

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

In re:

Nuo Therapeutics, Inc.,

Debtor.

Chapter 11

Case No. 16-10192 (MFW)

Hearing Date: February 22, 2016 at 9:30 a.m. (ET)

Objection Deadline: February 16, 2016 at 12:00 p.m. (ET)

NOTICE OF MOTION OF THE DEBTOR AND DEBTOR IN POSSESSION PURSUANT TO SECTIONS 105(a), 363 AND 365 OF THE BANKRUPTCY CODE FOR AN ORDER (I)(A) APPROVING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS; (B) SCHEDULING THE RELATED AUCTION AND HEARING TO CONSIDER APPROVAL OF SALE; (C) APPROVING PROCEDURES RELATED TO THE ASSUMPTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF; (E) APPROVING EXPENSE REIMBURSEMENT; AND (F) GRANTING RELATED RELIEF; AND (II)(A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO; AND (C) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that on February 1, 2016, Nuo Therapeutics, Inc., the debtor and debtor-in-possession in the above-captioned case (the "Debtor"), filed the *Motion of the Debtor and Debtor In Possession Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code for an Order (I)(A) Approving Procedures In Connection With the Sale of Substantially All of the Debtor's Assets; (B) Scheduling the Related Auction and Hearing to Consider Approval of Sale; (C) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (D) Approving the Form and Manner of Notice Thereof; (E) Approving Expense Reimbursement; and (F) Granting Related Relief; and (II)(A) Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (C) Granting Related Relief* (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801 (the "Bankruptcy Court"). A copy of the Motion is being served concurrently herewith.

PLEASE TAKE FURTHER NOTICE that this Motion is scheduled to be heard by the Bankruptcy Court on **February 22, 2016 at 9:30 a.m. (prevailing Eastern Time)** before The Honorable Mary F. Walrath, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom #4, Wilmington, Delaware 19801 (the "Hearing").

PLEASE TAKE FURTHER NOTICE that responses or objections, if any, to the Motion shall be made in writing and shall set forth the basis thereof, and be (i) filed with this Court on or before **February 16, 2016 at 12:00 p.m. (prevailing Eastern Time)** (the “Objection Deadline”) and (ii) served upon (i) counsel to the Debtor: Dentons US LLP, 1301 K Street NW, Suite 600 – East Tower, Washington, DC 20006 (Attn: Sam J. Alberts (sam.alberts@dentons.com)), 303 Peachtree St. NE, Atlanta, GA 30308 (Attn: Bryan Bates (bryan.bates@dentons.com)), and Ashby & Geddes, PA, 500 Delaware Avenue, 8th Fl, Wilmington DE 19801 (Attn: William Bowden (wbowden@ashby-geddes.com)), (ii) the Debtor’s investment banker: Gordian Group, LLC, 950 Third Avenue, 17th Floor, New York, NY 10022 (Attn: Philip Engel (pe@gordiangroup.com) and Antonio Grassia (ajg@gordiangroup.com)), (iii) counsel to the Stalking Horse Purchaser: Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, New York 10022 (Attn: Jeff J. Friedman (jeff.friedman@kattenlaw.com)) and Connolly Gallagher, 1000 West Street, Suite 1400, Wilmington, DE 19801 (Attn.: Jeffrey C. Wisler (jwisler@connollygallagher.com)), (iv) the Office of the United States Trustee (the “U.S. Trustee”): U.S. Trustee, 844 King Street, Suite 2207, Lockbox #35, Wilmington, Delaware, 19801 (Fax: 302-573-6497) (Attn: Juliet M. Sarkessian (juliet.m.sarkessian@usdoj.gov)), and (v) counsel to any Official Committee, so as to be received by the Objection Deadline.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: February 1, 2016
Wilmington, Delaware

ASHBY & GEDDES, P.A.

/s/ Stacy L. Newman

William P. Bowden (No. 2553)
Karen B. Skomorucha Owens (No. 4759)
Stacy L. Newman (No. 5044)
500 Delaware Avenue, P.O. Box 1150
Wilmington, Delaware 19899-1150
Tel.: (302) 654-1888
Fax: (302) 654-2067
Email: wbowden@ashby-geddes.com
Email: kowens@ashby-geddes.com
Email: sneyman@ashby-geddes.com

-and-

DENTONS US LLP
Sam J. Alberts (admitted hac vice)
1301 K Street, NW
Suite 600. East Tower
Washington, D.C. 20005
Tel.: (202) 408-7004

Fax: (202) 408-6399
Email: sam.alberts@dentons.com

-and-

Bryan E. Bates (admitted pro hac vice)
303 Peachtree Street, NE
Suite 5300
Atlanta, Georgia 30308
Tel.: (404) 527-4073
Fax: (404) 527-4198
Email: bryan.bates@dentons.com

*Proposed Counsel for the Debtor and
Debtor-in-Possession*

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MOTION OF THE DEBTOR AND DEBTOR IN POSSESSION PURSUANT TO SECTIONS 105(a), 363 AND 365 OF THE BANKRUPTCY CODE FOR AN ORDER (I)(A) APPROVING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS; (B) SCHEDULING THE RELATED AUCTION AND HEARING TO CONSIDER APPROVAL OF SALE; (C) APPROVING PROCEDURES RELATED TO THE ASSUMPTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF; (E) APPROVING EXPENSE REIMBURSEMENT; AND (F) GRANTING RELATED RELIEF; AND (II)(A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO; AND (C) GRANTING RELATED RELIEF

The above-captioned debtor and debtor in possession (the "Debtor"), by its undersigned counsel, hereby moves the Court (the "Motion") for the entry of an order pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") for: (i) an order substantially in the proposed form attached hereto as **Exhibit C** (the "Bidding Procedures Order") (a) approving procedures in connection with the sale of substantially all of the Debtor's assets (the "Bidding Procedures", which are attached as Exhibit 1 to the Bidding Procedures Order); (b) scheduling the related auction and hearing to consider approval of such sale; (c)

approving procedures related to the assumption of certain executory contracts and unexpired leases; (d) approving the form and manner of notice thereof; and (e) approving expense reimbursement; and (ii) an order, substantially in the proposed form attached hereto as **Exhibit D** (the “Sale Order”) (a) authorizing the sale of such assets free and clear of liens, claims, encumbrances, and other interests, except as provided in a Purchase Agreement (defined herein) and (b) approving the assumption and assignment of certain of the Debtor’s executory contracts and unexpired leases related thereto; and (iii) granting relief related. In support of this Motion, the Debtor respectfully states the following:

Jurisdiction, Venue, and Predicates for Relief

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief requested herein are (i) sections 105(a), 363, and 365 of the Bankruptcy Code; (ii) Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014; and (iii) Local Rules 2002-1 and 6004-1.

3. Further, pursuant to Local Rule 9013-1(f), the Debtor hereby consents to the entry of a final judgment or order in connection with this Motion if it is determined that this Court cannot—absent the consent of the parties—enter such final judgment or order consistent with Article III of the United States Constitution.

Background

4. On January 26, 2016 (the “Petition Date”), the Debtor filed with the Court its voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing the above-captioned chapter 11 case. The Debtor continues to operate its business and manage its

property as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. No creditors' committee has been appointed in this case. No trustee or examiner has been appointed.

6. A full description of the Debtor's business operations, corporate structure, capital structure, and reasons for commencing this case is set forth in the Declaration of David E. Jordan in Support of First Day Motions (the "Jorden Declaration"), which was filed on the Petition Date and is incorporated herein by reference. Additional facts in support of the specific relief sought herein are set forth below.

7. The Debtor operates a biomedical company that pioneers leading-edge biodynamic therapies. The Debtor's flagship product—the Aurix™ System ("Aurix" or the "Aurix System")—is a biodynamic hematogel that uses a patient's own platelets and plasma as a catalyst for healing. It is the only therapy of its kind cleared by the U.S. Food and Drug Administration (the "FDA") for use on a variety of wound etiologies. The use of autologous biological therapies for tissue repair and regeneration is part of a transformative clinical strategy designed to improve long-term recovery in complex chronic conditions with significant unmet medical needs. In September 2007, the Debtor (then known as Cytomedix, Inc.) received clearance from the FDA for Aurix, which was formerly known as the AutoloGel™ System. In April 2010, the Debtor acquired the Angel® Whole Blood Separation System ("Angel" or the "Angel System") from Sorin Group USA, Inc. In February 2012, the Debtor acquired Aldagen, Inc. ("Aldagen"), a privately held cell-therapy company located in Durham, North Carolina.

8. The Debtor's current commercial offerings consist of point-of-care technologies for the safe and efficient separation of autologous blood and bone marrow to produce platelet-

based therapies or cell concentrates. Today, the Debtor has two distinct platelet-rich plasma devices, (i) the Aurix System for wound care and (ii) the Angel System for orthopedic markets. The Debtor's product sales are predominantly in the U.S. (approximately 84%) products through direct-sales representatives and the Angel cPRP system under a licensing agreement between the Debtor and Arthrex. Growth drivers in the U.S. include the treatment of chronic wounds with Aurix in the Veterans Affairs healthcare system and the Medicare population under a National Coverage Determination when registry data is collected under Centers for Medicare & Medicaid Service's Coverage with Evidence Development program, and the licensing agreement that allows Arthrex as a partner to promote the Angel System for uses other than wound care.

9. However, in recent years the Debtor has faced an increasingly competitive environment; indeed, the Aurix System is one of many therapies in the chronic-wound market. Consequently, the market has been slow to accept new products like Aurix. The Angel System faces similar challenges from a number of larger companies with established market share and greater resources than the Debtor. Because of this intense competition, the Debtor's revenues have been insufficient to cover operating expenses. In August 2015, the Debtor attempted to implement a realignment plan (the "Realignment Plan") with the goal of preserving and maximizing the value of the Debtor's existing assets. The Realignment Plan, among other things, eliminated approximately 30% of the Debtor's workforce and otherwise preserved cash and cash equivalents to finance the Debtor's future operations and support the Debtor's revised business objectives.

10. Unfortunately, however, the Debtor has continued to experience losses following the implementation of the Realignment Plan and now faces severe liquidity pressures that have created difficulty in servicing its existing debt, obtaining additional or replacement financing,

and funding its ongoing operations. The Debtor's deteriorating financial condition has left the Debtor with no choice but to seek relief under chapter 11 of the Bankruptcy Code. Thus, after careful evaluation and further negotiation with the Debtor's stakeholders (including affiliates of Deerfield Management Company, L.P.), the Debtor determined—in its reasonable business judgment—that an expedited sale of its business is essential to not only preserve the underlying value of its operations by providing customers and employees with a clear path forward, but also to maximize the value of the Debtor's assets for the benefit of the Debtor's creditors.

11. Before filing this chapter 11 case, the Debtor undertook a focused marketing process to explore a broad range of strategic financing and sale options for the Debtor and its various business units, focusing on (i) Aurix and (ii) Angel business units. After careful evaluation and further negotiation with the Debtor's stakeholders, it was determined that the structure and financial support obtained through securing debtor-in-possession financing as well as the ability of the Debtor to conduct an auction in this Court and subsequently consummate a sale transaction, presented the best option for the Debtor.

12. The Debtor has determined, after the exercise of due diligence and in consultation with its investment banker, Gordian Group, LLC ("Gordian"), that maximizing the value of the Debtor's estate is best accomplished through the sale, free and clear of liabilities, of substantially all of its assets (as described more fully herein, the "Offered Assets").

13. The Debtor is party to that certain Facility Agreement dated as of March 31, 2014 (the "Facility Agreement") with (i) Deerfield Private Design Fund II, L.P.; (ii) Deerfield Private Design International II, L.P.; (iii) Deerfield Special Situations Fund, L.P.; and (iv) Deerfield Special Situations International Master Fund, L.P. The Debtor was advised that on January 1, 2015, Deerfield Special Situations International Master Fund, L.P. transferred its assets

(including its rights and liabilities under the Facility Agreement) to Deerfield Special Situations Fund, L.P. (Deerfield Private Design Fund II, L.P., Deerfield Private Design International II, L.P. and Deerfield Special Situations Fund, L.P. in their capacity as lenders are collectively, the “Lenders” and in their capacity as purchasers under the Stalking Horse Agreement (as defined below) are collectively, the “Stalking Horse Purchaser”.) Pursuant to the Facility Agreement, the Debtor owes the Lenders principal and accrued interest as of the Petition Date in the approximate amount of \$38.3 million plus related fees and expenses incurred in connection with the Facility Agreement (the “Claim Amount”). In addition, the Lenders have agreed to provide DIP financing to the Debtor in an amount up to \$9.0 million (inclusive of \$4.5 million to roll-up and refinance indebtedness under the Facility Agreement) (the “DIP Financing”), pursuant to the terms and conditions in that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement and related documents (the “DIP Financing Agreement”), subject to approval of the Court. A motion to approve the DIP Financing and the DIP Financing Agreement was filed with the Court on the Petition Date and the Court approved the DIP Financing on an interim basis pursuant to an order dated January 28, 2016.

14. The Debtor has been negotiating with and intends to enter into an asset purchase agreement with the Stalking Horse Purchaser, pursuant to which the Stalking Horse Purchaser will acquire the Offered Assets on the terms and conditions specified therein (together with the schedules and related documents thereto, the “Stalking Horse Agreement”). The Stalking Horse Agreement is being finalized and is anticipated to be executed by the Stalking Horse Purchaser prior to the hearing to consider entry of the Bidding Procedures Order (the “Bid Procedures Hearing”) scheduled for February 22, 2016. The latest draft of the Stalking Horse Agreement is

attached hereto as **Exhibit B.**¹ A final version of the Stalking Horse Agreement will be filed with the Court and placed in the data room set up by the Debtor for prospective bidders no later than 2 days before the Bid Procedures Hearing.

15. The sale transaction pursuant to the Stalking Horse Agreement is subject to competitive bidding as set forth herein, the Bidding Procedures and the Bidding Procedures Order. Pursuant to the terms of the Stalking Horse Agreement, the Stalking Horse Purchaser has agreed to purchase the Offered Assets for the assumption of certain liabilities and an amount equal to \$13,000,000.00 (the “Stalking Horse Purchase Price”), consisting of (i) \$7,000,000.00 for the Offered Assets of the Angel Business (defined herein) and \$6,000,000.00 for the Offered Assets of the Aurix Business (defined herein), not in cash, but in the form of a reduction in the Claim Amount pursuant to Section 363(k) of the Bankruptcy Code.² The Stalking Horse Purchaser, in making this offer, has relied on promises by the Debtor to seek the Court’s approval of reimbursement of the reasonable fees, costs, and expenses incurred by the Stalking Horse Purchaser and its affiliates in connection with the transactions contemplated by the Stalking Horse Agreement through the date of termination, subject to a cap of \$300,000 (the “Expense Reimbursement”), should another bidder be the Successful Bidder (as defined below). The Debtor, in the exercise of its business judgment, believes that the Expense Reimbursement is a necessary inducement for the Stalking Horse Purchaser, and thus, necessary to establish a “floor” for the sale of the Offered Assets and ultimately encourage competitive bidding and promote the realization of the highest value for the Offered Assets.

¹ Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Stalking Horse Agreement.

² It is an event of default under the DIP Financing Agreement if the Stalking Horse Purchaser is not permitted to credit bid at least \$15.55 million in connection with the Sale, subject to the rights of parties in interest to challenge the credit bid rights of the Stalking Horse Purchaser in accordance with the terms of the order approving the DIP Financing. Accordingly, the Debtor seeks such authorization from the Court in the Bidding Procedures Order.

16. The Debtor believes that the marketing and sale of the Offered Assets pursuant to the Bid Procedures presents the best opportunity to maximize the value of the Offered Assets for all interested parties. Moreover, the Debtor believes the rapid transition to new ownership will maximize the value of the Offered Assets.

Relief Requested³

17. First, the Debtor requests entry of the Bidding Procedures Order: (i) approving the Bidding Procedures for (a) submitting bids for any or all of the Offered Assets and (b) conducting an auction (the "Auction") with respect to the Offered Assets in the event that the Debtor receives at least one bid in addition to that submitted by the Stalking Horse Purchaser; (ii) scheduling the Auction for **March 9, 2016 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Dentons US LLP, 1221 Avenue of the Americas, New York, NY 10020, or at such other place, date, and time as may be designated by the Debtor; (iii) scheduling a hearing to approve any sale of Offered Assets with respect to any bid(s) accepted by the Debtor on or before **March 11, 2016** (the "Sale Hearing"); (iv) approving procedures (the "Cure Procedures"), as set forth below, for the assumption and assignment of certain of the Debtor's executory contracts (the "Contracts") and unexpired leases (the "Leases") to any purchaser(s) of the Offered Assets, and to resolve any objections thereto; and (v) approving (a) the form of notice of the Auction and Sale (the "Procedures Notice"), attached to the Bid Procedures Order as Exhibit 3, to be served on the Procedures Notice Parties (defined herein) and (b) the form of notice to parties holding Contracts and Leases likely to be assumed and assigned in connection with the sale of Offered Assets, in the form attached to the Bid Procedures Order as Exhibit 4 (the "Cure Notice").

³ In compliance with Local Rule 6004-1 and for the convenience of the reader, the salient terms of the transaction as currently set forth in the Stalking Horse Agreement have been summarized and are attached hereto as **Exhibit A**.

18. Second, the Debtor requests entry of the Sale Order, pursuant to sections 105, 363, and 365 of the Bankruptcy Code: (i) approving the sale of the Offered Assets to the purchaser(s) (the “Sale”), free and clear of all liens, claims, encumbrances, and other interests, except as provided in the Stalking Horse Agreement (with all liens, claims, encumbrances and other interests to attach to the Sale proceeds with the same validity and in the same order of priority as they attached to the Offered Assets prior to the Sale), and (ii) authorizing the Debtor to consummate the Sale and all documents, agreements, and contracts executed in conjunction therewith.

I. PROPOSED BID AND SALE PROCEDURES

Assets to be Sold

19. As noted above, the Debtor seeks to complete the Sale of the Offered Assets, which fall into two broad business units. There are Offered Assets related to the Aurix business (the “Aurix Business”) and Offered Assets related to the Angel business (the “Angel Business”).

Summary of Proposed Bidding Procedures

20. Except as otherwise provided in the Purchase Agreement, all of the Debtor’s rights, title and interest in all of the Offered Assets shall be sold free and clear of any liens, security interests, claims, charges or encumbrances in accordance with section 363 of the Bankruptcy Code. The Debtor proposes that any such liens, security interests, claims, charges or encumbrances shall attach to the amounts payable to the Debtor’s estate resulting from the Sale, net of any transaction fees (the “Sale Proceeds”), in the same order of priority and subject to the rights, claims, defenses, and objections, if any, of all parties with respect thereto, subject to any further order of the Court.

21. In order to ensure that the Debtor receives the maximum value for the Offered Assets, the Stalking Horse Agreement is subject to higher or better offers, and, as such, the

Stalking Horse Agreement will serve as the “stalking horse” bid for the Offered Assets. The Bidding Procedures allow Qualified Bidders (defined below) to bid to purchase all or a portion of the Offered Assets either (i) in a sale pursuant to Section 363 of the Bankruptcy Code or (ii) in the form of a recapitalization transaction effectuated through a plan of reorganization (a “Chapter 11 Plan Bid”). For any Chapter 11 Plan Bid to be a Qualified Bid, as currently contemplated, it must include a binding commitment of the Qualified Bidder to provide the necessary financing to enable the Debtor to confirm and consummate a chapter 11 plan and provide for the repayment, in full in cash, of the DIP Financing provided by the Lenders, upon maturity (including by acceleration in the case of an event of default) in accordance with the DIP Financing Agreement.

A. Provisions Governing Qualifications of Bidders

22. Unless otherwise ordered by the Court, in order to participate in the bidding process, prior to the Bid Deadline (defined herein), each person, other than the Stalking Horse Purchaser, who wishes to participate in the bidding process (a “Potential Bidder”) must deliver the following to the Notice Parties (defined herein):

- (a) a written disclosure of the identity of each entity that will be bidding for the Offered Assets or otherwise participating in connection with such bid; and
- (b) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtor to a Potential Bidder) in form and substance satisfactory to the Debtor and which shall inure to the benefit of any purchaser of the Offered Assets; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.

23. A Potential Bidder that delivers the documents and information described above and that the Debtor determines in its reasonable business judgment, after consultation with its advisors, the Lenders and any official committee appointed in this case (“Official Committee”), is likely (based on availability of financing, experience and other considerations) to be able to

consummate the sale, will be deemed a “Qualified Bidder.” The Debtor will limit access to due diligence to those parties it believes, in the exercise of its reasonable judgment are pursuing the transaction in good faith.

24. As promptly as practicable after a Potential Bidder delivers all of the materials required above, the Debtor will determine and will notify the Potential Bidder if such Potential Bidder is a Qualified Bidder.

B. Due Diligence

25. The Debtor will afford any Qualified Bidder such due diligence access or additional information as the Debtor, in consultation with its advisors, deems appropriate, in its reasonable discretion. The due diligence period shall extend through and including the Auction date; provided, however, that any Qualified Bid (defined herein) submitted shall be irrevocable until the selection of the Successful Bidder (defined herein) and any Back-Up Bidder (defined herein).

