating the period of time before which, within which or following which, any act is to be done or step taken under this Agreement, the date that is the reference date in calculating such

period will be excluded, (iv) any period of time hereunder ending on a day that is not a Business Day shall be extended to the next Business Day, (v) the words “year” or “years”, unless otherwise indicated, is deemed to refer to a calendar year, (vi) the word “will” shall be construed to have the same meaning and effect as the word “shall”, (vii) “writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form, (viii) any reference to any law also refers to all rules and regulations promulgated thereunder, in each case as amended, modified, codified, replaced or reenacted, in whole or in part, (ix) instances of “extent” in the phrase “to the extent” are deemed to mean the degree to which a subject or other thing extends, and such phrase does not mean simply “if”, (x) the word “or” in this Agreement shall mean “and/or”, (xi) the words, “herein,” “hereto,” “hereof” and words of similar import refer to this Agreement as a whole and not to any particular Section or paragraph hereof, (xii) each accounting term used herein that is not specifically defined herein has the meaning given to it under GAAP, (xiii) references to “\$” shall mean United States dollars and (xiv) the word “any” means “any and all”.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the date first written above.

PURCHASER:

BREAKTHROUGH ENERGY VENTURES II, L.P.

Signed by:

Carmichael Roberts

174CC0DB9D264F6...

Name: Carmichael Roberts

Title: Member

SELLER:

VIRIDOS, INC.

DocuSigned by:

Eric Moellering

B6122B35D7584D5...

Name: Eric Moellering

Title: Co-Chief Executive Officer

SCHEDULE 1

PURCHASED ASSETS

All assets, properties, claims and rights (of every kind, nature, character and description, whether real, personal or mixed, tangible or intangible, accrued, contingent or otherwise, wherever located and regardless of whether reflected on the Seller's books and records) other than the Excluded Assets (as defined on Schedule 2). Without limiting the generality of the foregoing, the Purchased Assets shall include, without limitation, the following:

- (a) Cash. All cash and cash equivalents, including all bank accounts and lockboxes in excess of amounts permitted under the DIP Budget.
- (b) Personal Property. All owned equipment, machinery, tools, tooling, jigs, molds, dies, furniture, fixtures, computers, vehicles, supplies, and other personal property.
- (c) Intellectual Property. All patents, patent applications, trademarks, trademark applications, service marks, trade names corporate names, copyrights, copyright applications, trade secrets, rights in software, computer programs and source code, websites (including all URLs and website files, content and infrastructure and other related rights), domain names, intellectual property licenses, formulas, systems, processes, techniques, know-how, employee agreements and covenants respecting intellectual property, causes of action (including all Claims for infringement) related to intellectual property, trade secrets, telephone, telex and facsimile numbers and other directory listings, and other intellectual property rights, including any items under development (the "**IP**").
- (d) Inventory. All inventories of raw materials, work-in-process, finished goods and supplies (the "**Inventory**").
- (e) Books and Records. All files, records, books, supplier, dealer and customer lists, work orders, credit information and correspondence, operating data, drawings, plans, designs, financial information, sales and marketing information and all other records and documents related to the other Purchased Assets (the "**Books and Records**").
- (f) Prepaid Assets. All prepaid rent, utilities, deposits and other prepaid items.
- (g) Licenses and Permits. All government licenses, approvals, permits and authorizations (and any applications for the foregoing), to the extent they are assignable (the "**Permits**").
- (h) Intangible Assets. All goodwill, confidential information, telephone numbers, fax numbers and other intangible assets of any kind or nature (the "**Intangible Assets**").
- (i) Contracts. All of the Seller's rights, title and interest in and to the Designated Contracts, including all leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interest in real property that are Designated Contracts.
- (j) Warranties. All rights of the Seller to the warranties, express or implied, received from third parties to the extent related to the Purchased Assets.

- (k) Refund Claims. All refund claims, including insurance and Tax refunds.
- (l) Accounts Receivable. All accounts receivable.
- (m) Estate Claims. All claims or causes of action available to Seller including (i) avoidance actions under Chapter 5 of the Bankruptcy Code (including Sections 544, 545, 547, 548, 549, 550 and 553) or any similar actions under any other applicable law and (ii) claims and causes of action against (1) any of Seller's vendors, suppliers, employees, customers or trade creditors in regards or related to the Purchased Assets; (2) any of Seller's counterparties under any Designated Contracts and (3) any affiliates of any of the Persons listed in clauses (i) and (ii).

This Schedule may be updated by the Parties until the Closing.