C. Provisions Governing Qualified Bids

A bid submitted will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder and complies with all of the following (a “Qualified Bid”):

- a) it states that the applicable Qualified Bidder offers to purchase any or all of the Offered Assets either (i) in cash or (ii) through a recapitalization transaction effectuated through a plan of reorganization;
- b) it identifies with particularity which one or more of the following asset pools that the Qualified Bidder is offering to purchase: (i) Lot A – Aurix, (ii) Lot B – Angel, (iii) Lot C – Aldagen, (iv) Lot D – Aurix and Angel, and/or (v) Lot E – all Offered Assets;
- c) it includes a signed writing that the Qualified Bidder’s offer is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder, provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder then (x) if the Successful Bid concerns an asset sale, the offer shall remain irrevocable until the earlier of (i) the closing of the transaction with the Successful Bidder and (ii) the date that is fifteen (15) business days after entry of the Sale Order with respect to the Successful Bidder and sixteen (16) business days after entry of the Sale

Order with respect to the Back-Up Bidder and (y) if the Successful Bid is a Chapter 11 Plan Bid and such bidder is the Successful Bidder, its offer shall remain irrevocable until the effective date of such plan of reorganization (For the avoidance of doubt, there will be no Back-Up Bidder if the Successful Bid is a Chapter 11 Plan Bid.);

- d) confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;
- e) it sets forth each regulatory and third-party approval required for the Qualified Bidder to consummate the transaction and the time period within which the Qualified Bidder expects to receive such approvals;
- f) it includes a duly authorized and executed copy of a purchase or acquisition agreement in the form of the Stalking Horse Agreement (a "Purchase Agreement"), including the purchase price for the Offered Assets expressed in U.S. Dollars, or, in the case of a Chapter 11 Plan Bid, the amount of the capital investment contemplated by such bid (the "Purchase Price"), together with all exhibits and schedules thereto, together with copies marked ("Marked Agreement") to show any amendments and modifications to the Stalking Horse Agreement and the proposed order to approve the sale by the Court;
- g) it includes written evidence of a firm, irrevocable commitment for financing (and in the case of a Chapter 11 Plan Bid for Plan Bid DIP Financing), or other evidence of ability to consummate the proposed transaction, that will allow the Debtor to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement;
- h) if the bid is for all or substantially all of the Offered Assets (or in the case of a Chapter 11 Plan Bid, a bid for the equity of the reorganized Debtors), it must have a value to the Debtor, in the Debtor's exercise of its reasonable business judgment, after consultation with its advisors, the Lenders and any Official Committee, that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement plus the amount of the Expense Reimbursement and \$100,000. If the bid is for less than all or substantially all of the Offered Assets to be acquired by the Stalking Horse Bidder, it must have a value to the Debtor, in the Debtor's exercise of its reasonable business judgment, after consultation with its advisors, the Lenders and any Official Committee, that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement for the Offered Assets sought in the bid, plus and the Expense Reimbursement and \$100,000; provided, however, that the Debtor, in consultation with its advisors, the Lenders and any Official Committee, may accept a single Qualified Bid or multiple bids for non-overlapping material portions of the Offered Assets such that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid;

- i) it identifies with particularity which executory contracts and unexpired leases the Qualified Bidder wishes to assume and provides for the Qualified Bidder to pay related cure costs;
- j) it contains sufficient information concerning the Qualified Bidder's ability to provide adequate assurance of performance with respect to executory contracts and unexpired leases;
- k) it includes an acknowledgement and representation that the bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Offered Assets prior to making its offer; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Offered Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Offered Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;
- l) it includes evidence, in form and substance reasonably satisfactory to the Debtor, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Purchase Agreement;
- m) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtor), certified check or such other form acceptable to the Debtor, payable to the order of the Debtor (or such other party as the Debtor may determine) in an amount equal to ten percent (10%) of the Purchase Price which deposit shall be forfeited if such bidder is the Successful Bidder and breaches its obligation to close;
- n) it contains a detailed description of how the Qualified Bidder intends to treat current employees of the Debtor;
- o) it contains such other information reasonably requested by the Debtor; and
- p) it is received prior to the Bid Deadline.

26. The Debtor, in consultation with the Lenders and any Official Committee, may qualify any bid as a Qualified Bid that meets the foregoing requirements. Notwithstanding the foregoing, the Stalking Horse Purchaser is deemed a Qualified Bidder and the Stalking Horse Agreement is deemed a Qualified Bid, for all purposes in connection with the Bidding Process, the Auction, and the Sale.

27. The Debtor shall notify the Stalking Horse Purchaser and all Qualified Bidders in writing as to whether or not any bids constitute Qualified Bids (and with respect to each Qualified Bidder that submitted a bid as to whether such Qualified Bidder's bid constitutes a Qualified Bid) and provide copies of the Purchase Agreements relating to any such Qualified Bid to the Stalking Horse Purchaser and such Qualified Bidders no later than one (1) business day following the expiration of the Bid Deadline.

D. Bid Deadline

28. A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the "Notice Parties"): (i) counsel to the Debtor: Dentons US LLP, 1301 K Street NW, Suite 600 – East Tower, Washington, DC 20006 (Attn: Sam J. Alberts (sam.alberts@dentons.com)), 303 Peachtree St. NE, Atlanta, GA 30308 (Attn: Bryan Bates (bryan.bates@dentons.com)), and Ashby & Geddes, PA, 500 Delaware Avenue, 8th Fl, Wilmington DE 19801 (Attn: William Bowden (wbowden@ashby-geddes.com)), (ii) the Debtor's investment banker: Gordian Group, LLC, 950 Third Avenue, 17th Floor, New York, NY 10022 (Attn: Philip Engel (pe@gordiangroup.com) and Antonio Grassia (ajg@gordiangroup.com)), (iii) counsel to the Stalking Horse Purchaser: Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, New York 10022 (Attn: Jeff J. Friedman (jeff.friedman@kattenlaw.com)) and Connolly Gallagher, 1000 West Street, Suite 1400, Wilmington, DE 19801 (Attn.: Jeffrey C. Wisler (jwisler@connollygallagher.com)), (iv) the Office of the United States Trustee (the "U.S. Trustee"): U.S. Trustee, 844 King Street, Suite 2207, Lockbox #35, Wilmington, Delaware, 19801 (Fax: 302-573-6497) (Attn: Juliet M. Sarkessian (juliet.m.sarkessian@usdoj.gov)), and (v) counsel to any Official Committee, so as to be received by the Notice Parties not later than **March 7, 2016 at 4:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline").

E. Credit Bidding

29. The Stalking Horse Purchaser holds a security interest in the Offered Assets and has submitted a credit bid for the Offered Assets. It may submit additional credit bids for the Offered Assets as it deems necessary and desirable subject to the limit fixed by the Court. Accordingly, the Debtor seeks the Court's allowance of credit bidding by the Stalking Horse Purchaser in connection with the Sale pursuant to Bankruptcy Code section 363(k).

F. Evaluation of Competing Bids

30. A Qualified Bid will be valued based upon several factors including, without limitation, (1) the amount of such bid, (2) the risks and timing associated with consummating such bid, (3) any proposed revisions to the form of Stalking Horse Agreement, and (4) any other factors deemed relevant by the Debtor in its reasonable discretion.

G. No Qualified Bids

31. If the Debtor does not receive any Qualified Bids other than the Stalking Horse Agreement, the Debtor will not hold an auction and the Stalking Horse Purchaser will be named the Successful Bidder for the Offered Assets.

H. Auction Process

32. If the Debtor receives one or more Qualified Bids in addition to the Stalking Horse Agreement, the Debtor will conduct the Auction of the Offered Assets, which shall be transcribed at **March 9, 2016 at 10:00 a.m. (prevailing Eastern Time)**, at the offices of Dentons US LLP, 1221 Avenue of the Americas, New York, NY 10020, or such other location as shall be timely communicated to all entities entitled to attend the Auction. The Auction shall run in accordance with the following procedures:

- a) only the Debtor, the Stalking Horse Purchaser, Qualified Bidders who have timely submitted a Qualified Bid, and any Official Committee, and their respective advisors may attend the Auction;

- b) only the Stalking Horse Purchaser and the Qualified Bidders who have timely submitted a Qualified Bid will be entitled to make any subsequent bids at the Auction;
- c) each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;
- d) at least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtor whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the date of the selection of the Successful Bidder and the Back-Up Bidder (defined below) at the conclusion of the Auction. At least one (1) business day prior to the Auction, the Debtor will provide copies of the Qualified Bid or combination of Qualified Bids which the Debtor believes in its reasonable discretion is the highest or otherwise best offer (the "Starting Bid") to all Qualified Bidders;
- e) all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (defined herein) at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction; provided that all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction in person;
- f) the Debtor, after consultation with its advisors, the Lenders and any Official Committee, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules are (i) not inconsistent with the Bidding Procedures, the Bankruptcy Code, or any order of the Court entered in connection herewith, and (ii) disclosed to each Qualified Bidder at the Auction; and
- g) bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each a "Subsequent Bid") providing a net value to the Debtor's estate of at least an additional \$100,000 above the prior bid. After the first round of bidding and between each subsequent round of bidding, the Debtor, after consultation with the Lenders and any Official Committee, shall announce the bid that it believes to be the highest or otherwise better offer (the "Leading Bid"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid. Qualified Bidders will not have the opportunity to pass. Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by Subsequent Bids, the Debtor will give effect to the Expense Reimbursement payable to the Stalking Horse Purchaser as well as any additional liabilities to be assumed by the Stalking Horse Purchaser or a Qualified Bidder, as applicable, and any additional costs which may be imposed on the Debtor.

I. Selection of Successful Bid

33. Prior to the conclusion of the Auction, the Debtor, in consultation with its advisors, the Lenders and any Official Committee, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer or offers are the highest or otherwise best from among the Qualified Bidders submitted at the Auction (one or more such bids, collectively the “Successful Bid” and the bidder(s) making such bid, collectively, the “Successful Bidder”), and communicate to the Qualified Bidders the identity of the Successful Bidder and the details of the Successful Bid. The Successful Bid may consist of a single Qualified Bid or multiple bids. The determination of the Successful Bid by the Debtor at the conclusion of the Auction shall be final, subject only to approval by the Court.

34. Unless otherwise agreed to by the Debtor and the Successful Bidder, within two (2) business days after the conclusion of the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made. Within one (1) business day following the conclusion of the Auction, the Debtor shall file a notice identifying the Successful Bidder with the Court and shall serve such notice by fax, email or overnight mail to all counterparties whose contracts are to be assumed and assigned.

35. The Debtor will sell the Offered Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Court at the Sale Hearing. In the event that the Successful Bid is a Chapter 11 Plan Bid, the Sale Hearing will not go forward and the Debtor will seek to prosecute confirmation of the plan of reorganization proposed by such Chapter 11 Plan Bid.

J. Return of Deposits

36. All deposits shall be returned to each bidder not selected by the Debtor as the Successful Bidder or the Back-Up Bidder (defined herein) no later than five (5) business days following the conclusion of the Auction.

K. Back-Up Bidder

37. If an Auction is conducted and the Successful Bid is not a Chapter 11 Plan Bid, the Qualified Bidder or Qualified Bidders with the next highest or otherwise best Qualified Bid, as determined by the Debtor in the exercise of its business judgment, at the Auction shall be required to serve as a back-up bidder (the "Back-Up Bidder") and keep such bid open and irrevocable until sixteen (16) business days after the Sale Hearing. If the Successful Bidder fails to consummate the approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtor will be authorized, but not required, to consummate the sale with the Back-Up Bidder without further order of the Court. The Stalking Horse Purchaser, may, but is not required to, be a Back-Up Bidder. For the avoidance of doubt, there will be no Back-Up Bidder if the Successful Bid is a Chapter 11 Plan Bid.

L. Expense Reimbursement

38. In recognition of its expenditure of time, energy, and resources, the Debtor has agreed that if the Stalking Horse Purchaser is not the Successful Bidder, the Debtor will pay the Stalking Horse Purchaser the Expense Reimbursement, subject to a cap of \$300,000. The Stalking Horse Purchaser shall provide reasonable documentation of the Expense Reimbursement to the Debtor and the U.S. Trustee and any Official Committee. The Expense Reimbursement shall be payable at closing of the sale to the Successful Bidder from the proceeds of sale.

39. The Debtor has further agreed that its obligation to pay the Expense Reimbursement pursuant to the Stalking Horse Agreement shall survive termination of the Stalking Horse Agreement, shall, to the extent owed by the Debtor, constitute an administrative expense claim under section 503(b) of the Bankruptcy Code and shall be payable at closing of the sale to a Successful Bidder notwithstanding section 507(a) of the Bankruptcy Code.

M. Sale Hearing

40. The Debtor will seek entry of the Sale Order from the Court at the Sale Hearing to begin on **March 11, 2016** (or at another date and time convenient to the Court) to approve and authorize the sale transaction to the Successful Bidder on terms and conditions determined in accordance with the Bidding Procedures. If, however, the Successful Bid is a Chapter 11 Plan Bid, the Sale Hearing will not go forward and the Debtor will seek to prosecute confirmation of the plan of reorganization proposed by such Chapter 11 Plan Bid.

Notice of Sale Hearing

41. As stated above, the Debtor requests that this Court schedule the Sale Hearing for March 11, 2016. The Debtor proposes that any objections to the Sale (other than an Assumption Objection (defined herein) which shall be governed by the procedures set forth below) (a "Sale

Objection”), must (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) set forth the specific basis for the Sale Objection; (iv) be filed with the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, **on or before 4:00 p.m. (prevailing Eastern Time) on March 4, 2016** (the “Sale Objection Deadline”) and (v) be served, so as to be actually received on or before the Sale Objection Deadline, upon the Notice Parties. If a Sale Objection is not filed and served on or before the Sale Objection Deadline, the Debtor requests that the objecting party be barred from objecting to the Sale and not be heard at the Sale Hearing, and this Court may enter the Sale Order without further notice to such party.

42. The Debtor also requests that the Court approve the form of the Procedures Notice, substantially in the form of Exhibit 3 to the Bidding Procedures Order. The Debtor will serve a copy of the Procedures Notice on the following parties: (i) the U.S. Trustee, (ii) the Official Committee, if any, (iii) any parties requesting notices in this case pursuant to Bankruptcy Rule 2002, (iv) counsel to the Stalking Horse Purchaser, (v) all Potential Bidders, (vi) all parties known by the Debtor to assert a lien on any of the Offered Assets, (vii) all persons known or reasonably believed to have asserted an interest in any of the Offered Assets, (viii) all non-Debtor parties to any assumed contracts and leases, (ix) the Office of the United States Attorney for the District of Delaware, (x) the Office of the Attorney General in each state in which the Debtor operates, (xi) the Office of the Secretary of State in each state in which the Debtor operates or is organized, (xii) all taxing authorities having jurisdiction over any of the Offered Assets, including the IRS, and (xiii) all environmental authorities having jurisdiction over any of the Offered Assets (collectively with the parties specified in this paragraph, the “Procedures Notice Parties”).

43. The Debtor proposes to file with the Court and serve the Procedures Notice within two (2) business days following entry of the Bidding Procedures Order, by first-class mail, postage prepaid on the Procedures Notice Parties. The Procedures Notice provides that any party that has not received a copy of the Motion or the Bidding Procedures Order that wishes to obtain a copy of the Motion or the Bidding Procedures Order, including all exhibits thereto, may make such a request in writing to Dentons US LLP, Attn: James A. Copeland, 1221 Avenue of the Americas, New York, New York 10020 or by emailing james.copeland@dentons.com.

44. The Debtor shall also post the Procedures Notice and the Bidding Procedures Order on the website of its claims and noticing agent, Epiq Bankruptcy Solutions, LLC, at <http://dm.epiq11.com/NUO>.

45. In the event that the Successful Bid is determined to be a Chapter 11 Plan Bid, the Debtor will as soon as possible after such determination, file and serve a notice on the Procedures Notices Parties indicating that the Sale Hearing will not go forward and that the Debtor will seek to prosecute confirmation of the plan of reorganization proposed by such Chapter 11 Plan Bid.

46. The Debtor submits that the foregoing notices comply fully with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Bidding Procedures, Auction and Sale, and Sale Hearing to the Debtor's creditors and other parties in interests as well as to those who have expressed an interest or are likely to express an interest in bidding on the Offered Assets. Based on the foregoing, the Debtor respectfully requests that this Court approve these proposed notice procedures.

Sale Hearing

47. At the Sale Hearing, the Debtor will seek Court approval of the Sale to the Successful Bidder, free and clear of all liens, claims, interests and encumbrances pursuant to

section 363 of the Bankruptcy Code, with all liens, claims, interests and encumbrances to attach to the Sale Proceeds with the same validity and in the same order of priority as they attached to the Offered Assets prior to the Sale, including the assumption by the Debtor and assignment to the Successful Bidder of the Assumed Executory Contracts and Leases pursuant to section 365 of the Bankruptcy Code. The Debtor will submit and present additional evidence, as necessary, at the Sale Hearing demonstrating that the Sale is fair, reasonable and in the best interest of the Debtor's estate and all interested parties, and satisfies the standards necessary to approve a sale of substantially all of a debtor's assets articulated by the Court of Appeals for the Third Circuit in *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986). If, however, the Successful Bid is a Chapter 11 Plan Bid, the Sale Hearing will not go forward and the Debtor will seek to prosecute confirmation of the plan of reorganization proposed by such Chapter 11 Plan Bid.

Procedures for the Assumption and Assignment of Assigned Contracts and Leases

48. As noted above, the Debtor will seek to assume and assign certain Contracts and Leases to be identified on schedules to the Purchase Agreement other than those agreements excluded by the Successful Bidder pursuant to such bidder's Purchase Agreement (collectively, the "Assumed Executory Contracts").

49. At least initially, the Assumed Executory Contracts will be those Contracts and Leases that the Debtor believes may be assumed and assigned as part of the orderly transfer of the Offered Assets. The Successful Bidder may choose to exclude (or to add) certain Contracts or Leases to the list of Assumed Executory Contracts, subject to further notice.

50. In the interim, the Debtor will file with the Court and serve the Cure Notice, substantially in the form of Exhibit 4 to the Bid Procedures Order, (along with a copy of this Motion) upon each counterparty to the Assumed Executory Contracts by no later than **February**

23, 2016. The Cure Notice will state the date, time and place of the Sale Hearing as well as the date by which any objection to the assumption and assignment of Assumed Executory Contracts (including the Cure Amount (defined below) must be filed and served. The Cure Notice also will identify the amounts, if any, that the Debtor believes are owed to each counterparty to an Assumed Executory Contract in order to cure any defaults that exist under such contract (the “Cure Amounts”). To the extent there is a contract added to the list of contracts to be assumed by the Successful Bidder pursuant to the Successful Bidder’s Purchase Agreement selected at the Auction, this Motion constitutes a separate motion to assume and assign that contract to the Successful Bidder pursuant to section 365 of the Bankruptcy Code; each such contract will be listed on an exhibit to the Successful Bidder’s Purchase Agreement, and will be given a separate Cure Notice filed and served by overnight delivery within five (5) business days of the conclusion of the Auction and announcement of the Successful Bidder.

51. The inclusion of a contract, lease, or other agreement on the Cure Notice shall not constitute or be deemed a determination or admission by the Debtor and its estate or any other party in interest that such contract, lease, or other agreement is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights with respect thereto shall be reserved.

52. If a Contract or Lease is assumed and assigned pursuant to Court Order, then unless the Assumed Executory Contract counterparty properly files and serves an objection to the Cure Amount contained in the Cure Notice by the Assumption Objection Deadline (defined below), the Assumed Executory Contract counterparty will receive at the time of the Closing of the sale (or as soon as reasonably practicable thereafter), the Cure Amount as set forth in the Cure Notice, if any. If an objection is filed by a counterparty to an Assumed Executory Contract,

the Debtor proposes that such objection must set forth a specific default in the executory contract or unexpired lease, claim a specific monetary amount that differs from the amount, if any, specified by the Debtor in the Cure Notice, and set forth any reason why the counterparty believes the executory contract or unexpired lease cannot be assumed and assigned to the Successful Bidder.

53. If any counterparty objects for any reason to the assumption and assignment of an Assumed Executory Contract (including to a Cure Amount) (a “Assumption Objection”), the Debtor proposes that the counterparty must file the objection and serve it so as to be actually received on or before the Assumption Objection Deadline (defined below), upon the Notice Parties by no later than (i) **4:00 p.m. (prevailing Eastern Time) on March 4, 2016** or (ii) the date otherwise specified in the Cure Notice (or, alternatively, the date set forth in the motion to assume such Assumed Executory Contract if such contract is to be assumed and assigned after the Auction) (the “Assumption Objection Deadline”), provided, however, if the Successful Bidder is not the Stalking Horse Purchaser, any counterparty may raise at the Sale Hearing an objection to the assumption and assignment of the Assumed Executory Contract solely with respect to the Successful Bidder’s ability to provide adequate assurance of future performance under the Assumed Executory Contract. After receipt of an Assumption Objection, the Debtor will attempt to reconcile any differences in the Cure Amount or otherwise resolve the objection with the counterparty. In the event that the Debtor and the counterparty cannot resolve an Assumption Objection, and the Court does not otherwise make a determination at the Sale Hearing regarding an Assumption Objection related to a Cure Amount, the Debtor shall segregate from the sale proceeds any disputed Cure Amounts pending the resolution of any such Cure Amount disputes by the Court or mutual agreement of the parties.

54. The Successful Bidder shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under section 365(b) of the Bankruptcy Code in connection with the proposed assignment of any Assumed Executory Contract, and the failure to provide adequate assurance of future performance to any counterparty to any Assumed Executory Contract shall not excuse the Successful Bidder from performance of any and all of its obligations pursuant to the Successful Bidder's Purchase Agreement. The Debtor proposes that the Court make its determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to section 365(b) of the Bankruptcy Code at the Sale Hearing. Cure Amounts disputed by any counterparty will be resolved by the Court at the Sale Hearing or such later date as may be agreed to or ordered by the Court.

55. Except to the extent otherwise provided in the Successful Bidder's Purchase Agreement, the Debtor and the Debtor's estate shall be relieved of all liability accruing or arising after the assumption and assignment of the Assumed Executory Contracts pursuant to section 365(k) of the Bankruptcy Code.

II. APPLICABLE AUTHORITY

A. **The Sale of the Offered Assets is Authorized by Section 363 as a Sound Exercise of the Debtor's Business Judgment**

56. In accordance with Bankruptcy Rule 6004, sales of property rights outside the ordinary course of business may be by private sale or public auction. The Debtor has determined that the Sale of the Offered Assets by public auction will enable it to obtain the highest and best offer for these assets (thereby maximizing the value of the estate) and is in the best interests of the Debtor's creditors. In particular, the Stalking Horse Agreement is the result of comprehensive arms'-length negotiations for the Sale of the Offered Assets and the Sale

pursuant to the terms of the Stalking Horse Agreement, subject to higher or otherwise better offers at the Auction, will provide a greater recovery for the Debtor's creditors than would be provided by any other existing alternative.

57. Section 363 of the Bankruptcy Code provides that a 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). 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 the estate, a sale of a debtor's assets should be authorized if a sound business purpose exists for doing so. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (2d Cir. 1986); *In re Titusville Country Club*, 128 B.R. 396 (W.D. Pa. 1991); *In re Delaware & Hudson Ry. Co.*, 124 BR. 169, 176 D. Del. 1991); *see also Official Committee of Unsecured Creditors v. The LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

58. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); *Integrated Resources*, 147 B.R. at 659 ("It is a well-established principle of bankruptcy law that the. . . [trustee's] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.") (quoting *In re Atlanta Packaging Prods., Inc.*, 99 BR. 124, 130 (Bankr. N.D. Ga. 1988)). As long as the sale appears to enhance a

debtor's estate, court approval of a trustee's decision to sell should only be withheld if the trustee's judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code. *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 255 (N.D. Tex. 2005); *In re Lajijani*, 325 B.R. 282, 289 (9th Cir. B.A.P. 2005); *In re WPRV-TV, Inc.*, 143 B.R. 315, 319 (D.P.R. 1991) ("The trustee has ample discretion to administer the estate, including authority to conduct public or private sales of estate property. Courts have much discretion on whether to approve proposed sales, but the trustee's business judgment is subject to great judicial deference.").

59. Applying section 363, the proposed Sale of the Offered Assets should be approved. As set forth above, the Debtor has determined that the best method of maximizing the recovery of the Debtor's creditors would be through the Sale of the Offered Assets. Further, the Debtor believes that the value its estate—and, thus, the Debtor's creditors—will receive for the Sale of the Offered Assets exceeds any value the Debtor's estate could get for the Offered Assets if the Debtor is required to liquidate its assets piecemeal. As assurance of value, bids will be tested through the Auction consistent with the requirements of the Bankruptcy Code, the Bankruptcy Rules, and pursuant to the Bidding Procedures approved by the Court. Consequently, the fairness and reasonableness of the consideration to be paid by the Successful Bidder ultimately will be demonstrated by adequate "market exposure" and an open and fair auction process—the best means, under the circumstances, for establishing whether a fair and reasonable price is being paid.

60. The Debtor believes that the timeline for the marketing and sale of the Offered Assets is aggressive, however, the Debtor and its professionals are making every effort under these circumstances. In addition to the Debtor's prior efforts, since its engagement in December

2015, the Debtor's investment banker has been contacting potential interested parties and has assembled a data room which is available upon the execution of an appropriate confidentiality agreement. There is a limited universe of potential acquirers of the Offered Assets, and, the Debtor and its advisors have been in active discussions with many of these potential purchasers.

B. The Bidding Procedures Are Appropriate and Will Maximize the Value Received for the Offered Assets.

61. As noted above, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales. *See, e.g., In re Fin'l News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (“court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates”).

62. Procedures to dispose of assets, similar to the proposed Bidding Procedures, have been approved in other bankruptcy cases. *See, e.g., In re IMRIS, Inc.*, Case No. 15-11133 (CSS) (Bankr. D. Del. June 16, 2015); *In re Velti Inc.*, Case No. 13-12878(PJW) (Bankr. D. Del. Nov. 20, 2013); *In re Orchard Supply Hardware Stores Corp.*, Case No. 13-11565 (CSS) (Bankr. D. Del. Jul. 8, 2013); *In re Conex Holdings LLC*, Case No. 11-10501(CSS) (Bankr. D. Del. Sept. 14, 2011); *In re Barnes Bay Dev. Ltd.*, Case No. 11-10792 (PJW) (Bankr. D. Del. May 19, 2011); *In re East West Resort Dev. V, L.P., L.L.L.P.*, Case No. 10-10452 (BLS) (Bankr. D. Del. March 31, 2010); *In re Dana Corp.*, Case No. 06-10354 (Bankr. S.D.N.Y. Oct. 19, 2006); *In re Delphi Corp.*, Case No. 05-44481 (Bankr. S.D.N.Y. June 22, 2006); *In re Oxford Automotive, Inc.*, Case No. 04-74377 (Bankr. E.D. Mich. Jan. 24, 2005); *see also In re Calpine Corp.*, Case No. 05-60200 (Bankr. S.D.N.Y. Dec. 6, 2006).

63. The Debtor believes that the Bidding Procedures will establish the parameters under which the value of the Offered Assets may be tested at an auction and through the ensuing Sale Hearing. Such procedures will increase the likelihood that the Debtor's creditors will receive the greatest possible consideration for its assets because they will ensure a competitive and fair bidding process. They also allow the Debtor to undertake an auction in as expeditious and efficient manner as possible, which the Debtor believes is essential to maximizing the value of the Debtor's estate for its creditors.

64. The Debtor also believes that the proposed Bidding Procedures will promote active bidding from seriously interested parties and will dispel any doubt as to the best and highest offer reasonably available for the Debtor's assets. In particular, the proposed Bidding Procedures will allow the Debtor to conduct an auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who demonstrate the ability to close a transaction. Further, the Bidding Procedures provide the Debtor with the opportunity to consider all Qualified Bids and to select, in its reasonable business judgment, and after consultation with its professionals, the Lenders and any Official Committee, the highest and best offer(s) for the Offered Assets. Moreover, the Bidding Procedures provide the Debtor with the flexibility to modify the Bidding Procedures, if necessary, to maximize value for the Debtor's estate.

65. In sum, the Debtor believes that the Bidding Procedures will encourage bidding for the Offered Assets and are consistent with the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. Accordingly, the proposed Bidding Procedures are reasonable, appropriate, and within the Debtor's sound business judgment.

C. Credit Bidding Should be Authorized

66. A secured creditor is allowed to “credit bid” the amount of its claim in a sale. Section 363(k) of the Bankruptcy Code provides, in relevant part, that in a sale under section 363 of the Bankruptcy Code, unless the court for cause orders otherwise, the holder of a claim secured by property that is the subject of the sale “may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.” 11 U.S.C. § 363(k). Even if a secured creditor is undersecured, as determined in accordance with section 506(a) of the Bankruptcy Code, section 363(k) allows such secured creditor to bid the total face value of its claim on its collateralized assets and does not limit the credit bid to the claim’s economic value. *See Cohen v. KB Mezzanine Fund II, LP (In re Submicron Sys. Corp.)*, 432 F.3d 448, 459-60 (3d Cir. 2006) (explaining that “[i]t is well settled among district and bankruptcy courts that creditors can bid the full face value of their secured claims under § 363(k)”).

67. Pursuant to the Bidding Procedures, the Stalking Horse Purchaser is entitled to credit bid some or all of the Claim Amount pursuant to section 363(k) of the Bankruptcy Code subject to the limit fixed by the Court. Although there ultimately may be a dispute concerning the allowed Claim Amount, the credit bid amount agreed to by the Debtor and the Stalking Horse Purchaser with respect to the prepetition indebtedness for purpose of the sale process is fair and reasonable under the circumstances and is without prejudice to parties in interest to subsequently challenge the credit bid rights of the Stalking Horse Purchaser in accordance with the order entered by the Court approving the DIP Financing.

D. The Sale of the Offered Assets Free and Clear of Liens and Other Interests is Authorized by Section 363(f) of the Bankruptcy Code

68. The Debtor further submits that it is appropriate to sell the Offered Assets free and clear of liens pursuant to section 363(f) of the Bankruptcy Code, with any such liens attaching to the Sale Proceeds of the Offered Assets to the extent applicable. Section 363(f) of the Bankruptcy Code authorizes a trustee to sell assets free and clear of liens, claims, interests and encumbrances if:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interests;
- (2) such entity consents;
- (3) 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;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f).

69. This provision 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).

70. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Offered Assets “free and clear” of liens and interests. *In re Dundee Equity Corp.*, 1992 Bankr. LEXIS 436, at *12 (Bankr. S.D.N.Y. March 6, 1992) (“[s]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met.”); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same); *Michigan Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the

disjunctive; holding that the court may approve the sale “free and clear” provided at least one of the subsections of Bankruptcy Code section 363(f) is met).

71. The Debtor believes that at least one of the tests of section 363(f) is satisfied with respect to the transfer of the Offered Assets pursuant to the Stalking Horse Agreement. In particular, the Debtor believes that at least section 363(f)(2) will be met in connection with the transactions proposed under the Purchase Agreement because each of the parties holding liens on the Offered Assets will consent or, absent any objection to this motion, will be deemed to have consented to the Sale. Any lienholder also will be adequately protected by having their liens, if any, in each instance against the Debtor or its estate, attach to the Sale Proceeds ultimately attributable to the Offered Assets in which such creditor alleges an interest, in the same order of priority, with the same validity, force and effect that such creditor had prior to the Sale, subject to any claims and defenses the Debtor may possess with respect thereto. Accordingly, section 363(f) authorizes the transfer and conveyance of the Debtor’s assets free and clear of any such claims, interests, liabilities or liens.

72. Although section 363(f) of the Bankruptcy Code provides for the sale of assets “free and clear of any interests,” the term “any interest” is not defined anywhere in the Bankruptcy Code. *Folger Adam Security v. DeMatteis/MacGregor JV*, 209 F.3d 252, 257 (3d Cir. 2000). In the case of *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-89 (3d Cir. 2003), the Third Circuit specifically addressed the scope of the term “any interest.” The Third Circuit observed that while some courts have “narrowly interpreted that phrase to mean only in rem interests in property,” the trend in modern cases is towards “a more expansive reading of ‘interests in property’ which ‘encompasses other obligations that may flow from ownership of the property.’” *Id.* at 289 (citing 3 *Collier on Bankruptcy* 15th Ed. Rev., ¶ 363.06[1] (L. King,

15th rev. ed. 1988)). As determined by the Fourth Circuit in *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 581-582 (4th Cir. 1996), a case cited with approval and extensively by the Third Circuit in *Folger, supra*, the scope of section 363(f) is not limited to in rem interests. Thus, the Third Circuit in *Folger* stated that *Leckie* held that the debtors “could sell their assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute.” *Folger*, 209 F.3d at 258 (citing *Leckie*, 99 F.3d at 582).

73. Courts have consistently held that a buyer of a debtor’s assets pursuant to a section 363 sale takes such assets free from successor liability resulting from pre-existing claims. *See The Ninth Avenue Remedial Group v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); *MacArthur Company v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93-94 (2d Cir. 1988) (channeling of claims to proceeds consistent with intent of sale free and clear under section 363(f) of the Bankruptcy Code); *In re New England Fish Co.*, 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (transfer of property in free and clear sale included free and clear of Title VII employment discrimination and civil rights claims of debtor’s employees); *In re Hoffman*, 53 B.R. 874, 876 (Bankr. D.R.I. 1985) (transfer of liquor license free and clear of any interest permissible even though the estate had unpaid taxes); *American Living Systems v. Bonapfel (In re All Am. of Ashburn, Inc.)*, 56 B.R. 186, 190 (Bankr. N.D. Ga. 1986) (product liability claims based on successor doctrine precluded after sale of assets free and clear); *WBO P’ship v. Virginia Dept. of Medical Assistance Servs. (In re WBO P’ship)*, 189 B.R. 97, 104-05 (Bankr. E.D. Va. 1995) (Commonwealth of Virginia’s right to recapture depreciation is an “interest” as used in

section 363(f)).⁴ The purpose of an order purporting to authorize the transfer of assets free and clear of all “interests” would be frustrated if claimants could thereafter use the transfer as a basis to assert claims against the purchaser arising from the Debtor’s pre-sale conduct. Under section 363(f) of the Bankruptcy Code, the purchaser is entitled to know that the Debtor’s assets are not infected with latent claims that will be asserted against the purchaser after the proposed transaction is completed. Accordingly, consistent with the above-cited case law, the order approving the Sale should state that the Successful Bidder is not liable as a successor under any theory of successor liability, for claims that encumber or relate to the Offered Assets.

E. The Proposed Notice of Bidding Procedures, Auction, and Sale Is Appropriate

74. The Debtor believes that it will obtain the maximum recovery for creditors of the Debtor’s estate if the Offered Assets are sold through a well-advertised sale and auction. The Debtor has already taken significant steps to identify potential purchasers.

75. Under Bankruptcy Rules 2002(a) and (c), the Debtor is required to notify creditors of the proposed sale of the Debtor’s assets, including a disclosure of the time and place of an auction, the terms and conditions of a sale, and the deadline for filing any objections. The Debtor submits that the notice procedures herein comply fully with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the sale by auction to the Debtor’s creditors and other interested parties, as well as to those parties who have expressed an interest, or may express an interest, in bidding on the Offered Assets. The proposed time frame

⁴ Some courts, concluding that section 363(f) of the Bankruptcy Code does not empower them to convey assets free and clear of claims, have nevertheless found that section 105(a) of the Bankruptcy Code provides such authority. *See, e.g., Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (stating that the absence of specific authority to sell assets free and clear of claims poses no impediment to such a sale, as such authority is implicit in the court’s equitable powers when necessary to carry out the provisions of title 11).

between the filing of this Motion, the commencement of the bidding process and the Auction will provide interested purchasers ample time to participate in the Auction.

F. The Expense Reimbursement is Appropriate Under the Circumstances

76. The Debtor submits that the Expense Reimbursement is a normal and oftentimes necessary component of sales outside the ordinary course of business under section 363 of the Bankruptcy Code. In particular, such a protection encourages a potential purchaser to invest the requisite time, money and effort to conduct due diligence and sale negotiations with a debtor despite the inherent risks and uncertainties of the chapter 11 process. *See, e.g., In re Comdisco, Inc.*, Case No. 01 24795 (RB) (Bankr. N.D. Ill. Aug. 9, 2002) (approving a termination fee as, inter alia, an actual and necessary cost and expense of preserving the debtor's estate, of substantial benefit to the debtor's estate and a necessary inducement for, and a condition to, the proposed purchaser's entry into the purchase agreement); *Integrated Resources*, 147 B.R. at 660 (noting that fees may be legitimately necessary to convince a "white knight" to offer an initial bid by providing some form of compensation for the expenses such bidder incurs and the risks such bidder faces by having its offer held open, subject to higher and better offers); *In re Hupp Indus.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1997) (without any reimbursement, "bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder's. . . due diligence"); *In re Marrose Corp.*, 1992 WL 33848, at *5 (Bankr. S.D.N.Y. 1992) (stating that "agreements to provide reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or 'stalking horse' which attracts more favorable offers"); *In re 995 Fifth Ave. Assocs.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (finding that bidding incentives may be "legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking") (citations omitted).

77. Moreover, expense reimbursements, in excess of the Expense Reimbursement sought to be approved by this Motion, have been approved in other chapter 11 cases in this Court. *See, e.g., In re IMRIS, Inc.*, Case No. 15-11133 (CSS) (Bankr. D. Del. June 16, 2015); *In re Nortel Networks Inc.*, Case No. 09-10138 (KG) (Bankr. D. Del. Feb. 27, 2009) (approving up to \$400,000 in expense reimbursements in connection with \$17.65 million sale); *In re Tallygenicom, L.P.*, Case No. 09-10266 (CSS) (Bankr. D. Del. Feb. 19, 2009) (approving \$750,000 expense reimbursement in connection with \$36.6275 million sale); *In re Fluid Routing Solutions Intermediate Holding Corp.*, Case No. 09-10384 (CSS) (Bankr. D. Del. Feb. 19, 2009) (approving expense reimbursement of \$750,000 in connection with an \$11 million sale).

78. A proposed bidding incentive, such as the Expense Reimbursement, should be approved when it is in the best interests of the estate. *See In re S.N.A. Nut Co.*, 186 B.R. 98, 104 (Bankr. N.D. Ill. 1995); *see also In re America West Airlines, Inc.*, 166 B.R. 908 (Bankr. D. Ariz. 1994); *In re Hupp Indus., Inc.*, 140 B.R. 191 (Bankr. N.D. Ohio 1992). Typically, this requires that the bidding incentive provide some benefit to the debtor's estate. *Calpine Corp. v. O'Brien Env'tl. Energy, Inc. (In re O'Brien Env'tl. Energy, Inc.)*, 181 F.3d 527, 533 (3d Cir. 1999) (holding even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions the administrative expense provisions of Bankruptcy Code section 503(b) govern in the bankruptcy context).

79. In *O'Brien Environmental Energy*, the Third Circuit found that whether break-up fees and expenses could be paid to Calpine Corp. as a "stalking horse" depended on whether such fees were necessary to preserve the value of the estate. *See* 181 F.3d at 536. The court determined that Calpine's right to break up fees and expenses depended on whether it provided a benefit to the debtor's estate by promoting competitive bidding or researching the value of the

assets at issue to increase the likelihood that the selling price reflected the true value of the company. *Id.* at 537. The Debtor believes that approval of the Expense Reimbursement will create such a competitive bidding process.

80. The Debtor believes that the proposed Expense Reimbursement is fair and reasonably compensates the Stalking Horse Purchaser for taking actions that will benefit the Debtor's estate. The Expense Reimbursement compensates the Stalking Horse Purchaser for diligence and professional fees incurred in negotiating the terms of the Stalking Horse Agreement on an expedited timeline.

81. Next, the Debtor does not believe that the Expense Reimbursement will have a chilling effect on the sale process. Rather, the Stalking Horse Purchaser will increase the likelihood that the best possible price for the Offered Assets will be received, by permitting other qualified bidders to rely on the diligence performed by the Stalking Horse Purchaser, and moreover, by allowing qualified bidders to utilize the Stalking Horse Agreement as a platform for negotiations and modifications in the context of a competitive bidding process.

82. Finally, the Expense Reimbursement will be paid only if, among other things, the Debtor enters into a transaction for the Offered Assets with a bidder other than the Stalking Horse Purchaser. Accordingly, no Expense Reimbursement will be paid unless a higher and better offer is achieved and consummated.

83. In sum, the Expense Reimbursement is reasonable under the circumstances and will enable the Debtor to maximize the value for the Offered Assets while limiting any chilling effect in the sale process. The Expense Reimbursement not only compensates the Debtor for the risk that it assumes in foregoing a known, willing and able purchaser for a new potential acquirer, but also ensure that there is an increase in the net proceeds received by its estate, after

deducting the Expense Reimbursement to be paid to the Stalking Horse Purchaser in the event of a prevailing overbid.

G. Assumption and Assignment of Certain Executory Contracts and Unexpired Leases

84. Section 365(a) of the Bankruptcy Code provides that, subject to the court's approval, a trustee "may assume or reject any executory contracts or unexpired leases of the debtor." 11 U.S.C. § 365(a). Upon finding that a trustee has exercised its sound business judgment in determining to assume an executory contract or unexpired lease, courts will approve the assumption under section 365(a) of the Bankruptcy Code. *See Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.)*, 78 F.3d 18, 25 (2d Cir. 1996); *see also Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1993).

85. Pursuant to section 365(f)(2) of the Bankruptcy Code, a trustee may assign an executory contract or unexpired lease of nonresidential real property if:

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

86. 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. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *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 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)

(“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

87. Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *In re Bygaph, Inc.*, 56 B.R. 596, 605-6 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease has financial resources and expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding; chief determinant of adequate assurance is whether rent will be paid).

88. The Debtor and the Successful Bidder will present evidence at the Sale Hearing to prove the financial credibility, willingness and ability of the Successful Bidder to perform under the Contracts or Leases. The Court and other interested parties therefore will have the opportunity to evaluate the ability of any Successful Bidder to provide adequate assurance of future performance under the Contracts or Leases, as required by section 365(b)(1)(C) of the Bankruptcy Code.

89. In addition, the Debtor submits that the cure procedures set forth herein are appropriate, reasonably calculated to provide notice to any affected party and afford the affected party to opportunity to exercise any rights affected by the Motion, and consistent with section 365 of the Bankruptcy Code. To the extent that any defaults exist under any Assumed Executory Contracts, any such defaults will be cured pursuant to the Successful Bidder’s Purchase Agreement. Except as otherwise limited by section 365 of the Bankruptcy Code, any provision in the Assumed Executory Contracts that would restrict, condition, or prohibit an assignment of such contracts will be deemed unenforceable pursuant to section 365(f)(1) of the Bankruptcy Code.

90. Accordingly, the Debtor submits that the cure procedures for effectuating the assumption and assignment of the Assumed Executory Contracts as set forth herein are appropriate and should be approved.

H. The Successful Bidder Should be Afforded All Protections Under Section 363(m) as A Good Faith Purchaser

91. Section 363(m) of the Bankruptcy Code protects a good-faith purchaser's interest in property purchased from the debtor's estate notwithstanding that the sale conducted under section 363(b) is later reversed or modified on appeal. Specifically, section 363(m) states that:

The reversal or modification on appeal of an authorization under [section 363(b)] . . . does not affect the validity of a sale . . . to an entity that purchased . . . 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) “fosters 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.’” *In re Chateaugay Corp.*, 1993 U.S. Dist. Lexis 6130, *9 (S.D.N.Y. 1993) (quoting *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986)); *see Allstate Ins. Co. v. Hughes*, 174 BR. 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”); *In re Stein & Day, Inc.*, 113 B.R. 157, 162 (Bankr. S.D.N.Y. 1990) (“pursuant to 11 U.S.C. § 363(m), good faith purchasers are protected from the reversal of a sale on appeal unless there is a stay pending appeal”).

92. The selection of the Successful Bidder will be the product of arms'-length, good-faith negotiations in an anticipated competitive purchasing process. The Debtor intends to

request at the Sale Hearing a finding that the Successful Bidder is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code.

I. Relief from the 14-Day Waiting Period Under Bankruptcy Rules 6004(h) and 6006(d) is Appropriate

93. 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.” Similarly, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” The Debtor requests that the Order be effective immediately by providing that the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

94. 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 Committee Notes to Fed. R. Bankr. P. 6004(h) and 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 14-day stay period, *Collier* suggests that the 14-day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” *Collier on Bankruptcy* P 6004.11 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Furthermore, *Collier* provides that 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.*

95. The Debtor hereby requests that the Court waive the 14-day stay periods under Bankruptcy Rules 6004(h) and 6006(d) or, in the alternative, if an objection to the Sale is filed,

reduce the stay period to the minimum amount of time needed by the objecting party to file its appeal.

Notice

96. The Debtor will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to any Official Committee; (c) counsel to the Lenders; (d) the United States Attorney's Office for the District of Delaware; (e) the Internal Revenue Service; (f) the Securities and Exchange Commission; (g) counsel to the ad hoc equity committee; (h) the Procedures Notice Parties; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests that the Court enter orders substantially in the proposed forms attached hereto as **Exhibit C** and **Exhibit D**: (i) granting the relief requested herein and (ii) granting to the Debtor such other and further relief as the Court may deem proper.

[signature on following page]

Dated: February 1, 2016
Wilmington, Delaware

ASHBY & GEDDES, P.A.