SCHEDULE 2

EXCLUDED ASSETS

- 1 All Cash and cash equivalents up to the amounts set forth in the DIP Budget.
- 2 All rights under any life insurance policies owned by the Seller, including the cash surrender value of those policies, or relating to the Purchased Assets.
- 3 The Seller's minute books, and organizational expenses on the Seller's books.
- 4 Any customer owned inventory or property.
- 5 Personal property owned by employees.
- 6 The Seller's rights under this Agreement.
- 7 All rights, title and interest in and to any contracts, leases or purchase orders other than the Designated Contracts.
- 8 Employee pension benefit plans and employee welfare benefit plans maintained by the Seller and the assets thereof.

This Schedule may be updated by the Parties until the Closing.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

VIRIDOS, INC.,¹

Debtor.

Chapter 11

Case No. 25-10697 (CTG)

**Hearing Date: May 9, 2025 at 12:00 p.m.
Obj. Deadline: May 2, 2025 at 4:00 p.m.**

**NOTICE OF DEBTOR’S MOTION FOR ENTRY OF AN ORDER
(I) APPROVING THE BIDDING PROCEDURES IN CONNECTION
WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS,
(II) SCHEDULING AN AUCTION AND A SALE HEARING, (III) APPROVING
THE FORM AND MANNER OF NOTICE THEREOF, (IV) AUTHORIZING
THE DEBTOR TO ENTER INTO THE STALKING HORSE AGREEMENT,
(V) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT
OF CONTRACTS AND LEASES, AND (VI) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on April 17, 2025, Viridos, Inc., as debtor and debtor in possession (the “Debtor”) in the above captioned chapter 11 case, by and through its proposed undersigned counsel, filed the *Debtor’s Motion for Entry of an Order (i) Approving the Bidding Procedures in Connection with the Sale of Substantially all of the Debtor’s Assets, (ii) Scheduling an Auction and a Sale Hearing, (iii) Approving the Form and Manner of the Notice Thereof, (iv) Authorizing the Debtor to Enter into the Stalking Horse Agreement, (v) Approving Procedures for the Assumption and Assignment of Contracts and Lease, and (vi) Granting Related Relief* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware.

¹ The Debtor in this Chapter 11 Case and the last four digits of its U.S. taxpayer identification number is: Viridos, Inc. (3940). The Debtor’s corporate headquarters is located at: 11149 N. Torrey Pines Road, La Jolla, CA 92037.

PLEASE TAKE FURTHER NOTICE that responses or objections, if any, to the Motion must (i) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the District of Delaware, (ii) be filed with the Clerk of the Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **May 2, 2025 at 4:00 p.m. (ET)** (the “Objection Deadline”), and (iii) be served upon each of the following parties on or before the Objection Deadline: (i) the Debtor, Viridos, Inc., 11149 B. Torrey Pines Road, La Jolla, CA 92037 Attn: Eric Moellering (emoellering@viridos.com); (ii) proposed counsel to the Debtor, Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, DE, 19801 Attn: Matthew P. Ward (matthew.ward@wbd-us.com), Morgan L. Patterson (morgan.patterson@wbd-us.com) and Marcy J. McLaughlin Smith (marcy.smith@wbd-us.com), (iii) Office of The United States Trustee, 844 King Street, Suite 2207, Lock Box 35, Wilmington, Delaware 19801, Attn: Timothy J. Fox, Esq. (timothy.fox@usdoj.gov); (iv) counsel for Breakthrough Energy Ventures II, L.P. Attn: Dennis A. Meloro (dennis.meloro@gtlaw.com), Jeffrey M. Wolf (jeffrey.wolf@gtlaw.com), Brian E. Greer (greegb@gtlaw.com) and Charlie Liu (Charlie.liu@gtlaw.com) and (v) to the extent not listed herein, those parties requesting notice pursuant to Rule 2002 of the Bankruptcy Rules (the “Notice Parties”).

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Motion, if required, will be held before the Honorable Craig T. Goldblatt, United States Bankruptcy Judge for the District of Delaware, at the Bankruptcy Court, 824 North Market Street, 3rd Floor, Courtroom #7, Wilmington, Delaware 19801 on **May 9, 2025 at 12:00 P.M. (ET)**.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY MADE IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: April 17, 2025
Wilmington, Delaware

WOMBLE BOND DICKINSON (US) LLP

/s/ Morgan L. Patterson

Matthew P. Ward (DE Bar No. 4471)
Morgan L. Patterson (DE Bar No. 5388)
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Proposed Counsel to the Debtor