/s/ Stacy L. Newman

By:

William P. Bowden (No. 2553)
Karen B. Skomorucha Owens (No. 4759)
Stacy L. Newman (No. 5044)
500 Delaware Avenue, P.O. Box 1150
Wilmington, DE 19899-1150
Phone: 302.654.1888
Fax: 302.654.2067
Email: wbowden@ashby-geddes.com
kowens@ashby-geddes.com
snewman@ashby-geddes.com

-and-

DENTONS US LLP

Sam J. Alberts (admitted pro hac vice)
1301 K Street, NW
Suite 600. East Tower
Washington, D.C. 20005
Tel: 202.408.7004
Fax: 202.408.6399
Email: sam.alberts@dentons.com

Bryan E. Bates (admitted pro hac vice)
303 Peachtree Street, NE
Suite 5300
Atlanta, Georgia 30308
Tel.: 404.527.4073
Fax: 404.527.4198
Email: bryan.bates@dentons.com

*Proposed Attorneys for Debtor
and Debtor-in-Possession*

Exhibit A

(Highlighted Provisions Pursuant to Del. Bankr. L.R. 6004-1)

In accordance with Local Rule 6004-1, the Debtor respectfully represents the following:

- (1) **Sale to an Insider:** The Debtor is not aware of a prospective buyer that is an insider of the Debtor.
- (2) **Agreements with Management:** No agreements with management have been entered into in connection with the Sale.
- (3) **Releases:** No releases have been entered into in connection with the Sale.
- (4) **Private Sale/No Competitive Bidding:** The Sale is being conducted pursuant to the competitive bidding process detailed in the Motion.
- (5) **Closing and Other Deadlines:** The consummation of the transactions contemplated by the Successful Bidder's Purchase Agreement¹ shall take place at a closing to be held at the offices of Dentons US LLP, 1221 Avenue of the Americas, New York, NY 10020, or at such other location as deemed appropriate by the parties. In the event that the Successful Bid is a Chapter 11 Plan Bid, the Debtor will prosecute confirmation of the plan of reorganization proposed by such Chapter 11 Plan Bid.
- (6) **Good Faith Deposit:** All bidders except the Stalking Horse Purchaser will be required to post a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtor), certified check or such other form acceptable to the Debtor, payable to the order of the Debtor (or such other party as the Debtor may determine) in an amount equal to ten percent (10%) of the Purchase Price.
- (7) **Interim Arrangements with Proposed Buyer:** The Debtor has not entered into any interim arrangements with any proposed buyer.
- (8) **Use of Proceeds:** Upon Closing, the net sale proceeds shall be, to the extent permitted and appropriate, treated as cash collateral and shall not be used except to meet obligations payable in connection with the Sale, including, if the Successful Bidder is not the Stalking Horse Purchaser, the Expense Reimbursement.
- (9) **Tax Exemption:** No tax exemptions under section 1146(a) of the Bankruptcy Code are contemplated in connection with the Sale.
- (10) **Record Retention:** The Debtor will continue to have access to its books and records related to the Offered Assets pursuant to section 5.14 of the Purchase Agreement.
- (11) **Sale of Avoidance Actions:** The Sale does not involve the sale or release of chapter 5 causes of action except those relating to the Successful Bidder and its

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

affiliates, contracts and leases assumed as part of the transaction, and certain vendors and employees of the Debtor.

- (12) **Requested Findings as to Successor Liability:** The Successful Bidder may be undertaking certain Assumed Liabilities pursuant to the Successful Bidder's Purchase Agreement. The Successful Bidder would be assuming only those liabilities, and all other liabilities not expressly assumed by the Successful Bidder under the Successful Bidder's Purchase Agreement, whether or not incurred or accrued on or after the date on which the Sale is closed, shall be retained by the Debtor.
- (13) **Sale Free and Clear of Unexpired Leases:** The Debtor is seeking to sell the Offered Assets free and clear of liens and other interests pursuant to Section 363(f) of the Bankruptcy Code, unless otherwise provided in the Successful Bidder's Purchase Agreement.
- (14) **Credit Bid:** Credit bids shall be accepted in accordance with section 363(k) of the Bankruptcy Code up to the limit set by the Court. In connection with the Sale of all or any of the Offered Assets, the Stalking Horse Purchaser holds a perfected security interest in such Offered Assets and has submitted a credit bid for its collateral. It may submit additional credit bids for its collateral as it deems necessary and desirable, up to the limit set by the Court.
- (15) **Relief from Bankruptcy Rule 6004(h):** As noted in the Motion, the Debtor is requesting relief from the 14-day stay imposed by Rules 6004(h) and 6006(d).

Exhibit B

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

**DEERFIELD PRIVATE DESIGN FUND II, L.P., DEERFIELD PRIVATE
DESIGN INTERNATIONAL II, L.P. AND DEERFIELD SPECIAL
SITUATIONS FUND, L.P.**

as Purchasers,

and

NUO THERAPEUTICS, INC.

(f/k/a Cytomedix, Inc.)

as Seller

Dated as of February ___, 2016

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ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated as of [●], 2016 (the “**Execution Date**”), by and among Deerfield Private Design Fund II, L.P., a Delaware limited partnership, Deerfield Private Design International II, L.P., a British Virgin Islands limited partnership, and Deerfield Special Situations Fund, L.P. a Delaware limited partnership (collectively, “**Purchasers**” and each a “**Purchaser**”), and NUO THERAPEUTICS, INC. (f/k/a Cytomedix, Inc.), a Delaware corporation (“**Seller**”). Certain capitalized terms used herein are defined in Article I.

RECITALS

WHEREAS, Seller currently conducts the Business and Purchasers desire to acquire the Business;

WHEREAS, Seller intends to commence a case (the “**Chapter 11 Case**”) under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”);

WHEREAS, each Facility Lender is a secured creditor of Seller holding valid interests in, on and against Seller, its estates and property of its estates, arising in connection with the Facility Finance Documents;

WHEREAS, Seller will submit a proposed Bidding Procedures Order and a proposed Sale Order in the Chapter 11 Case, which, when approved by the Bankruptcy Court will authorize the Credit Bid of the claims of the Facility Lender and the DIP Lender as set forth herein;

WHEREAS, on or prior to the entry of the Bidding Procedures Order by the Bankruptcy Court, the DIP Loan Agreement shall have been entered into by the parties thereto and become effective; and

WHEREAS, in connection with the Chapter 11 Case and subject to the terms and conditions contained herein and following the entry of the Sale Order approving the Credit Bid of the claims of each Facility Lender and the DIP Lender as the highest or otherwise best bid by the Bankruptcy Court, and subject to the terms and conditions thereof, Seller shall transfer and assign to Purchasers, and Purchasers shall acquire and accept from Seller, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, the Acquired Assets and shall assume from Seller the Assumed Liabilities, all as more specifically provided herein and in the Sale Order.

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

ARTICLE I.

DEFINITIONS

1.1 Certain Definitions. For purposes of this Agreement, the following terms used in this Agreement shall have the respective meanings assigned to them below:

(a) “**Accounts Receivable**” means (i) any and all accounts receivable, trade accounts and other amounts (including overdue accounts receivable) owed to Seller relating to, or arising in connection with the operation and conduct of, the Business and any other rights of Seller to payment from third parties and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of services rendered, in each case owing to Seller, and any return of premiums or other funds relating to or arising from any insurance policies listed on Schedule 5.20(a) (except with respect to insurance proceeds for which there is an administrative claim against Seller or with respect to facts, events or circumstances related to Excluded Assets and Excluded Liabilities arising after the Closing); (ii) all other accounts or notes receivable of Seller and the full benefit of all security for such accounts or notes receivable arising in the conduct of the Business; and (iii) any and all claims, remedies or other rights relating to any of the foregoing, together with any interest or unpaid financing charges accrued thereon, in each case existing on the Execution Date or arising in the Ordinary Course of Business after the Execution Date and in each case that have not been satisfied or discharged prior to the close of business on the day immediately preceding the Closing Date or have not been written off or sent to collection prior to the close of business on the day immediately preceding the Closing Date (it being understood that the receipt of a check prior to the close of business on the day immediately preceding the Closing Date shall constitute satisfaction or discharge of the applicable account or note receivable to the extent of the payment represented thereby).

(b) “**Acquired Angel Names**” means the Trademarks of Seller which are exclusively used in connection with the Angel Business.

(c) “**Acquired Assets**” means the Aurix Acquired Assets and Angel Acquired Assets, collectively.

(d) “**Acquired Aurix Names**” means the Trademarks of Seller which are exclusively used in connection with the Aurix Business.

(e) “**Acquired Intellectual Property Rights**” means the Acquired Aurix Intellectual Property Rights and the Acquired Angel Intellectual Property Rights, collectively.

(f) “**Acquired Names**” means the Acquired Angel Names and the Acquired Aurix Names, collectively.

(g) “**Affiliate**” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or

is under common control with, such Person, and the term “**control**” (including the terms “**controlled by**” and “**under common control with**”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

(h) “**Alternative Transaction**” means (i) the approval by the Bankruptcy Court of the sale or sales of all or a material portion of the Acquired Assets to a third party other than Purchasers (or an Affiliate of Purchasers), or (ii) the filing of a Chapter 11 plan by Seller or anyone else that does not contemplate the sale of the Acquired Assets to Purchasers (or an Affiliate of Purchasers) in accordance with the terms hereof.

(i) “**Ancillary Agreements**” means, collectively, the agreements to be executed in connection with the transactions contemplated by this Agreement, including the Bill of Sale, the Assignment and Assumption Agreement, and the trademark and domain name assignment.

(j) “**Angel Business**” means the business of developing, designing, licensing, manufacturing, marketing and selling the Angel concentrated Platelet Rich Plasma System primarily for the orthopedics and aesthetics markets, and including, without limitation, the administration of related licensing, distribution, development and manufacturing Contracts.

(k) “**Angel Inventory**” means all raw materials, work-in-process, finished goods, supplies, samples (including samples held by sales representatives), components, packaging materials, and other inventories to which Seller has title that are in the possession or custody of Seller or, solely with respect to inventories to which Seller has title, any third party to the extent used or held for use in connection with any of the Angel Acquired Assets or the Angel Business.

(l) “**Angel Permits**” means all licenses, permits (including environmental, construction and operation permits), provider numbers, franchises, certificates, approvals, consents, waivers, clearances, exemptions, classifications, registrations, orders and other similar documents and authorizations issued by any Governmental Body and/or any self-regulatory body or organization to or for the benefit of any Seller Entity and used, or held for use, in connection with the operation of the Angel Business or applicable to ownership or use of the Angel Acquired Assets or assumption of the Assumed Angel Liabilities.

(m) “**Assigned Contracts**” means the Aurix Assigned Contracts and Angel Assigned Contracts, collectively.

(n) “**Assumed Liabilities**” means Assumed Aurix Liabilities and Assumed Angel Liabilities, collectively.

(o) “**Auction**” has that meaning ascribed to such term by the Bidding Procedures Order.

(p) “**Aurix Business**” means the business of developing, designing, licensing, manufacturing, marketing and selling the Aurix™ System primarily for wound care and dermatological applications, including, without limitation, the administration of related licensing, distribution, development and manufacturing Contracts.

(q) “**Aurix Inventory**” means all raw materials, work-in-process, finished goods, supplies, samples (including samples held by sales representatives), components, packaging materials, and other inventories to which Seller has title that are in the possession or custody of Seller or, solely with respect to inventories to which Seller has title, any third party to the extent used or held for use in connection with any of the Aurix Acquired Assets or the Aurix Business.

(r) “**Aurix Permits**” means all licenses, permits (including environmental, construction and operation permits), provider numbers, franchises, certificates, approvals, consents, waivers, clearances, exemptions, classifications, registrations, orders and other similar documents and authorizations issued by any Governmental Body and/or any self-regulatory body or organization to or for the benefit of any Seller Entity and used, or held for use, in connection with the operation of the Aurix Business or applicable to ownership or use of the Aurix Acquired Assets or assumption of the Assumed Aurix Liabilities.

(s) “**Avoidance Action**” means any and all claims and causes of action of Seller arising under the Bankruptcy Code or similar federal, state or local laws, including under Chapter 5 of the Bankruptcy Code and similar state laws.

(t) “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure.

(u) “**Bidding Procedures Order**” means an order substantially in the form attached hereto as Exhibit C or in such form as is otherwise in form and substance satisfactory to Seller and Purchasers.

(v) “**Business**” means the Aurix Business and the Angel Business, collectively.

(w) “**Cash and Cash Equivalents**” means all of Seller’s cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers’ acceptances, commercial paper and government securities and other cash equivalents.

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

(y) “**Code**” means the Internal Revenue Code of 1986, as amended.

(z) “**Contract**” means any written or oral contract, purchase order, service order, sales order, indenture, note, bond, lease, license, commitment or instrument or other agreement, arrangement or commitment that is binding upon a Person or its property (excluding any Insurance Policies).

(aa) “**Credit Bid**” means a credit bid of a portion the Facility Indebtedness and a portion of the DIP Loan in the amounts and in the manner specified in Section 3.1(a)(i) and Section 3.1(b)(i).

(bb) “**Cure Costs**” means the amounts necessary to cure all defaults, if any, and to pay all actual pecuniary losses, if any, that have resulted from such defaults, under the Assigned Contracts, in each case as of the Petition Date and to the extent required by Section 365(b) of the Bankruptcy Code and any Order of the Bankruptcy Court approving the assumption and assignment of the Assigned Contracts, which amounts (if not already paid or to be paid in the Ordinary Course of Business pursuant to an Order of the Bankruptcy Court) shall be identified to Purchasers in writing no later than the later of twenty (20) days after the Petition Date and, with respect to Contracts or Seller Real Estate Leases added to the schedule of Assigned Contracts, two (2) business days after such Contract or Seller Real Estate Lease is added to such schedule.

(cc) “**Customer Contracts**” means the Aurix Customer Contracts and Angel Customer Contracts, collectively.

(dd) “**DIP Lender**” means the lenders party to the DIP Loan Agreement.

(ee) “**DIP Loan**” means the Indebtedness (including principal, interest, fees, premium and any other amounts due or other obligations) of Seller arising under the DIP Loan Agreement and/or the DIP Loan Documents.

(ff) “**DIP Loan Agreement**” means that certain Senior Secured Debtor-in-Possession Credit Agreement, by and among Seller, as borrower, as debtor and debtor-in-possession, and the DIP Lender, provided in connection with the Chapter 11 Case as such DIP Loan Agreement may be amended, modified, supplemented, or restated from time to time.

(gg) “**DIP Loan Documents**” means the “Transaction Documents” as defined in the DIP Loan Agreement, as such Loan Documents are amended, modified, supplemented or restated from time to time, and the DIP Orders.

(hh) “**DIP Orders**” means any Order substantially in the form attached hereto as Exhibit D and as such Order may be modified so as to reflect that it has been entered on a final basis in each case in form and substance satisfactory to Purchasers.

(ii) “**Documents**” means all of Seller’s written files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental reports, data, studies and documents, Tax Returns, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, research material, technical documentation (design specifications, engineering information, test results, maintenance schedules, functional requirements, operating instructions, logic manuals, processes, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials, in each case whether or not in electronic form.

(jj) “**Employee**” means an individual who, as of the applicable date, is employed by, or engaged to provide services as an employee to, any Seller Entity in connection with the Business.

(kk) “**Encumbrance**” means any lien, encumbrance, Claim, right, demand, charge, mortgage, deed of trust, option, pledge, security interest or similar interest, title defect, hypothecation, easement, right of way, restrictive covenant, condition, restriction, encroachment, rights of first refusal, preemptive right, judgment, conditional sale or other title retention agreements and other imposition, imperfection or defect of title or restriction on transfer or use of any nature whatsoever, whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown.

(ll) “**Environmental Laws**” means all Laws relating to pollution or protection of health, natural resources or the environment, or the generation, use, treatment, storage, handling, transportation or Release of, or exposure to, Hazardous Materials, including, without limitation, the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), Safe Drinking Water Act (42 U.S.C. § 3000(f) et seq.), Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), Clean Air Act (42 U.S.C. § 7401 et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.) and other similar U.S. or foreign federal, state, provincial and local statutes.

(mm) “**Environmental Permits**” means all material Permits issued pursuant to Environmental Laws.

(nn) “**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and any similar foreign Laws.

(oo) “**ERISA Affiliate**” means any entity which is, or at any relevant time within the past six (6) years was, a member of (A) a controlled group of corporations (as defined in Section 414(b) of the Code), (B) a group of trades or businesses under common control (as defined in Section 414(c) of the Code), or (C) an affiliated service group (as defined under Section 414(m) of the Code), any of which includes or included Seller, but the term ERISA Affiliate does not include Seller.

(pp) “**Facility Agreement**” means that certain Facility Agreement, dated as of March 31, 2014, by and among Seller, as borrower, and Deerfield Private Design Fund II, L.P., Deerfield Private Design International II, L.P., Deerfield Special Situations Fund, L.P. and Deerfield Special Situations International Master Fund, L.P., as lenders, as such Facility Agreement has been amended, modified, supplemented or restated.

(qq) “**Facility Finance Documents**” means the “Loan Documents” as defined in the Facility Agreement, as such Loan Documents are amended, modified, supplemented or restated from time to time.

(rr) “**Facility Indebtedness**” means all obligations, claims, rights, actions, causes of action, suits, liabilities, damages, debts, costs, expenses and demands

whatsoever, in law or in equity, arising under, or otherwise relating to, the Facility Agreement.

(ss) “**Facility Lender**” means each lender party to the Facility Agreement, other than Deerfield Special Situations International Master Fund, L.P.

(tt) “**Final Order**” means an Order or judgment of the Bankruptcy Court or any other court of competent jurisdiction entered by the Clerk of the Bankruptcy Court or such other court on the docket in Seller’s Chapter 11 Case or the docket of such other court, which has not been modified, amended, reversed, vacated or stayed and as to which (i) the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari* or motion for new trial, reargument or rehearing shall then be pending or (ii) if an appeal, writ of *certiorari*, new trial, reargument or rehearing thereof has been sought, such Order or judgment of the Bankruptcy Court or other court of competent jurisdiction shall have been affirmed by the highest court to which such Order was appealed, or *certiorari* shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such Order, and the time to take any further appeal, petition for *certiorari* or move for a new trial, reargument or rehearing shall have expired, as a result of which such Order shall have become final in accordance with Rule 8002 of the Bankruptcy Rules; provided, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such Order, shall not cause such Order not to be a Final Order.

(uu) “**GAAP**” means United States generally accepted accounting principles as in effect from time to time.

(vv) “**Governmental Body**” means any government, quasi-governmental entity, or other governmental or regulatory body, agency or political subdivision thereof of any nature, whether foreign, federal, state, provincial or local, or any ministry agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) or any judicial, quasi-judicial or administrative body, or any regulatory body of applicable jurisdiction.

(ww) “**Hazardous Materials**” means petroleum and all derivatives thereof or synthetic substitutes therefor, asbestos and asbestos containing materials, and any and all materials, substance or waste now or hereafter defined, listed, designated or classified as, or otherwise determined to be, “hazardous wastes,” “hazardous substances,” “toxic substance,” “radioactive,” “solid wastes,” or “toxic” (or words of similar meaning) under or pursuant to or otherwise listed or regulated pursuant to any Environmental Law.

(xx) “**In-Bound IP Contracts**” means the In-Bound Angel IP Contracts and the In-Bound Aurix IP Contracts, collectively.

(yy) “**Indebtedness**” of any Person means, without duplication, (i) the interest in respect of, principal of and premium (if any) in respect of (x) indebtedness of such Person for money borrowed and (y) indebtedness evidenced by notes, debentures, bonds

or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property (other than for services and goods acquired in the Ordinary Course of Business); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Encumbrance (other than Permitted Encumbrances), on any property or asset of such Person (whether or not such obligation is assumed by such Person).

(zz) “**Intellectual Property Rights**” means all intellectual property and proprietary rights of any kind, including the following: (i) Trademarks; (ii) patents, utility models and industrial design registrations (and all continuations, divisionals, continuations in part, provisionals, renewals, reissues, re-examinations and applications for any of the foregoing); (iii) copyrights and copyrightable subject matter (including any registrations and applications for any of the foregoing); (iv) trade secrets and other confidential or proprietary business information (including manufacturing and production processes and techniques, research and development information, technology, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, customer and supplier lists and information), know how, proprietary processes, formulae, algorithms, models, and methodologies; (v) Software; and (vi) all rights to sue for past, present and future infringement, misappropriation, dilution or other violation of any of the foregoing and all remedies at law or equity associated therewith.

(aaa) “**Inventory**” means all Aurix Inventory and Angel Inventory, collectively.

(bbb) “**IP Contracts**” means the In-Bound IP Contracts and Out-Bound IP Contracts, collectively.

(ccc) “**IT Assets**” means all of Seller's computers, Software, firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines, and all other information technology equipment and elements, and all associated documentation that are used, or held for use, in connection with the operation of the Business.

(ddd) “**Knowledge of Seller**” (or “**Seller's Knowledge**”) means the actual knowledge, after reasonable inquiry, of those persons listed on Schedule 1.1(ddd).

(eee) “**Laws**” means all federal, state, provincial, local or foreign laws, statutes, common law, rules, codes, regulations, restrictions, ordinances, Orders, decrees, approvals, directives, judgments, rulings, injunctions, writs and awards of, or issued, promulgated, enforced or entered by, any and all Governmental Bodies, or court of competent jurisdiction, or other legal requirement or rule of law, including common law.

(fff) “**Leased Real Property**” means all of any Seller Entities’ rights, title and interests under the Seller Real Estate Leases.

(ggg) “**Legal Proceeding**” means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims or any proceedings by or before a Governmental Body.

(hhh) “**Liability**” means, as to any Person, any debt, adverse claim, liability, duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, including all costs and expenses relating thereto.

(iii) “**Material Adverse Effect**” means any change, effect, event, occurrence, development, circumstance or state of facts (i) which has had or would reasonably be expected to have a materially adverse effect on the business, properties, operations or financial condition of the Aurix Business, the Angel Business or the Seller, or which would materially impair Seller’s ability to perform its obligations under this Agreement or have a materially adverse effect on or prevent or materially delay the consummation of the transactions contemplated by this Agreement or (ii) which could reasonably be expected to result in criminal proceedings against the Seller Entities or, with respect to the Aurix Business or the Angel Business, against any current director or officer of the Seller Entities; provided, however, that changes in the business, properties, operations or financial condition of the Aurix Business, the Angel Business or the Seller Entities arising by reason of any of the following shall not constitute a material adverse effect under clause (i) above: (A) the filing of a voluntary petition under Chapter 11 of the Bankruptcy Code or the effect, directly or indirectly, of such filing; (B) changes in conditions in the U.S. or global economy or capital or financial markets generally, including changes in interest or exchange rates; (C) factors generally affecting the industries or markets in which the Seller Entities operate; (D) changes in general legal, tax, regulatory, political or business conditions that, in each case, generally affect the geographic regions or industries in which the Seller Entities conduct their business; (E) acts of war, armed hostilities, sabotage or terrorism, or any escalation or worsening of any such acts of war, armed hostilities, sabotage or terrorism threatened or underway as of the date of this Agreement; (F) changes in, or required by, applicable Law or GAAP; and (G) any action taken by Seller or its Affiliates at the express written request of Purchasers or their Affiliates; except, in the cases of clauses (B), (C), (D), (E) and (F), to the extent that Seller is disproportionately affected thereby as compared with other participants in the industries in which the Seller Entities operate.

(jjj) “**Non-Assumed Contracts**” means any Contracts to which Seller is a party but that are not Assigned Contracts, including, without limitation, the Contracts set forth on Schedule 1.1(jjj).

(kkk) “**Order**” means any order, writ, judgment, injunction, decree, stipulation, determination, decision, verdict, ruling, subpoena, or award entered by or with any Governmental Authority (whether temporary, preliminary or permanent).

(lll) “**Ordinary Course of Business**” means the ordinary and usual course of day-to-day operations of the Business consistent with past practice.

(mmm) “**Other Contracts**” means the Other Angel Contracts and Other Aurix Contracts, collectively.

(nnn) “**Out-Bound IP Contracts**” means the Out-Bound Angel IP Contracts and the Out-Bound Aurix IP Contracts, collectively.

(ooo) “**Permits**” means the Aurix Permits and the Angel Permits, collectively.

(ppp) “**Permitted Encumbrances**” means: (a) statutory Encumbrances for current Taxes, assessments and other Governmental Body charges that are not yet due and payable; (b) mechanics’, materialmen’s, warehouseman’s and similar Encumbrances that relate to Assumed Liabilities; (c) such covenants, conditions, restrictions, easements, encroachments or encumbrances, or any other state of facts, that do not materially interfere with the present occupancy of the Leased Real Property or the use of such Leased Real Property; (d) zoning, building codes and other land use Laws regulating the use or occupancy of real property or the activities conducted thereon which are imposed by any Governmental Body having jurisdiction over real property; and (e) a lessor’s interest in, and any mortgage, pledge, security interest, Encumbrance (statutory or other) or conditional sale agreement on or affecting a lessor’s interest in, property underlying any of the Seller Real Estate Leases or leases for personal property.

(qqq) “**Person**” means an individual, corporation, partnership, limited liability company, unlimited liability company, joint venture, association, trust, unincorporated organization, labor union, estate, Governmental Body or other entity or group.

(rrr) “**Petition Date**” means the date on which Seller commenced the Chapter 11 Case.

(sss) “**Purchase Orders**” means the Aurix Purchase Orders and Angel Purchase Orders, collectively.

(ttt) “**Regulatory Negative Event**” means any current, pending or threatened, claim, suit, proceeding, hearing, enforcement action, audit, investigation, arbitration, injunction, order, notice, or other action, of which Seller has Knowledge, whether informal or formal, from any Governmental Body, including, without limitation, the FDA, the Centers for Medicare & Medicaid Services, the U.S. Department of Health and Human Services Office of Inspector General, Health Canada, the European Medicines Agency and the Japanese Ministry of Health & Welfare alleging material non-compliance by, or liability of, any Seller Entity under any Health Care Laws.

(uuu) “**Regulatory Approvals**” means any consents, waivers, approvals, Orders, Permits or authorizations of any Governmental Body required in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereunder.

(vvv) “**Reimbursable Expenses**” means and includes all reasonable out-of-pocket costs, fees and expenses incurred (following the date on which Purchasers became Facility Lenders) or to be incurred by Purchasers or their Affiliates in connection with evaluating, negotiating, documenting and performing the transactions contemplated by this Agreement (including fees, costs and expenses of any professionals (including financial advisors, outside legal counsel, accountants, experts and consultants) retained by Purchasers or their Affiliates in connection with or related to the authorization, preparation, investigation, negotiation, execution and performance of this Agreement, the transactions contemplated hereby, including the Chapter 11 Case and other judicial and regulatory proceedings related to such transactions); provided that the aggregate amount of Reimbursable Expenses shall not exceed \$300,000.

(www) “**Release**” means, with respect to any Hazardous Material, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or migrating into or through any surface or ground water, drinking water supply, soil, surface or subsurface strata or medium, or the ambient air.

(xxx) “**Sale Hearing**” means the hearing before the Bankruptcy Court to approve this Agreement and seeking entry of the Sale Order.

(yyy) “**Sale Motion**” means the motion or motions of Seller, in form and substance reasonably acceptable to Seller and Purchasers, seeking approval and entry of the Bidding Procedures Order and Sale Order.

(zzz) “**Seller Entities**” means Seller and its Subsidiaries set forth on Schedule 1.1(zzz).

(aaaa) “**Seller Intellectual Property Rights**” means all Intellectual Property Rights owned or purported to be owned by Seller.

(bbbb) “**Software**” means computer software, programs and databases in any form, including Internet web sites, web content and links, source code, executable code, tools, developers kits, utilities, graphical user interfaces, menus, images, icons and forms, and all versions, updates, corrections, enhancements and modifications thereof, and all related documentation, developer notes, comments and annotations related thereto.

(cccc) “**Subsidiary**” means, with respect to any Person, (a) any other Person that directly, or indirectly through one or more intermediaries, is controlled by such Person; or (b) any other Person where a majority of its equity interests are held, directly, or indirectly through one or more intermediaries, by such Person. For purposes of this definition, “**control**” (including, with correlative meaning, the terms “**controlling**” and “**controlled**”) means the possession, directly or indirectly, of the power to direct or cause

the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

(dddd) “**Supplier Contracts**” means the Aurix Supplier Contracts” and the Angel Supplier Contracts, collectively.

(eeee) “**Tax**” and “**Taxes**” mean any and all taxes, charges, fees, tariffs, duties, impositions, levies or other assessments, imposed by any Laws or Governmental Body, and including any interest, penalties or additional amounts attributable to, imposed upon, or with respect thereto.

(ffff) “**Tax Period**” means any period prescribed by any Laws or Governmental Body for which a Tax Return is required to be filed or a Tax is required to be paid.

(gggg) “**Tax Return**” means any return, report, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) supplied or required to be supplied to any Governmental Body with respect to Taxes, including attachments thereto and amendments thereof.

(hhhh) “**Trademarks**” means trademarks, service marks, trade names, slogans, logos, trade dress, internet domain names, uniform resource identifiers, rights in design, brand names, and other similar designations of source or origin, together with all translations, adaptations, derivations, and combinations thereof, all goodwill connected with the use thereof and symbolized thereby, and all registrations and applications to register the foregoing, and all renewals thereof.

(iiii) “**WARN Act**” means the Worker Adjustment and Retraining Notification Act of 1988, 29 U.S.C. § 2101 et seq., or any applicable similar state, provincial or local law which impose obligations in circumstances of mass termination.

1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have meanings set forth in the sections indicated:

<u>Term</u>	<u>Section</u>
Acquired Assets	2.1
Acquired Angel Intellectual Property Rights	2.1(c)(iii)
Acquired Aurix Intellectual Property Rights	2.1(b)(iii)
Agreement	Preamble
Allocation Schedule	11.1(b)
Angel Acquired Assets	2.1
Angel Customer Contracts	2.1(c)(i)
Angel IP Contracts	2.1(c)(i)
Angel Purchase Orders	2.1(c)(i)
Angel Supplier Contracts	2.1(c)(i)
Assigned Contract Assumption Notice	2.8(a)
Assignment and Assumption Agreement	4.2(b)
Assumed Angel Liabilities	2.3(b)

<u>Term</u>	<u>Section</u>
Assumed Aurix Liabilities	2.3(a)
Assumed Liabilities	2.3(b)
Audited Financial Statements	5.12
Aurix Acquired Assets	2.1
Aurix Acquired Assets	2.1
Aurix Assigned Contracts	2.1(b)(i)
Aurix Customer Contracts	2.1(b)(i)
Aurix IP Contracts	2.1(b)(i)
Aurix Purchase Orders	2.1(b)(i)
Aurix Purchase Price	3.1(a)
Aurix Supplier Contracts	2.1(b)(i)
Back-up Bidder	8.1(c)
Balance Sheet Date	5.12
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Bill of Sale	4.2(a)
Chapter 11 Case	Recitals
Closing	4.1
Closing Date	4.1
COBRA Continuation Coverage	7.3
Competing Bid	8.1(b)
Confidentiality Agreements	2.1(a)(v)
Corporate Records	2.2(j)
Credit Bid Amount	3.1(b)(i)
Damages	12.10(b)
Disputed Cure Costs	2.7(c)
Employment Contracts	2.1(a)(iii)
Equipment	2.1(a)(ii)
Exceptions	5.2
Excluded Assets	2.2
Excluded Liabilities	2.4
Excluded Plans	2.4(f)
Execution Date	Preamble
Executory Contract List	2.7(a)
FDA	5.13(c)
FDCA	5.13(a)
Financial Statements	5.12
Health Care Laws	5.13(a)
HSR Act	5.3
Improvements	2.1(a)(ii)
In-Bound Angel IP Contracts	2.1(c)(i)
In-Bound Aurix IP Contracts	2.1(b)(i)
Insurance Policies	5.20(a)
Interim Financial Statements	5.12
IP Contracts	2.1(f)

<u>Term</u>	<u>Section</u>
Material Contracts	5.7(a)
Named Insured	4.2(h)
Other Angel Contracts	2.1(c)(i)
Other Aurix Contracts	2.1(b)(i)
Out-Bound Angel IP Contracts	2.1(c)(i)
Outside Back-up Date	8.1(c)
Out-Bound Aurix IP Contracts	2.1(b)(i)
Outside Date	4.4(b)
Prevailing Bidder	8.1(c)
Purchase Price	3.1(a)
Purchasers	Preamble
Purchaser Disclosure Schedule	Article VI
Purchaser Named Insurance Policies	4.2(h)
Recharacterization	9.12
Representatives	9.2(a)
Safety Notices	5.13(f)
Sale Order	8.2
Seller	Preamble
Seller Broker Fee	5.11
Seller Disclosure Schedule	Article V
Seller Entity Registered Intellectual Property Rights	5.8(a)
Seller Leased Real Estate Leases	2.1(a)(i)
Seller Leased Real Property	2.1(a)(i)
Seller Real Estate Leases	2.1(a)(i)
Seller Software	5.8(a)
Straddle Period	11.1(b)
Subsidiary Equity Interest	2.3(l)
Third Party Claim	12.3(a)
Third Party Insurance Policies	5.20(c)
Transfer Tax	11.1(a)
Transferred Employee	7.1
Undisputed Cure Costs	2.7(a)

ARTICLE II.

ACQUISITION AND TRANSFER OF ASSETS; ASSUMPTION OF LIABILITIES

2.1 Acquisition and Transfer of Acquired Assets. At the Closing, and upon the terms and conditions set forth herein and in the Sale Order, Seller shall transfer, assign, convey and deliver to Purchasers or their assigns, and Purchasers or their assigns shall acquire and accept from Seller, all of Seller's rights, title, and interests in, to and under (in each case free and clear of any and all Encumbrances, other than Permitted Encumbrances and Assumed Liabilities) the Aurix Acquired Assets and the Angel Acquired Assets. "**Aurix Acquired Assets**" and "**Angel Acquired Assets**" shall mean all property, assets and rights owned, leased or held for use by Seller, used or useful in or held for use in the Aurix Business or Angel Business, respectively, of

every kind, character and description, including all direct or indirect, rights, title, and interests of Seller in, to and under all the tangible and intangible, [real] and personal, assets, properties, rents, Claims and contracts of Seller, to the extent transferable, wheresoever located, whether carried on the books of Seller or not carried on the books of Seller, due to expense, full depreciation or otherwise, used or useful in or held for use in the Aurix Business (in the case of Aurix Acquired Assets) or the Angel Business (in the case of the Angel Acquired Assets) provided, however, that neither the Aurix Acquired Assets nor the Angel Acquired Assets shall include any Excluded Assets.

(a) Each of the Aurix Acquired Assets and the Angel Acquired Assets shall include, without limitation, the following:

(i) [all of Seller's rights, title and interests under the leases of real property leased by Seller set forth on Schedule 2.1(a)(i) (all of such assumed leases, the "**Seller Real Estate Leases**"), including rights to security deposits related thereto (the real property leased by Seller pursuant to the Leased Real Estate Leases, the "**Seller Leased Real Property**")¹];

(ii) [all of: (i) Seller's rights, title and interests to the buildings, improvements and furnishings, fixtures and equipment now or hereafter located on the Leased Real Property, subject to limitations set forth in the Seller Real Estate Leases (collectively, the "**Improvements**"); (ii) Seller's equipment, security devices, furniture, fixtures, tools and other personal property now or hereafter owned or held by Seller, but excluding any of the foregoing items under leases or similar contracts not constituting Assigned Contracts (collectively, the "**Equipment**"); and (iii) any rights of Seller to the warranties and licenses received from manufacturers and sellers of the Equipment, Improvements or any component thereof];

(iii) [all of Seller's rights and interests under the employment agreements (to the extent assignable) with respect to Transferred Employees ("**Employment Contracts**")];

(iv) all Software owned by Seller;

(v) all rights under any existing confidentiality or non-disclosure agreements ("**Confidentiality Agreements**");

(vi) copies of all Tax Returns and Tax records of Seller related to Taxes arising in connection with the Leased Real Property;

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¹ NTD: Status of leases TBD .

(vii) [any claim, right or interest of Seller in or to any refund, rebate, abatement or other recovery for Taxes, together with any interest due thereon or penalty rebate arising therefrom, for any Tax Period (or portion thereof) ending on or before the Closing Date];

(viii) all rights, Claims or causes of action of Seller against other parties arising out of events occurring prior to the Closing Date (including, for the avoidance of doubt, rights, Claims or causes of action arising out of events occurring prior to the Petition Date), including, without limitation, (i) those matters set forth on Schedule 2.1(a)(viii), (ii) rights, Claims or causes of action of Seller against any counterparty to a Contract for breach of contract or related matters, and (iii) any rights under or pursuant to any and all warranties, representations and guarantees made by suppliers, manufacturers, and contractors relating to products sold, or services provided, to Seller, excluding only the rights, Claims and causes of action that are identified as Excluded Assets in Section 2.2;

(ix) all Cash and Cash Equivalents, whether on hand, in transit or in banks or other financial institutions, security entitlements, securities accounts, commodity contracts and commodity accounts and including any cash collateral that is collateralizing any letters of credit issued pursuant to the DIP Loan Documents or any other letter of credit, including, without limitation, any letter of credit issued prior to the Petition Date, or obligation with respect thereto, assumed by Purchasers, but excluding any cash tendered as part of the Purchase Price, to the extent in excess of expenses permitted to be paid by the Company in accordance with the DIP Loan Documents; and

(x) to the extent permitted by applicable Law, all Avoidance Actions.

(b) The Aurix Acquired Assets shall include, without limitation, the following:

(i) all of Seller's rights and interests under: (A) the sales orders, customer Contracts, master service agreements, work orders, study agreements, contractor agreements, memorandums of agreement, statements of work, or other similar Contracts entered into by Seller with its customers, in each case, in connection with the Aurix Business including those listed on Schedule 2.1(b)(i) ("**Aurix Customer Contracts**"); (B) the open purchase orders with respect to the Aurix Business for which the goods or services have not been received by Seller as of the Closing Date (the "**Aurix Purchase Orders**"); (C) other Contracts entered into by Seller with any supplier or vendor and listed on Schedule 2.1(b)(i) ("**Aurix Supplier Contracts**"); (D) all Contracts (1) granting Seller any rights, via a license, transfer of ownership, covenant not to sue or otherwise, in or to any Intellectual Property Rights owned or controlled by third parties, including Software, that relate to or are necessary, used or useful in connection with the Aurix Business ("**In-Bound Aurix IP Contracts**"), including those In-Bound Aurix IP Contracts listed on Schedule 2.1(b)(i), and (2) granting any third party any rights, via a license, transfer of ownership, covenant not to sue or otherwise,

in or to any Intellectual Property Rights owned or controlled by Seller, including Software, that relate to or are necessary, used or useful in connection with the Aurix Business (“**Out-Bound Aurix IP Contracts**”), including those Out-Bound Aurix IP Contracts listed on Schedule 2.1(b)(i) (the Out-Bound Aurix IP Contracts together with the In-Bound Aurix IP Contracts, the “**Aurix IP Contracts**”); and (E) all other Contracts listed on Schedule 2.1(b)(i) (the “**Other Aurix Contracts**” and, together with the Seller Real Estate Leases, the Employment Contracts, the Aurix Customer Contracts, the Aurix Purchase Orders, the Aurix IP Contracts, the Aurix Supplier Contract and the Confidentiality Agreements and Supplier Contracts that Purchasers are assuming, the “**Aurix Assigned Contracts**”);

(ii) all of Seller’s rights and interests: (i) in the Aurix Inventory; and (ii) in and to the warranties received from vendors or suppliers with respect to the Aurix Inventory;

(iii) all Seller Intellectual Property Rights necessary, used or useful in connection with the Aurix Business (including for the avoidance of doubt the Acquired Aurix Names), together with all of Seller’s documentation (in any form or medium) relating thereto, and all of Seller’s physical embodiments thereof (the “**Acquired Aurix Intellectual Property Rights**”); provided that, to the extent that such Seller Intellectual Property Rights cannot be transferred to Purchasers, Seller shall be deemed to have granted to Purchasers an exclusive (even as to Seller), royalty-free right and license to use and otherwise exploit such Intellectual Property Rights from and after the Closing Date, to the fullest extent permitted by applicable law, including the right to sue and otherwise recover for past, present and future infringements, misappropriations, dilutions, and other violations thereof;

(iv) all rights and interests of Seller under any Aurix Permits (to the extent transferable);

(v) all of Seller’s instruments, Accounts Receivable (whether current or noncurrent), rebates, refunds, unbilled costs and fees attributable to the Aurix Business or the Acquired Aurix Assets and all causes of action specifically pertaining to the collection of the foregoing, and any other receivables of Seller, in each case arising prior to or on the Closing Date;

(vi) to the extent permitted by applicable Law, all rights and benefits under Insurance Policies listed on Schedule 4.2(g) that relate to or arise from the Aurix Business, Acquired Aurix Assets or Assumed Aurix Liabilities, including, without limitation, (i) all proceeds from such Insurance Policies except to the extent that such proceeds relate to claims that are Excluded Assets or Excluded Liabilities or relate to any Seller Plans, and (ii) all claims, demands, proceedings and causes of action asserted by Seller under such Insurance Policies that relate to or arise from the Aurix Business, Acquired Aurix Assets or Assumed Aurix Liabilities, and (iii) any letters of credit related thereto;

(vii) all security and utility deposits, other deposits, credits, allowance, prepaid assets, or charges, rebates, setoffs, prepaid expenses, and other prepaid items related to the Acquired Aurix Assets (except for security deposits relating to (i) the Seller Real Estate Leases which are not Assigned Aurix Contracts, (ii) Contracts that are not Assigned Aurix Contracts, and (iii) Excluded Assets); and any restricted cash Seller is required to maintain in connection with Seller's insurance programs or policies that represent prepayments and similar items arising out of, or relating to, the Acquired Aurix Assets or the Aurix Business;

(viii) all promotional allowances and vendor rebates and similar items related to the Aurix Business;

(ix) all office supplies, stationary, forms, labels, shipping materials, brochures, art work, photographs, production supplies, other miscellaneous supplies, and other tangible property of any kind wherever located, including all property of any kind located in any building, office or other space leased, owned, or occupied by Seller or in any warehouse where any of Seller's properties and assets may be situated;

(x) the right to receive and retain mail and other communications related to the Aurix Business; and

(xi) all goodwill and other intangible assets including correspondence with present or prospective customers and suppliers, advertising materials, software programs, telephone exchange numbers, and other similar intangible assets associated with the Aurix Business and the Acquired Aurix Assets (to the extent transferable), including customer and supplier lists provided that, to the extent such intangible assets cannot be transferred to Purchasers, Seller shall be deemed to have granted to Purchasers an exclusive, royalty-free right and license to use such intangible assets from and after the Closing Date, to the fullest extent permitted by applicable law and the underlying agreements, as applicable.

(c) The Angel Acquired Assets shall include, without limitation, the following

(i) all of Seller's rights and interests under: (A) the sales orders, customer Contracts, master service agreements, work orders, study agreements, contractor agreements, memorandums of agreement, statements of work, or other similar Contracts entered into by Seller with its customers, in each case, in connection with the Aurix Business, including those listed on Schedule 2.1(c)(i) ("**Angel Customer Contracts**"); (B) the open purchase orders with respect to the Angel Business for which the goods or services have not been received by Seller as of the Closing Date (the "**Angel Purchase Orders**"); (C) other Contracts entered into by Seller with any supplier or vendor and listed on Schedule 2.1(c)(i) ("**Angel Supplier Contracts**"); (D) all Contracts (1) granting Seller any rights, via a license, transfer of ownership, covenant not to sue or otherwise, in or to any Intellectual Property Rights owned or controlled by third parties, including Software, that relate to or are necessary, used or useful in connection with the

Angel Business (“**In-Bound Angel IP Contracts**”), including those In-Bound Angel IP Contracts listed on Schedule 2.1(c)(i), and (2) granting any third party any rights, via a license, transfer of ownership, covenant not to sue or otherwise, in or to any Intellectual Property Rights owned or controlled by Seller, including Software, that relate to or are necessary, used or useful in connection with the Angel Business (“**Out-Bound Angel IP Contracts**”), including those Out-Bound Angel IP Contracts listed on Schedule 2.1(c)(i) (the Out-Bound Angel IP Contracts together with the In-Bound Angel IP Contracts, the “**Angel IP Contracts**”); (E) all other Contracts listed on Schedule 2.1(c)(i) (the “**Other Angel Contracts**” and, together with the Seller Real Estate Leases, the Employment Contracts, the Angel Customer Contracts, the Angel Purchase Orders, the Angel IP Contracts, the Angel Supplier Contract and the Confidentiality Agreements and Supplier Contracts that Purchasers are assuming, the “**Angel Assigned Contracts**”);

(ii) all of Seller’s rights and interests: (i) in the Angel Inventory; and (ii) in and to the warranties received from vendors or suppliers with respect to the Angel Inventory;

(iii) all Seller Intellectual Property Rights necessary, used or useful in connection with the Angel Business (including for the avoidance of doubt the Acquired Angel Names), together with all of Seller’s documentation (in any form or medium) relating thereto, and all of Seller’s physical embodiments thereof (the “**Acquired Angel Intellectual Property Rights**”); provided that, to the extent that such Seller Intellectual Property Rights cannot be transferred to Purchasers, Seller shall be deemed to have granted to Purchasers an exclusive (even as to Seller), royalty-free right and license to use and otherwise exploit such Intellectual Property Rights from and after the Closing Date, to the fullest extent permitted by applicable law, including the right to sue and otherwise recover for past, present and future infringements, misappropriations, dilutions, and other violations thereof;

(iv) all rights and interests of Seller under any Angel Permits (to the extent transferable);

(v) all of Seller’s instruments, Accounts Receivable (whether current or noncurrent), rebates, refunds, unbilled costs and fees attributable to the Angel Business or the Acquired Angel Assets and all causes of action specifically pertaining to the collection of the foregoing, and any other receivables of Seller, in each case arising prior to or on the Closing Date;

(vi) to the extent permitted by applicable Law, all rights and benefits under Insurance Policies listed on Schedule 4.2(g) that relate to or arise from the Angel Business, Acquired Angel Assets or Assumed Angel Liabilities, including, without limitation, (i) all proceeds from such Insurance Policies except to the extent that such proceeds relate to claims that are Excluded Assets or Excluded Liabilities or relate to any Seller Plans, and (ii) all claims, demands, proceedings

and causes of action asserted by Seller under such Insurance Policies that relate to or arise from the Angel Business, Acquired Angel Assets or Assumed Angel Liabilities, and (iii) any letters of credit related thereto;

(vii) all security and utility deposits, other deposits, credits, allowance, prepaid assets, or charges, rebates, setoffs, prepaid expenses, and other prepaid items related to the Acquired Angel Assets (except for security deposits relating to (i) the Seller Real Estate Leases which are not Assigned Angel Contracts, (ii) Contracts that are not Assigned Angel Contracts, and (iii) Excluded Assets); and any restricted cash Seller is required to maintain in connection with Seller's insurance programs or policies that represent prepayments and similar items arising out of, or relating to, the Acquired Angel Assets or the Angel Business;

(viii) all promotional allowances and vendor rebates and similar items related to the Angel Business;

(ix) all office supplies, stationary, forms, labels, shipping materials, brochures, art work, photographs, production supplies, other miscellaneous supplies, and other tangible property of any kind wherever located, including all property of any kind located in any building, office or other space leased, owned, or occupied by Seller or in any warehouse where any of Seller's properties and assets may be situated;

(x) the right to receive and retain mail and other communications related to the Angel Business; and

(xi) all goodwill and other intangible assets including correspondence with present or prospective customers and suppliers, advertising materials, software programs, telephone exchange numbers, and other similar intangible assets associated with the Angel Business and the Acquired Angel Assets (to the extent transferable), including customer and supplier lists provided that, to the extent such intangible assets cannot be transferred to Purchasers, Seller shall be deemed to have granted to Purchasers an exclusive, royalty-free right and license to use such intangible assets from and after the Closing Date, to the fullest extent permitted by applicable law and the underlying agreements, as applicable.

2.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the Acquired Assets are the only properties, rights and assets transferred to, or otherwise acquired by, Purchasers under this Agreement. Without limiting the generality of the foregoing, the Acquired Assets do not include (i) any right, title, or interest of any Person other than Seller in any property or asset and (ii) the properties and assets of Seller listed or described below in this Section 2.2 (all properties and assets not being acquired by Purchasers are herein collectively referred to as the "**Excluded Assets**"):

(a) the Purchase Price;

(b) all of Seller's rights under Contracts that are not Assigned Contracts, including any Contracts set forth on Schedule 2.2(b);

(c) all of Seller's rights and interests under any Permits that are not Acquired Assets;

(d) any assets and associated Claims or rights arising out of the Excluded Liabilities, including rights relating to prepaid expenses, refunds or adjustments (except to the extent described in Section 2.1(o));

(e) all rights of Seller arising under this Agreement and the Ancillary Agreements;

(f) all rights, Claims or causes of action of Seller that are related to the Excluded Assets or the Excluded Liabilities (except to the extent described in Section 2.1(o));

(g) all good faith or other bid deposits submitted by any third party under the terms of the Bid Procedures Order, including the sales procedures;

(h) any and all privileges of Seller with any of its professionals including attorneys, accountants, and other advisors, whether related to attorney-client privilege, attorney work product, or otherwise;

(i) all bank accounts and lockboxes;

(j) all company Tax Returns or Tax records (other than those described in Section 2.1(n)), seals, minute books, charter documents, stock or equity record books and such other books and records as pertain to the organization, existence, or capitalization of Seller, as well as any other records or materials relating to Seller generally and not involving or related to the Acquired Assets or the operations of the Business (the "**Corporate Records**"); provided that, Seller shall provide Purchasers with reasonable access to, and copies of, any Corporate Records;

(k) all rights and benefits under director and officer Insurance Policies;

(l) The stock and other equity interests or securities, including promissory notes, issued by each Subsidiary of Seller; and

(m) all of Seller's rights and interests in and to the assets listed on Schedule 2.2.

2.3 Assumption of Liabilities.

(a) Subject to the terms and conditions set forth in this Agreement, at the Closing, in consideration for the assignment, conveyance, transfer and delivery of the Acquired Aurix Assets to Purchasers, Purchasers shall assume only the following Liabilities as set forth on Schedule 2.3(a) (collectively, the "**Assumed Aurix Liabilities**");

(i) the Liabilities and executory obligations of Seller under the Aurix Assigned Contracts (specifically excluding the Excluded Assets);

(ii) the Liabilities relating to Seller's current trade payables and other current accounts payable related to the Aurix Business;

(iii) the Liabilities arising in connection with the use and operation of the Leased Real Property from and after the Closing Date;

(iv) the Liabilities with respect to Cure Costs (including for Undisputed Cure Costs and Disputed Cure Costs) to the extent related to the Assigned Aurix Contracts;

(v) the Liabilities and obligations relating to or arising from the Acquired Aurix Assets or the operation of the Aurix Business relating to or arising from the period commencing after the Closing Date; and

(vi) the Liabilities of Seller for Transfer Taxes under Section 11.1(a) to the extent related to the Aurix Acquired Assets;

(vii) the Liabilities of Seller for all accrued and unpaid wages and accrued and unused vacation, time-off, bonus, commissions, sick days, and personal days with respect to the applicable Transferred Employees as of the Closing Date; and

(viii) [the Liabilities assumed pursuant to Section 7.3 and, solely with respect to the Transferred Employees, Section 7.1].

(b) Subject to the terms and conditions set forth in this Agreement, at the Closing, in consideration for the assignment, conveyance, transfer and delivery of the Acquired Angel Assets to Purchasers, Purchasers shall assume only the following Liabilities as set forth on Schedule 2.3(b) (collectively, the "**Assumed Angel Liabilities**" and, together with the Assumed Aurix Liabilities, the "**Assumed Liabilities**"):

(i) the Liabilities and executory obligations of Seller under the Angel Assigned Contracts (specifically excluding the Excluded Assets);

(ii) the Liabilities relating to Seller's current trade payables and other current accounts payable related to the Angel Business;

(iii) the Liabilities arising in connection with the use and operation of the Leased Real Property from and after the Closing Date;

(iv) the Liabilities with respect to Cure Costs (including for Undisputed Cure Costs and Disputed Cure Costs) to the extent related to the Assigned Angel Contracts;

(v) the Liabilities and obligations relating to or arising from the Acquired Angel Assets or the operation of the Angel Business relating to or arising from the period commencing after the Closing Date;

(vi) the Liabilities of Seller for Transfer Taxes under Section 11.1(a) to the extent related to the Angel Acquired Assets;

(vii) the Liabilities of Seller for all accrued and unpaid wages and accrued and unused vacation, time-off, bonus, commissions, sick days, and personal days with respect to the applicable Transferred Employees as of the Closing Date; and

(viii) [the Liabilities assumed pursuant to Section 7.3 and, solely with respect to the Transferred Employees, Section 7.1].

Notwithstanding anything in this Agreement to the contrary, Seller hereby acknowledges and agrees none of the Purchasers is a successor to Seller, is assuming from Seller, or is in any way responsible for, the Excluded Liabilities. The transactions contemplated by this Agreement shall in no way expand the rights or remedies of any third party against any of the Purchasers or Seller as compared to the rights and remedies that such third party would have had against Seller absent the Chapter 11 Case had Purchasers not assumed such Assumed Liabilities as set out above. Other than the Assumed Liabilities assumed by Purchasers, Purchasers are not assuming and shall not be liable for any liabilities or obligations of Seller.

2.4 Excluded Liabilities. Except for the Assumed Liabilities assumed by Purchasers, Purchasers shall not assume or be liable for or bound by any Liability of Seller, including any duties, responsibilities, liabilities, assessments, penalties or obligations of any kind or nature, whether known or unknown, whether asserted or unasserted, whether accrued or unaccrued, whether contingent or non-contingent, presently in existence or arising hereafter, disputed or undisputed, liquidated or unliquidated, at Law or in equity or otherwise, including any Liability based on successor liability theories (herein referred to as the “**Excluded Liabilities**”), including without limitation the following specific Liabilities to the extent they do not otherwise constitute Assumed Liabilities:

(a) any and all Liabilities of Seller under any Contract of Seller that is not an Assigned Contract whether accruing prior to, at, or after the Closing Date (except as set forth in Section 2.7);

(b) any and all Liabilities for Taxes (i) of Seller (including Taxes of any other Person as a transferee or successor, by Law, Contract or otherwise) for any Tax Period or (ii) arising from or with respect to the Acquired Assets or the Business for any Tax Period (or any portion thereof) ending on or prior to the Closing Date;

(c) any and all Liabilities for any Indebtedness or obligations for borrowed money of Seller;

(d) any and all Liabilities arising under any Environmental Law or any other Law in connection with any environmental, health, or safety matters, including as a result

of any action or inaction of Seller or of any third party relating to the storage, use, or operation of the Acquired Assets before the Closing Date;

(e) any and all Liabilities for: (i) costs and expenses incurred by Seller or owed in connection with the administration of the Chapter 11 Case (including the U.S. Trustee fees, the fees and expenses of attorneys, accountants, financial advisors, consultants, and other professionals retained by Seller, and any official or unofficial creditors' committee, the fees and expenses of the post-petition lenders or the pre-petition lenders incurred or owed in connection with the administration of the Chapter 11); and (ii) all costs and expenses of Seller incurred in connection with the negotiation, execution, and consummation of the transactions contemplated under this Agreement;

(f) any Liabilities arising from or with respect to each Seller Plan (the "**Excluded Plans**");

(g) except as included in Section 2.3(b)(vii) or Section 2.3(b)(viii), any and all Liabilities in any way attributable to (i) the employment or service of current or former employees, officers or directors of Seller or any current or former Subsidiary of Seller who is not a Transferred Employee, regardless of whether such Liability is attributable to the period before, on or after the Closing Date, or (ii) the employment of Employees to the extent attributable to the period at or before the Closing;

(h) any and all Liabilities arising out of related to the Excluded Assets;

(i) any and all Liabilities arising from or related to the operation or condition of the Acquired Assets or the Assumed Liabilities prior to the Closing or facts, actions, omissions, circumstances or conditions existing, occurring or accruing with respect to the Acquired Assets or the Assumed Liabilities prior to the Closing;

(j) any and all Liabilities relating to Seller's current trade payables and other current accounts payable (but excluding those set forth on Schedule 2.3); and

(k) any Liability not expressly included among the Assumed Liabilities and specifically so assumed.

2.5 Assignment of Contracts and Rights. To the maximum extent permitted by the Bankruptcy Code, the Acquired Assets, including without limitation Assigned Contracts, shall be assumed by and assigned to Purchasers pursuant to Section 365 of the Bankruptcy Code as of the Closing Date or such other date as specified in an Order of the Bankruptcy Court.

2.6 Limitations on Assignability.

(a) This Agreement and the instruments and documents executed and delivered herewith will constitute an assignment of all Acquired Assets; provided that neither this Agreement, nor any of the instruments or documents executed and delivered in connection herewith or contemplated hereby, shall constitute an assignment or assumption of any Acquired Asset, or an attempted assignment or an attempted assumption thereof, to the extent that, without the consent of a third party, such

assignment or attempted assignment, or assumption or attempted assumption, would constitute a breach thereof or in any way materially and adversely affect the rights of any Purchaser or Seller thereunder, unless otherwise provided under the Bankruptcy Code, the Sale Order or other applicable Law. If, with respect to any Acquired Asset such consent is not obtained or such assignment is not attainable pursuant to the Bankruptcy Code or the Sale Order, then such Acquired Asset shall not be transferred hereunder and the Closing shall proceed with respect to the remaining Acquired Assets without any reduction in the Purchase Price.

(b) With respect to such non-assignable or non-assumable Acquired Assets that are Assigned Contracts, Seller hereby appoints, effective as of the Closing Date, each Purchaser as Seller's agent and attorney-in-fact, effective as of the Closing Date, to act for Seller in obtaining the benefits and performing Seller's obligations under such Assigned Contracts, but only to the extent any action to obtain such benefits and any such delegation of duties may be made without violation thereof and, in each case, at the sole cost and expense of Purchasers without any liability or obligation of Seller. In addition, until the impracticalities of assignment referred to in this Section 2.6 hereof are resolved, Seller shall use its commercially reasonable efforts, at Purchasers' sole cost, to (i) provide Purchasers the benefits of any Acquired Asset referred to in this Section 2.6, (ii) cooperate in any reasonable and lawful arrangement designed to provide such benefits to Purchasers, and (iii) enforce, for the account and benefit of Purchasers, any and all rights of Seller arising from the Acquired Assets referred to in this Section 2.6 against such issuer thereof and all other parties thereto (including the right to elect to terminate any Contract in accordance with the terms thereof on the request of Purchasers). [Purchasers shall perform, on behalf of Seller, for the benefit of the issuer thereof and/or all other parties thereto, the obligations of Seller under the Acquired Assets referred to in this Section 2.6 or in connection therewith.]

2.7 Executory Contract Designation.

(a) No later than the date of the service of the Executory Contract List upon all necessary parties pursuant to Section 2.7(b) hereof, Seller shall deliver to Purchasers a true, correct and complete list of all material Contracts that are executory Contracts or unexpired leases related to the Acquired Assets or otherwise used in connection with the Business (the "**Executory Contract List**"). The Executory Contract List shall list the monetary amounts that Seller believes are the Cure Costs ("**Undisputed Cure Costs**") and such other commercial information related to the Contracts listed thereon as shall be reasonably requested by Purchasers. Seller shall also provide, together with the Executory Contract List, a list of any nonmonetary obligations that Seller believes must be otherwise satisfied, including pursuant to Section 365(b)(1)(A) and (B) of the Bankruptcy Code, in order for Purchasers to take assignment of the Assigned Contracts pursuant to this Agreement.

(b) No later than twenty-three (23) days after the Petition Date, a copy of the Executory Contract List shall be properly served on all necessary parties.

(c) To the extent a counterparty to a Contract objects or otherwise challenges the Undisputed Cure Costs determined by Seller and asserts a different monetary amount that must be paid and/or nonmonetary obligations that otherwise must be satisfied, including pursuant to Section 365(b)(1)(A) and (B) of the Bankruptcy Code, in order for Purchasers to assume such Contract pursuant to this Agreement, the difference between the Undisputed Cure Costs determined by Seller and such amounts and/or nonmonetary obligations determined by such counterparty shall be referred to as the “**Disputed Cure Costs**”.

(d) Notwithstanding anything in this Agreement to the contrary, Purchasers may revise any schedule (other than the Seller Disclosure Schedule) setting forth any Acquired Assets and any Excluded Assets to (i) include in the definition of Acquired Assets, Acquired Aurix Assets or Acquired Angel Assets (pursuant to the applicable schedule) and to exclude from the definition of Excluded Assets, any Contract, Subsidiary Equity Interest, Seller Plan or other asset of Seller not previously included in the Acquired Aurix Assets, Acquired Angel Assets or Acquired Assets, at any time on or prior to the third (3rd) day prior to the Auction and require Seller to give notice to the parties to any such Contract and (ii) exclude from the definition of Acquired Aurix Assets, Acquired Angel Assets or Acquired Assets (pursuant to the applicable schedule) and to include in the definition of Excluded Assets, any Contract, Subsidiary Equity Interest, Seller Plan or other asset of Seller previously included in the Acquired Aurix Assets, Acquired Angel Assets or Acquired Assets and not otherwise included in the definition of Excluded Assets, at any time on or prior to the third (3rd) day prior to the Auction; provided that no such change of a schedule, the definition of the Acquired Aurix Assets, Acquired Angel Assets or Acquired Assets or the definition of the Excluded Assets shall reduce the amount of the Purchase Price below the amount of the Credit Bid. If any Contract, Subsidiary Equity Interest or Seller Plan is excluded from the Acquired Aurix Assets, Acquired Angel Assets or Acquired Assets as permitted by this Section 2.7(d), all Liabilities to third parties arising under such Contract, Subsidiary Equity Interest or Seller Plan shall be Excluded Liabilities. Without limiting any of Purchasers’ rights pursuant to this Section 2.7(d), in the event that the Sale Order does not approve the assignment or transfer of one or more of the Assigned Contracts to Purchasers as Acquired Assets, Purchasers may, in their sole discretion and at any time prior to the Closing Date, exclude any or all of the Assigned Contracts from the Acquired Assets but may not reduce the amount of the Purchase Price.

(e) Purchasers shall be obligated to pay at Closing any Undisputed Cure Costs associated with the assumption of such Assigned Contract. The Disputed Cure Costs shall be paid by Purchasers at the appropriate time set forth in any Order of the Bankruptcy Court or mutual agreement between Purchasers and the non-Seller counterparty to the applicable Assigned Contract.

(f) Notwithstanding anything contained herein to the contrary, Purchasers shall only take assignment of Contracts designated by Purchasers as Assigned Contracts pursuant to this Section 2.7.

(g) Prior to the Closing, Seller shall use commercially reasonable efforts to provide Purchasers with access to relevant business records, personnel, equipment, and Purchasers' other reasonable requests in order to allow Purchasers to assist with evaluating the Disputed Cure Costs.

2.8 Additional Assigned Contracts.

(a) No later than two (2) days prior to the Closing Date, Purchasers may designate a Non-Assumed Contract to be an Aurix Assigned Contract or Angel Assigned Contract, by one or more written notices to Seller (each an "**Assigned Contract Assumption Notice**"). As soon as practicable after receiving any Assigned Contract Assumption Notice, Seller shall take all actions reasonably necessary to assume and assign to Purchasers pursuant to Section 365 of the Bankruptcy Code all Non-Assumed Contracts set forth in such Assigned Contract Assumption Notice. The Cure Costs with respect to any Non-Assumed Contract that becomes an Assigned Contract shall be paid by Purchasers upon the later of (a) as soon as practicable after such Cure Costs are finally determined by the Bankruptcy Court and (b) as soon as practicable after the effectiveness of the assumption and assignment of such Assigned Contract. Seller and Purchasers acknowledge and agree that the agreements and covenants in this Section 2.8(a) shall survive the Closing. Notwithstanding anything in this Agreement to the contrary, on the date that any Non-Assumed Contract is assumed and assigned to Purchasers pursuant to this Section 2.8(a), such Non-Assumed Contract shall thereafter be deemed an Assigned Contract for all purposes under this Agreement. Any Non-Assumed Contract for which Purchasers have not provided an Assigned Contract Assumption Notice prior to the Closing Date shall be automatically deemed to be a Non-Assumed Contract, which Seller may reject or seek to reject without any further consent of Purchasers. The obligations of Seller under this Section 2.8(a) are subject to Section 365(d)(4) of the Bankruptcy Code and any extension provided or obtained thereunder.

(b) Seller shall not reject any Non-Assumed Contract until earliest of (x) the Closing Date; and (y) the date on which Purchasers deliver notice to Seller that they no longer object to the rejection of such Non-Assumed Contract. A Non-Assumed Contract shall not be considered an Assigned Contract unless expressly assumed and assigned pursuant to Section 2.8(a).

(c) To the extent that the need for Bankruptcy Court approval delays the assumption or rejection of any Contract, Seller shall take all commercially reasonable efforts to gain all necessary approvals, including as required under Section 365(d)(4) of the Bankruptcy Code, until the Closing Date with respect to any particular Contract.

ARTICLE III.

CONSIDERATION

3.1 Consideration.

(a) The aggregate consideration (collectively, the “**Aurix Purchase Price**”) to be paid for the acquisition of the Acquired Aurix Assets shall be:

(i) the release and waiver of Seller under (A) the Facility Agreement and (subject to Section 3.1(e)) (B) the DIP Loan Agreement of obligations, claims, rights, actions, causes of action, suits, liabilities, damages, debts, costs, expenses and demands whatsoever, in law or in equity, arising under, or otherwise relating to, the Facility Agreement and the DIP Loan Agreement in amounts equal to \$5,050,000 and \$950,000, respectively, or \$6,000,000 in the aggregate (the “**Aurix Credit Bid Amount**”); plus

(ii) an amount in cash equal to the Undisputed Cure Costs which shall be paid directly to the counterparties Aurix Assigned Contracts upon the assumption and assignment thereof.

(b) The aggregate consideration (collectively, the “**Angel Purchase Price**” and, together with the Aurix Purchase Price, the “**Purchase Price**”) to be paid for the acquisition of the Acquired Angel Assets shall be:

(i) the release and waiver of Seller under (A) the Facility Agreement and (subject to Section 3.1(e)) (B) the DIP Loan Agreement of obligations, claims, rights, actions, causes of action, suits, liabilities, damages, debts, costs, expenses and demands whatsoever, in law or in equity, arising under, or otherwise relating to, the Facility Agreement and the DIP Loan Agreement in amounts equal to \$5,500,000 and \$1,500,000, respectively, or \$7,000,000 in the aggregate (the “**Angel Credit Bid Amount**” and, together with the Angel Credit Bid Amount, the “**Credit Bid Amount**”); plus

(ii) an amount in cash equal to the Undisputed Cure Costs which shall be paid directly to the counterparties Angel Assigned Contracts upon the assumption and assignment thereof.

(c) In addition to the foregoing consideration, as consideration for the grant, sale, assignment, transfer and delivery of (i) the Acquired Aurix Assets, Purchasers shall assume and discharge the Assumed Aurix Liabilities as set forth in Section 2.3; and (ii) the Acquired Angel Assets, Purchasers shall assume and discharge the Assumed Angel Assets.

(d) The Purchase Price shall be satisfied at the Closing as to:

(i) the Credit Bid by the acknowledgment of satisfaction of the Indebtedness of (1) each Facility Lender and (2) each DIP Lender, respectively, by the applicable Credit Bid Amount; and

(ii) the amount of the Assumed Liabilities described in Section 2.3, by assuming the Assumed Aurix Liabilities and/or the Assumed Angel Liabilities, as applicable, pursuant to the Assignment and Assumption Agreement.

(e) Notwithstanding anything in this Agreement to the contrary, Purchasers may, at any time prior to the Closing, modify the relative portion of the Aurix Credit Bid Amount and/or the Angel Credit Bid Amount that will be satisfied by the release of obligations and claims arising under, or related to, the Facility Agreement and the DIP Loan Agreement. For the avoidance of doubt, the amounts due under DIP Loan Agreement will be the last funds utilized to satisfy the Credit Bid Amount, and will only be credit bid after amounts due under the Facility Agreement have been credit bid in full.

ARTICLE IV.

CLOSING AND TERMINATION

4.1 Closing. Subject to the satisfaction of the conditions set forth in Sections 10.1, 10.2 and 10.3 hereof or the waiver thereof by the party entitled to the benefit of the applicable condition, the closing of the acquisition and sale of the Acquired Assets, the delivery of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the “**Closing**”) shall take place at the offices of Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, New York 10022 (or at such other place as the parties may designate in writing) on the date that is no later than the fifteenth (15th) day following the entry of the Sale Order; provided, that, and subject to Section 4.4, to the extent the conditions set forth in Sections 10.1, 10.2 and 10.3 are not so satisfied (other than conditions that by their nature are to be satisfied at the Closing) or so waived on or prior to such date, the period of time within which the Closing shall occur shall be automatically extended until, and the Closing shall occur promptly (but no later than two (2) business days) following, such date as all of the conditions set forth in Sections 10.1, 10.2 and 10.3 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing) or waived by the party entitled to waive the applicable condition, unless another time or date, or both, are agreed to in writing by the parties hereto. The date on which the Closing shall be held is referred to in this Agreement as the “**Closing Date**.” Unless otherwise agreed by the parties in writing, the Closing shall be deemed effective and all right, title and interest of Seller in the Acquired Assets to be acquired by Purchasers hereunder shall be considered to have passed to Purchasers and the assumption of all of the Assumed Liabilities shall be considered to have occurred as of 11:59 p.m. Eastern Time on the Closing Date.

4.2 Closing Deliveries by Seller. At the Closing, Seller shall deliver to Purchasers:

(a) a duly executed bill of sale with respect to the Acquired Assets, substantially in the form attached hereto as Exhibit A (the “**Bill of Sale**”);

(b) a duly executed assignment and assumption agreement with respect to the Assumed Liabilities, including in recordable form as required by Purchasers, substantially in the form attached hereto as Exhibit B (the “**Assignment and Assumption Agreement**”);

(c) a true and correct certified copy of the Sale Order;

(d) a duly executed non-foreign-person affidavit of Seller reasonably satisfactory to Purchasers and prepared in accordance with Treasury Regulations Section 1.1445-2(b)(2);

(e) the officer’s certificates required to be delivered pursuant to Sections 10.3(b) and 10.3(c);

(f) a list of the applicable Accounts Receivable as of the last day of the fiscal month immediately preceding the month in which the Closing occurs;

(g) to the extent obtainable on commercially reasonable terms, written assurances in the form of policy endorsements or other forms reasonably satisfactory to Purchasers that names each Purchaser as an additional named insured (a “**Named Insured**”) under Seller’s insurance policies listed on Schedule 4.2(g) (the “**Purchaser Named Insurance Policies**”); provided, that Purchasers shall pay all reasonable costs and expenses incurred by Purchasers in connection with obtaining such written assurances;

(h) duly executed patent, trademark and copyright assignments in form and substance reasonably acceptable to Purchasers and suitable for recording with the United States Patent and Trademark Office, the United States Copyright Office, or the applicable patent, trademark, or copyright office, agency or registrar, together with any other documentation required in order for the assignments to be duly recorded with the applicable patent, trademark, or copyright office, agency, or registrar;

(i) executed documentation in form and substance reasonably acceptable to Purchasers for evidencing and effectuating the assignment of domain names with the applicable domain name registrar; and

(j) all other previously undelivered certificates, agreements and other documents required by this Agreement to be delivered by Seller at or prior to the Closing in connection with the transactions contemplated by this Agreement.

4.3 Closing Deliveries by Purchasers. At the Closing, Purchasers shall deliver, or cause to be delivered, to Seller (or to other Persons, at the direction of Seller):

(a) the applicable Purchase Price (including documentation in form and substance reasonably acceptable to Seller evidencing reduction of the DIP Loan and the Facility Indebtedness in the full amount of such Purchase Price);

(b) the Bill of Sale;

(c) the Assignment and Assumption Agreement;

(d) the officer's certificates required to be delivered pursuant to Sections 10.2(a) and 10.2(b); and

(e) all other previously undelivered certificates, agreements and other documents required by this Agreement to be delivered by Purchasers at or prior to the Closing in connection with the transactions contemplated by this Agreement.

4.4 Termination of Agreement. This Agreement may be terminated at any time prior to the Closing as follows:

(a) by the mutual written consent of Seller and Purchasers;

(b) by either Purchasers or Seller, if the Closing shall not have been consummated prior to March 25, 2016 (the "**Outside Date**"); provided, however, that Purchasers, in their sole discretion, may extend the Outside Date to the Maturity Date (as defined in the DIP Credit Agreement) and that in the event that the only condition set forth in Section 10.1, Section 10.2 and Section 10.3 that has not been satisfied (other than conditions that by their nature are to be satisfied at the Closing) or waived on or prior to the Outside Date is Section 10.3(f), then Purchasers, in their sole discretion, shall have the right to extend the Outside Date by up to one hundred-twenty (120) days from the Outside Date; provided, further, that if the Closing shall not have occurred on or before the Outside Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Purchasers or Seller, then Purchasers (if Purchasers are in breach) or Seller (if Seller is so in breach), respectively, may not terminate this Agreement pursuant to this Section 4.4(b);

(c) by either Purchasers or Seller, if there shall be any Law that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited, or there shall be in effect a final non-appealable order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; it being agreed that the parties hereto shall promptly appeal any such adverse determination which is appealable (and pursue such appeal with reasonable diligence);

(d) by Purchasers, (i) if the Chapter 11 Case is dismissed or converted to a case or cases under Chapter 7 of the Bankruptcy Code, or if a trustee or examiner with expanded powers to operate or manage the financial affairs, the business or the reorganization of Seller is appointed in the Chapter 11 Case, in each case without the consent of Purchasers or (ii) if Seller's exclusivity as to the proposal of any reorganization plan is terminated or modified;

(e) by Purchasers, if the Sale Order shall not have been entered by the Bankruptcy Court by the close of business on March 14, 2016; provided, however, that the right to terminate this Agreement under this Section 4.4(e) shall not be available to Purchasers if their failure to fulfill any material obligation under this Agreement has been

the cause of, or resulted in, the failure of the Sale Order to meet this requirement on or before such date;

(f) by either Purchasers or Seller, if, following its entry, the Sale Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any material respect without the prior written consent of Purchasers and Seller; provided, however, that the right to terminate this Agreement under this Section 4.4(f) shall not be available to any party whose failure to fulfill any material obligation under this Agreement has been the cause of, or resulted in, the failure of the Sale Order to meet this requirement;

(g) by Purchasers, if the Bidding Procedures Order shall not have been entered by the Bankruptcy Court by the close of business on February 23, 2016; provided, however, that the right to terminate this Agreement under this Section 4.4(g) shall not be available to Purchasers if their failure to fulfill any material obligation under this Agreement has been the cause of, or resulted in, the failure of the Bidding Procedures Order to meet this requirement on or before such date;

(h) by Purchasers if, following its entry, the Bidding Procedures Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any material respect without the prior written consent of Purchasers and Seller; provided, however, that the right to terminate this Agreement under this Section 4.4(h) shall not be available to Purchasers if their failure to fulfill any material obligation under this Agreement has been the cause of, or resulted in, the failure of the Bidding Procedures Order to meet this requirement;

(i) by either Seller or Purchasers if (i) the Auction has occurred and Purchasers were not the Prevailing Bidder, or (ii) the Bankruptcy Court otherwise approves an Alternative Transaction;

(j) by Seller, if Purchasers have breached any representation, warranty, covenant or agreement contained in this Agreement and as a result of such breach the conditions set forth in Section 10.2(a) and Section 10.2(b) hereof, as the case may be, would not then be satisfied at the time of such breach; provided, however, that if such breach is curable by Purchasers within ten (10) days through the exercise of their commercially reasonable efforts, then for so long as Purchasers continue to exercise such commercially reasonable efforts Seller may not terminate this Agreement under this Section 4.4(j) unless such breach is not cured within ten (10) days from written notice to Purchasers of such breach; provided, further, that Seller is not then in material breach of the terms of this Agreement, and provided, further, that no cure period shall be required for a breach which by its nature cannot be cured;

(k) by Purchasers, if Seller has breached any representation, warranty, covenant or agreement contained in this Agreement, and as a result of such breach the conditions set forth in Section 10.3(b) and Section 10.3(c) hereof, as the case may be, would not then be satisfied at the time of such breach; provided, however, that if such breach is curable by Seller within ten (10) days through the exercise of its commercially

reasonable efforts, then for so long as Seller continues to exercise such commercially reasonable efforts Purchasers may not terminate this Agreement under this Section 4.4(k) unless such breach is not cured within ten (10) days from written notice to Seller of such breach; provided, further, that Purchasers are not then in material breach of the terms of this Agreement, and provided, further, that no cure period shall be required for a breach which by its nature cannot be cured;

(l) by Seller, if all of the conditions set forth in Sections 10.1 and 10.3 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing) or waived and Purchasers fail to deliver the Purchase Price or the other deliverables required by Section 4.3;

(m) by Purchasers, if any creditor of Seller obtains relief from the automatic stay to foreclose on any of the Acquired Assets valued in excess of \$100,000;

(n) by Purchasers if the Auction required under the terms of the Bid Procedures Order, has not commenced by the close of business on March 13, 2016; or

(o) by Purchasers if the Bankruptcy Court fails to permit the Purchasers to credit bid the Facility Indebtedness and the DIP Loan as contemplated by Section 3.1 of this Agreement.

4.5 Procedure Upon Termination. In the event of a termination of this Agreement by Purchasers or Seller, or both, pursuant to Section 4.4, (a) written notice thereof shall be given promptly by the terminating party to the other parties hereto, specifying the provision hereof pursuant to which such termination is made, (b) except as contemplated by Section 4.6 and Section 8.1 with respect to the obligations of Purchasers to serve as Back-up Bidders hereunder, this Agreement shall thereupon terminate and become void and of no further force and effect; provided, however that Purchasers shall not be obligated to serve as a Back-up Bidders in the case of a termination pursuant to Section 4.4(k), and (c) the consummation of the transactions contemplated by this Agreement shall be abandoned without further action of the parties hereto. If this Agreement is terminated as provided herein, each party shall redeliver all documents, work papers and other material of any other party relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, to the party furnishing the same.

4.6 Effect of Termination. In the event that this Agreement is validly terminated pursuant to a right of termination as provided herein, then each of the parties shall be relieved of its duties and obligations arising under this Agreement effective as of the date of such termination and such termination shall be without Liability to Purchasers or Seller; provided, however, that Section 4.4, Section 4.5, this Section 4.6, Article XII, the Bidding Procedures Order (if entered) and Purchasers' obligation to serve as Back-up Bidders hereunder shall survive any such termination and shall be enforceable hereunder. In no event shall any termination of this Agreement relieve any party hereto of any Liability for any willful breach of this Agreement by such party.

ARTICLE V.

REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the correspondingly numbered Sections of the Seller Disclosure Schedule delivered as of the date hereof by Seller to Purchasers (the “**Seller Disclosure Schedule**”) (it being understood that any matter disclosed in any Section of the Seller Disclosure Schedule will be deemed to be disclosed in any other Section of the Seller Disclosure Schedule to the extent that it is readily apparent on the face of such disclosure that such disclosure is applicable to such other Section), Seller hereby represents and warrants to Purchasers as follows:

5.1 Organization. Seller is duly organized, validly existing and, as of the date of this Agreement, in good standing under the laws of its jurisdiction of organization. Each Seller Entity has all requisite power and authority to own, lease, develop and operate the Acquired Assets and to carry on its business as now being conducted (subject to the provisions of the Bankruptcy Code). Except as would not, individually or in the aggregate, constitute a Material Adverse Effect, each Seller Entity is duly licensed or qualified to do business in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary. Except for the equity interests that Seller holds in its Subsidiaries, no Seller Entity (i) owns, directly or indirectly, any capital stock or other ownership interest in any Person, or any securities convertible into or exchangeable or exercisable for any capital stock or other ownership interests in any Person, (ii) has any obligation to acquire any capital stock or other ownership interests in any Person, or any securities convertible into or exchangeable or exercisable for any capital stock or other ownership interests of any Person, or to make any investment in any Person, or (iii) is a party to any partnership, limited liability company, joint venture or similar agreement.

5.2 Authorization and Validity. Subject to Bankruptcy Court approval, Seller has all requisite corporate (or equivalent) power and authority to enter into this Agreement and any Ancillary Agreement to which it is or will be a party and to carry out its obligations hereunder and thereunder. Subject to Bankruptcy Court approval, the execution and delivery of this Agreement and the Ancillary Agreements, and the performance by Seller of its obligations hereunder and thereunder, have been duly authorized by all necessary corporate (or equivalent) action on behalf of Seller, and no other proceedings on the part of Seller are necessary to authorize such execution, delivery, and performance. This Agreement has been, and the Ancillary Agreements when delivered will be, duly executed by Seller, and, subject to Bankruptcy Court approval, constitute the valid and binding obligation, enforceable against Seller in accordance with the terms herein and therein (subject to bankruptcy, insolvency, reorganization, and other laws of general applicability relating to or effecting creditors’ rights and to general principles of equity, including principles of commercial reasonableness and good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) (collectively, the “**Exceptions**”).

5.3 No Conflict. The execution, delivery and performance by Seller of this Agreement and the Ancillary Agreements does not, and the consummation by Seller of the transactions contemplated hereby and thereby, upon entry of the Sale Order, will not, (a) conflict with or result in the breach of any provision of the organizational documents of any Seller Entity,

(b) conflict with, violate or result in the breach by any Seller Entity of any applicable Law, (c) require any Seller Entity to make any filing with or give notice to, or obtain any consent from, any Governmental Body, other than the Sale Order and, if required, any clearance under the Hart-Scott-Rodino Antitrust Improvement Act of 1976, as amended (the “**HSR Act**”), (d) conflict with, violate, result in the breach or termination of or the loss of a benefit under, or constitute (with or without notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, payment or acceleration) or adverse modification of any terms or rights under, any Assigned Contract or Permit, or (e) result in any Encumbrance (except for Permitted Encumbrances) on any of the Acquired Assets; other than, in the case of the foregoing subclauses (d) and (e), any of the foregoing that would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect. Except as set forth on Section 5.13 of the Seller Disclosure Schedule, no Seller Entity is a party to, or subject to or bound by, any judgment, injunction or decree of any Governmental Body or agreement which may materially restrict or interfere with the performance by Seller of this Agreement or Purchasers’ ability to operate the Business as currently operated.

5.4 Permits. Section 5.4 of the Seller Disclosure Schedule sets forth a true, complete and correct list of all Permits relating to the Acquired Assets held by the Seller Entities as of the date of this Agreement. The Permits listed in Section 5.4 of the Seller Disclosure Schedule and designated as Aurix Permits or Angel Permits constitute all of the Permits necessary for Seller to lawfully conduct and operate the Aurix Business and the Angel Business, respectively, in the manner currently conducted and operated in all material respects. Each Permit set forth on Section 5.4 of the Seller Disclosure Schedule is in full force and effect, the Seller Entities are in compliance in all material respects with their terms and conditions, all required renewal applications have been timely filed, no notice has been received by a Governmental Body to revoke any material Permit and no proceeding is pending or, to the Knowledge of Seller, threatened to revoke or limit any Permit required for the operation of the Aurix Business or the Angel Business.

5.5 Law and Legal Proceedings. Since January 1, 2013, the Seller Entities have been in compliance with all applicable Laws except for such non-compliance that has not had, or would not reasonably be expected to have, a Material Adverse Effect. As of the date of this Agreement, no Seller Entity has received a written (or, to the Knowledge of Seller, non-written) notice of any investigation or review by any Governmental Body with respect to the Acquired Assets or the Leased Real Property that is pending, or, to the Knowledge of Seller, threatened. Since January 1, 2013 through the date of this Agreement, except for the Chapter 11 Case and as set forth on Section 5.5 of the Seller Disclosure Schedule, there is no Legal Proceeding or Order pending, outstanding or, to Seller’s Knowledge, threatened against Seller that (a) seeks to restrain or prohibit or otherwise challenge the consummation, legality or validity of the transactions contemplated by this Agreement or the Ancillary Agreements or (b) would reasonably be expected to be material to the Acquired Assets or Assumed Liabilities. Since January 1, 2013, there has not been made or, to Seller’s Knowledge, threatened, any material product liability or other material product-related claims by any third party arising from the sale, design, distribution or manufacturing with respect to the safety of the products manufactured or sold by any Seller Entity and, to Seller’s Knowledge, there are no material safety concerns with respect to any such products.

5.6 Environmental Matters. The use by the Seller Entities of the Leased Real Property is in material compliance with all Environmental Laws. To the Knowledge of Seller, the Leased Real Property are in compliance with all Environmental Laws, including any Environmental Permits, except for such non-compliance that has not had, or would not reasonably be expected to have, a Material Adverse Effect. As of the date of this Agreement, (a) no Seller Entity is subject to any pending or, to Seller's Knowledge, threatened Legal Proceeding alleging that a Seller Entity may be in material violation of any Environmental Law or Environmental Permit, or may have any material Liability under any Environmental Law; and (b) no Seller Entity has stored, treated, disposed of, arranged for disposal or treatment of, transported, handled, manufactured, distributed, or released any Hazardous Materials on, under or from the Leased Real Property, except in material compliance with Environmental Laws. Seller has delivered or made available to Purchasers complete and accurate copies of all material environmental reports, audits, and assessments prepared by or for Seller that are in Seller's possession, as well as all material correspondence with Governmental Bodies or other Persons relating to environmental conditions or environmental compliance matters at the facilities and the properties of Seller and concerning the operation of the business of the Seller Entities.

5.7 Material Contracts.

(a) Section 5.7 of the Seller Disclosure Schedule sets forth, as of the Execution Date, a true, correct and complete list of the following Contracts to which any Seller Entity is a party in connection with the Aurix Business and/or the Angel Business and which are currently in effect (the "**Material Contracts**").

(i) Contracts with any Affiliate or current or former officer or director of Seller;

(ii) Contracts relating to the acquisition by any Seller Entity of any operating business or the capital stock of any other Person in the past three (3) years;

(iii) Contracts containing a covenant that restricts any Seller Entity from engaging in any line of business, conducting the Aurix Business or the Angel Business in any geographic area, or competing with any Person;

(iv) Contracts which are capital leases as determined pursuant to GAAP and involve annual payments by a Seller Entity in excess of \$20,000;

(v) Contracts relating to a joint venture of the Aurix Business, the Angel Business or any of the Seller Entities;

(vi) Contracts with customers of any Seller Entity (other than Contracts under which all work to be provided by the applicable Seller Entity has been completed) requiring the receipt by the applicable Seller Entity of an amount in excess of \$10,000;

(vii) Contracts with suppliers to the Seller Entities requiring the payment by any Seller Entity of an annual amount in excess of \$10,000;

(viii) All Seller Real Estate Leases;

(ix) Contracts for the employment of any individual on a full-time, part-time or consulting or other basis providing annual, or other compensation, severance or bonus arrangements providing for annual payments in excess of \$10,000;

(x) Any Contract to lease personal property which has future liability in excess of \$10,000 per annum;

(xi) All IP Contracts (other than click-wrap, shrink-wrap, off-the-shelf, or other software licenses of software commercially available to the public generally with annual, aggregate license, maintenance and support fees of less than \$10,000);

(xii) Any non-competition agreement with any key employee or officer, on the one hand, and any of the Seller Entities, on the other hand;

(xiii) Any non-disclosure, confidentiality or standstill arrangement with any Person entered into outside the Ordinary Course of Business (other than agreements entered into by Seller or its advisors during the two (2)-month period prior to the date hereof in connection with the sale process of Seller);

(xiv) Any Contract providing for the sale, transfer or other disposition outside the Ordinary Course of Business of any material asset or other property owned, leased or held for use by any of the Seller Entities or their respective Affiliates and utilized primarily in the Aurix Business and/or the Angel Business, that but for such Contract, would constitute an Acquired Asset pursuant to this Agreement;

(xv) Any distribution Contracts or licenses not otherwise described above;

(xvi) Any Contract entered into within the last twelve (12) months, not in the Ordinary Course of Business, in the nature of a settlement or a conciliation agreement arising out of any claim asserted by any Person (including, without limitation, any Governmental Body) providing for aggregate payments in excess of \$10,000;

(xvii) Any Contract (A) requiring payments by Seller in excess of \$10,000 in the next twelve month period or (B) providing for payments to Seller in excess of \$10,000 in any twelve month period; and

(xviii) Any Contract with any Governmental Body reasonably expected to result in payments in excess of \$10,000.

(b) Since January 1, 2015, (i) there has not been any written (or, to the Knowledge of Seller, non-written) claim or allegation by any Person that any Seller

Entity is in material breach or default under any Material Contract or that there exists an event or condition which (with or without notice or lapse of time or both) would result in a material breach or default by any Seller Entity under any Material Contract, and (ii) to the Knowledge of Seller, no other party to any Material Contract is in material breach or default thereunder. As of the date hereof, no party to a Material Contract has provided a Seller Entity with written notice (or, to the Knowledge of Seller, non-written notice) that it intends to cancel, terminate, fail to renew or materially reduce business conducted under any Material Contract. Except to the extent that a Material Contract is rejected, repudiated or terminated by Seller after the execution of this Agreement in accordance with the terms of this Agreement, each of the Material Contracts is in full force and effect and is valid and binding on the applicable Seller Entity party thereto and, to the Knowledge of Seller, each other party thereto. Seller has made available to Purchasers complete and accurate copies of each Material Contract.

5.8 Intellectual Property.

(a) Section 5.8(a)(i) of the Seller Disclosure Schedule sets forth a list of the following Intellectual Property Rights owned or purported to be owned by a Seller Entity: (i) all patents and patent applications, including for each the applicable patent number or application serial number, the applicable jurisdiction, the date filed or issued, and the present status thereof, (ii) all registered trademarks, trade dress, trade names or service marks, including for each the application serial number or registration number, the date filed or registered, and the applicable jurisdiction, (iii) all Internet domain name registrations and (iv) all copyright registrations, including for each the registration number, the date registered, and the applicable jurisdiction (items (i) through (iv) the “Seller Entity Registered Intellectual Property Rights”). Section 5.8(a)(i) of the Seller Disclosure Schedule also sets forth, all payments, filings, or other actions required to be made or taken in connection with the prosecution and maintenance of the Seller Entity Registered Intellectual Property Rights during the 180-day period from the date hereof. The Seller Entities own all Seller Entity Registered Intellectual Property Rights free and clear of all Encumbrances (other than Permitted Encumbrances). Each item of Seller Entity Registered Intellectual Property Rights (A) has not been abandoned, canceled or materially compromised by the applicable Seller Entity, or, to Seller’s Knowledge, any other Person, (B) has been maintained effective by all requisite filings, renewals and payments and (C) to Seller’s Knowledge, remains in full force and effect. Section 5.8(a)(ii) of the Seller Disclosure Schedule sets forth a list of all unregistered trademarks and service marks material to the business of the Seller Entities. Section 5.8(a)(iii) of the Seller Disclosure Schedule sets forth a list of all Software owned by the Seller Entities and material to the operation of the Aurix Business and/or the Angel Business, or the sale or provision of products or services in connection therewith (the “**Seller Software**”).

(b) Except as set forth on Section 5.8(b) of the Seller Disclosure Schedule, to Seller’s Knowledge, the Seller Entities own or have the right to use all Intellectual Property Rights necessary for the conduct of the Aurix Business and the Angel Business substantially in the manner currently conducted. To Seller’s Knowledge, except as set forth in Section 5.8(b) of the Seller Disclosure Schedule, the Acquired Intellectual Property Rights, the Intellectual Property Rights owned by the Seller Entities other than

Seller and the Intellectual Property Rights licensed to the applicable Seller Entity pursuant to the Assigned Contracts collectively constitute all Intellectual Property Rights owned or held by the Seller Entities and their respective Affiliates and used or held for use in connection with the operation of the Aurix Business and the Angel Business as currently conducted and proposed to be conducted. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not result in the loss, termination, or material impairment of any rights in the Seller Entity Intellectual Property Rights, any rights in the Intellectual Property Rights licensed pursuant to the Assigned Contracts, including the Seller Software (other than click-wrap, shrink-wrap, off-the-shelf, or other software licenses of software commercially available to the public generally with annual, aggregate license, maintenance and support fees of less than \$10,000).

(c) Except as set forth on Section 5.8(c) of the Seller Disclosure Schedule, no proceedings, claims, or actions have been instituted or are pending against any Seller Entity, or, to Seller's Knowledge, are threatened, that challenge validity, enforceability, registration, ownership or use of the Seller Entity Registered Intellectual Property Rights, or otherwise challenge the right of the applicable Seller Entity with respect to the use or ownership of any Seller Intellectual Property Rights, or that allege that any Seller Entity has infringed, misappropriated, diluted or otherwise violated the Intellectual Property Rights of any Person. To Seller's Knowledge, no Seller Entity is infringing, misappropriating, diluting or otherwise violating the Intellectual Property Rights of any Person. To Seller's Knowledge, no Person is infringing, misappropriating, diluting or otherwise violating Seller Intellectual Property Rights, and no Seller Entity has instituted or threatened to institute any proceeding, claim or action against any Person with respect to the foregoing.

(d) Except as provided in Section 5.8(d) of the Seller Disclosure Schedule, the Seller Entities have taken commercially reasonable actions, consistent with industry standards, to maintain and protect all Seller Intellectual Property Rights material to the Business, including entering into (i) written agreements with all Persons who have contributed to or participated in the conception or development of any material Intellectual Property Rights for the applicable Seller Entity assigning or otherwise vesting ownership of all such Intellectual Property Rights in the applicable Seller Entity and (ii) written confidentiality agreements binding all Persons exposed to the Seller Entities' trade secrets and other material, confidential information to obligations of confidentiality.

(e) To Seller's Knowledge, the IT Assets (i) operate and perform in all material respects in accordance with their documentation and functional specifications and otherwise as required by the Seller Entities and have not materially malfunctioned or failed within the past three (3) years, (ii) are sufficient for the immediate and foreseeable needs of the Seller Entities in all material respects, including as to capacity, scalability and ability to process current and anticipated peak volumes in a timely manner, and (iii) do not contain (A) any back door, time bomb, drop dead device or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a Person other than the user of the program that would materially disrupt the Seller Entities' operations or have a material impact on the

operations of the IT Assets, or (B) any virus, trojan horse, worm or other software routines or hardware components designed to permit unauthorized access, to disable, erase or otherwise harm software, hardware or data that would materially disrupt the Seller Entities' operations or have a material impact on the operations of the IT Assets. To Seller's Knowledge, the Seller Entities have in place commercially reasonable measures, consistent with current industry standards, to protect the confidentiality, integrity and security of the IT Assets (and all material information and transactions stored or contained therein or transmitted thereby) against any unauthorized use, access, interruption, modification or corruption. To Seller's Knowledge, the Seller Entities have implemented commercially reasonable data backup, data storage, system redundancy and disaster avoidance and recovery procedures, as well as a commercially reasonable business continuity plan, in each case consistent with customary industry practice.

5.9 Title to Assets; Sufficiency. The Seller Entities have good and valid title to and interest in (as applicable) all of their personal property which constitutes Acquired Assets in each case free and clear of Encumbrances, except Permitted Encumbrances. Subject to the entry of the Sale Order, Purchasers will be vested with good title to the personal property which constitutes Acquired Assets, free and clear of all Encumbrances, Claims, interests and encumbrances, other than Assumed Liabilities, to the fullest extent permissible under Section 3663(f) of the Bankruptcy Code. Except as set forth in Section 5.9 of the Seller Disclosure Schedule, upon entry of the Sale Order, Seller will have all requisite authority to transfer good and valid title to or leasehold interest in all of the Acquired Assets free and clear of all Encumbrances, including Permitted Encumbrances, to the fullest extent permissible under Sections 363 and 365 of the Bankruptcy Code, and shall convey to Purchasers at the time of the transfer of the Acquired Assets to Purchasers. The Aurix Acquired Assets constitute all of the properties used in or held for use in the Aurix Business and are sufficient for Purchasers to conduct the Aurix Business from and after the Closing Date without interruption and in the Ordinary Course of Business as it has been conducted by Seller. The Angel Acquired Assets constitute all of the properties used in or held for use in the Angel Business and are sufficient for Purchasers to conduct the Angel Business from and after the Closing Date without interruption and in the Ordinary Course of Business as it has been conducted by Seller

5.10 Real Property.

(a) None of the Seller Entities owns any real property.

(b) Section 5.10(b) of the Seller Disclosure Schedule sets forth a complete list of all Seller Real Estate Leases. Seller has provided Purchasers with, or access to, true, correct, accurate and complete copies of all leases and other instruments and agreements (together with all amendments, modifications, supplements, and restatements thereto, if any) in Seller's possession pertaining to the Seller Real Estate Leases. Except as set forth in Section 5.10(b) of the Seller Disclosure Schedule, such Seller Real Estate Leases have not been amended, modified, restated or otherwise supplemented and the Seller Real Estate Leases represent the entire agreement between the applicable Seller Entity party thereto and the applicable landlord with respect to the premises and leasehold estate under the respective Seller Real Estate Leases. Neither the applicable Seller Entity nor, to the knowledge of Seller, any other party to such Seller Real Estate Leases, is in

material default of its respective obligations under any Seller Real Estate Lease. Except as set forth in Section 5.10(b) of the Seller Disclosure Schedule, with respect to each of the aforementioned Seller Real Estate Leases: (i) except as results from the pendency of the Chapter 11 Case, the applicable Seller Entity has a valid and subsisting leasehold estate pursuant to each Leased Real Estate Lease for the full term of such Leased Real Estate Lease, and each Seller Real Estate Lease is legal, valid, binding and enforceable against the applicable Seller Entity and to Seller's knowledge, the other party thereto, and in full force and effect (subject to the Exceptions); (ii) except as results from the pendency of the Chapter 11 Case, the applicable Seller Entity has not received written notice of any current material default thereunder (or condition or event, which, after notice or a lapse of time or both, would constitute a default thereunder); (iii) to Seller's Knowledge, no security deposit or portion thereof deposited with respect to such Seller Real Estate Lease has been applied in respect of a breach or default under such Seller Real Estate Lease which has not been redeposited in full; (iv) except as set forth in Section 5.10(b) of the Seller Disclosure Schedule, the other party to such Seller Real Estate Lease is not an Affiliate of, and otherwise does not have any economic interest in, Seller; (v) except for Permitted Encumbrances or as set forth in Section 5.10(b) of the Seller Disclosure Schedule, there are no monetary Encumbrances on the estate or interest created by such Seller Real Estate Lease created or suffered to exist by Seller that will not be extinguished pursuant to the Sale Order as against such estate or interest; (vi) except as set forth in Section 5.10(b) of the Seller Disclosure Schedule neither the applicable Seller Entity nor, to the Knowledge of Seller, any other party to such Seller Real Estate Lease has assigned the same or sublet any part of the premises covered thereby or exercised any option or right thereunder; and (vii) no material penalties are accrued or unpaid under any Seller Real Estate Lease.

(c) Seller has not received any written, or to the Knowledge of Seller, oral notice of condemnation or eminent domain proceedings pending or threatened that affect the Leased Real Property. Seller has not received any written, or to the Knowledge of Seller, oral notice of any zoning, ordinance, building, land use, fire or health code or other legal violation affecting any such Leased Real Property, except where any such violations would not have, individually or in the aggregate, a Material Adverse Effect.

(d) There are no encroachments or other facts or conditions affecting any of the Leased Real Property that would be revealed by an accurate survey or inspection thereof, which encroachments, facts or conditions would have, individually or in the aggregate, a Material Adverse Effect. To the Knowledge of Seller, none of the buildings and structures on such Leased Real Property encroaches upon real property of another Person or upon the area of any easement affecting the Leased Real Property.

(e) To the Knowledge of Seller, each Leased Real Property and the Improvements thereon are supplied with utilities and other services necessary for the operation of such Leased Real Property and Improvements, including gas, electricity, water, telephone, sanitary sewer and storm sewer.

(f) To the Knowledge of Seller, each Leased Real Property abuts on and has direct vehicular access to a public road, or has access to a public road via a permanent,

irrevocable, appurtenant easement benefiting the parcel, and access to each Leased Real Property is provided by paved, gravel, dirt, or other improved public right-of-way with adequate curb cuts available.

(g) Except as disclosed in the Seller Disclosure Schedule, to the Knowledge of Seller, the Improvements on the Leased Real Property comply with all Laws in all material respects, and are not reliant upon any parking outside the Leased Real Property or easements running with the Leased Real Property in favor of Seller that owns or leases the applicable Improvements.

(h) Seller has delivered or made available to Purchasers in the [●] electronic data room, hosted by [●], to which representatives of Purchasers have been given access copies of all surveys of, and title insurance policies with respect to, each Leased Real Property in Seller's possession.

5.11 No Brokers or Finders. Except as relates to Seller's retention and engagement of Gordian Group or as set forth in Section 5.11 of the Seller Disclosure Schedule, Seller shall have incurred no Liability for brokerage or finders' fees or agents' commissions or other similar payment in connection with the negotiation, execution, or performance of this Agreement (a "**Seller Broker Fee**"). Neither Purchasers nor any Affiliate of Purchasers will have any Liability in connection with any Seller Broker Fee or any other brokerage or finders' fees or agents' commissions or other similar payment in connection with the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements incurred by any Seller Entity.

5.12 Financial Statements. Seller has delivered or made available to Purchasers the following financial statements (collectively the "**Financial Statements**"): (a) audited consolidated balance sheets and the related consolidated statements of operations, consolidated statement of changes in stockholders' equity and consolidated statement of cash flows, of Seller, as of and for the fiscal years ended December 31, 2014 and 2013, together with the notes thereto (the "**Audited Financial Statements**"), and (b) the unaudited consolidated balance sheets, and the related unaudited consolidated statements of operations, consolidated statement of changes in stockholders' equity and consolidated statement of cash flows, of Seller as of and for the nine (9)-month period ended September 30, 2015 (the "**Balance Sheet Date**") (the "**Interim Financial Statements**") as set forth in Section 5.12 of the Seller Disclosure Schedule. The Audited Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved, present fairly, in all material respects, the financial condition of Seller as of such dates and the results of operations and cash flows of Seller for such periods, and are consistent, in all material respects, with the books and records of Seller (which books and records are correct and complete in all material respects). The Interim Financial Statements include all of the assets and Liabilities of Seller as of September 30, 2015, in each case that are required by GAAP to be set forth on a balance sheet, and present fairly, in all material respects, the financial condition of Seller as of September 30, 2015 and the results of its operations for the period then ended, subject to customary year-end adjustments and accruals, and are consistent in all material respects with the books and records of Seller.

5.13 Compliance with Laws; Regulatory Matters.

(a) Except as set forth in Section 5.13(a) of the Seller Disclosure Schedule, the Business of the Seller Entities is being, and at all times within the past five (5) years has been, conducted in compliance in all material respects with all applicable Laws including (A) the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. Sections 301 et seq.) (the “**FDCA**”) and the regulations promulgated thereunder, (B) the Public Health Service Act (42 U.S.C. Sections 201 et seq.) and the regulations promulgated thereunder; (C) the Veterans Health Care Act (38 U.S.C. Section 126) and the regulations promulgated thereunder; (D) federal Medicare (Title XVIII of the Social Security Act) and Medicaid (Title XIX of the Social Security Act) statutes and the regulations promulgated thereunder, and any related Laws; (E) Laws relating to healthcare fraud and abuse, false claims and anti-kickback laws, including the Federal Anti-Kickback Statute (42 U.S.C. Sections 1320a-7b(b)), the Federal False Claims Act (31 U.S.C. Section 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the criminal laws (18 U.S.C. §§ 286 and 287), the exclusion laws (42 U.S.C. § 1320a-7), or any similar Laws; (F) Laws regarding the reporting of prices and promotional expenditures to healthcare professionals including the federal Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h) and similar state gift and disclosure Laws; (G) the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, the regulations promulgated thereunder and similar Laws pertaining to privacy, data protection and information security; (H) state Laws relating to the manufacture, sale, and distribution of medical products; and (I) all applicable Laws of other comparable foreign Governmental Bodies (collectively, “**Health Care Laws**”).

(b) No Seller Entity nor any Person affiliated with a Seller Entity is debarred under 21 U.S.C. Section 335a or any similar Law, or is otherwise excluded from or restricted in any manner from participation in any government program related to medical devices in the United States or any other country in which a Seller Entity conducts business and, to Seller’s Knowledge, no Person affiliated with any Seller Entity employs or uses the services of any person who is so debarred or otherwise excluded or restricted. As of the date hereof, no Legal Proceedings, claims or investigations that would reasonably be expected to result in such a debarment, exclusion or restriction are pending or threatened against any Seller Entity or any Person affiliated with a Seller Entity. No Seller Entity is a party to, nor does it have, any ongoing reporting obligations pursuant to or under any corporate integrity agreements, deferred prosecution agreements, monitoring agreements, consent decrees, settlement orders, plans of correction or similar agreements with or imposed by any Governmental Body.

(c) Except as set forth in Section 5.13(c) of the Seller Disclosure Schedule, no Seller Entity has received notice of or is subject to any pending or, to Seller’s Knowledge, threatened investigation, Legal Proceeding, hearing, enforcement, audit, arbitration or other action by the United States Food and Drug Administration (“**FDA**”) or any similar state or foreign Governmental Body alleging that any operation or activity of such Seller Entity is in violation of any applicable Law or Health Care Law, nor has

any Governmental Body indicated to Seller of an intention to conduct or initiate the same.

(d) Except as set forth in Section 5.13(d) of the Seller Disclosure Schedule, since January 1, 2013, (i) none of the Seller Entities has received an FDA Form 483 (or other Governmental Body notice of inspectional observations), FDA Warning or Untitled Letter (or the foreign equivalents thereof), or requests or requirements to make changes to products manufactured or sold by any Seller Entity that if not complied with would reasonably be expected to result in a material effect on Seller; (ii) no penalty, fine or other sanction has been assessed against any Seller Entity by any Governmental Body; (iii) no manufacturing sites or products have been subject to a Governmental Body shutdown or import or export prohibition; and (iv) no compliance order or other compliance monitoring or enforcement activity, nor any similar correspondence or notice from the FDA or other Governmental Body alleging or asserting noncompliance with any applicable Law, Permit or such requests or requirements of a Governmental Body, has been made in respect of any Seller Entity by any Governmental Body, and, to Seller's Knowledge, neither the FDA nor any Governmental Body is considering such action.

(e) No Seller Entity, nor to Seller's Knowledge (i) any officer or employee of a Seller Entity, (ii) any authorized agent of a Seller Entity or (iii) any principal investigator or sub-investigator of any clinical investigation conducted by a Seller Entity has, in the case of each of (i) through (iii) on account of actions taken for or on behalf of any Seller Entity, been convicted of any crime under the FDCA; nor has any such principal investigator or sub-investigator been disqualified from conducting any clinical investigation that supports an application for a research or marketing permit for products regulated by the FDA, including medical devices, under 21 C.F.R. § 312.70 or any similar or applicable foreign laws.

(f) The clinical, pre-clinical and other studies and tests conducted by or on behalf of or sponsored by any Seller Entity or in which any Seller Entity or its products or product candidates have participated were and, if still pending, are being conducted in all material respects in accordance with all applicable Laws, including, but not limited to, the FDCA and its applicable implementing regulations at 21 C.F.R. Parts 50, 54, 56, 58 and 812. Except as set forth in Section 5.13(f) of the Seller Disclosure Schedule, no investigational device exemption filed by or on behalf of any Seller Entity with the FDA has been terminated or suspended by the FDA, and since January 1, 2013 neither the FDA nor any applicable foreign regulatory agency has commenced, or, to Seller's Knowledge, threatened to initiate, any action to place a clinical hold order on, or otherwise terminate, delay or suspend, any proposed or ongoing clinical investigation conducted or proposed to be conducted by or on behalf of any Seller Entity.

(g) Since January 1, 2013, all applications, notifications, submissions, information, claims, reports, and other data and conclusions derived therefrom, utilized as the basis for or submitted in connection with any and all Permits from the FDA or other Governmental Body relating to any Seller Entity, its businesses and its products, when submitted to the FDA or other Governmental Body were true, complete and correct in all material respects as of the date of submission, and all necessary or required applications,

notifications, submissions, information, claims, reports, data, and updates, changes, corrections or modifications thereto have been submitted to the FDA or other Governmental Body.

(h) Section 5.13(h) of the Seller Disclosure Schedule sets forth a list of (i) all recalls, field notifications, field corrections, market withdrawals or replacements, safety alerts or other notices of action relating to an alleged lack of safety, efficacy, or regulatory compliance of the products manufactured or sold by any Seller Entity (“**Safety Notices**”) in the last five (5) years, (ii) the dates such Safety Notices, if any, were resolved or closed, and (iii) to Seller’s Knowledge, any material complaints with respect to the products manufactured or sold by any Seller Entity that are currently unresolved. There are no Safety Notices, or, to Seller’s Knowledge, material product complaints with respect to the products manufactured or sold by any Seller Entity, and to Seller’s Knowledge, there are no facts that would be reasonably likely to result in (i) a material Safety Notice with respect to the products manufactured or sold by any Seller Entity, (ii) a material change in labeling of any such products; or (iii) a termination or suspension of marketing or testing of any such product.

5.14 Absence of Undisclosed Liabilities. Except as set forth in the Seller Disclosure Schedule, to Seller’s Knowledge, the Seller Entities do not have any material Liabilities except (a) Liabilities reflected in the Interim Financial Statements, (b) Liabilities that have arisen after the Balance Sheet Date in the Ordinary Course of Business or otherwise in accordance with the terms and conditions of this Agreement (none of which is a material Liability for breach of warranty, malpractice, tort or infringement or a claim or lawsuit or breach of an Environmental Law) and (c) Liabilities that are or will be Excluded Liabilities.

5.15 Absence of Certain Developments. Except as set forth in Section 5.15 of the Seller Disclosure Schedule, and except as a result of the commencement of the Chapter 11 Case (and the execution of the transactions and agreements in connection therewith), since the Balance Sheet Date, each of the Aurix Business and the Angel Business has been conducted only in the Ordinary Course of Business consistent with past practice in all material respects, and Seller has not taken any action which, if taken after the execution and delivery of this Agreement, would require the consent of Purchasers pursuant to Section 9.1(b). Since January 1, 2015, no Material Adverse Effect has occurred.

5.16 Preemptive Rights. Other than (i) Purchasers, (ii) pursuant to any bids made by any Person in connection with the Auction, or (iii) prior to the Closing Date, any Seller Entity, no Person has any written or oral agreement or option, right of first refusal, right of first offer, right of first negotiation or similar right for the purchase, sale, use or other disposition of all or any of the Acquired Assets.

5.17 Tax Returns; Taxes. Except as set forth in Section 5.17 of the Seller Disclosure Schedule:

(a) All Tax Returns required to have been filed by the Seller Entities have been duly and timely filed and are true, correct and complete in all material respects. No extension of time in which to file such Tax Return is in effect.

(b) All Taxes due and payable by any Seller Entity (whether or not shown on any Tax Return) have been paid in full. The accruals and reserves with respect to Taxes (other than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the Interim Financial Statements are adequate in all respects to cover all Taxes of the Seller Entities accruing or payable with respect to Tax Periods (or portions thereof) ending on or before the Balance Sheet Date. All Liabilities of the Seller Entities for Taxes attributable to Tax Periods (or portions thereof) commencing after the Balance Sheet Date have arisen in the Ordinary Course of Business.

(c) No claims, adjustments, assessments or deficiencies for any amount of Taxes of the Seller Entities by any Governmental Body are being asserted, proposed or, to the Knowledge of Seller, threatened, and no audit or investigation of any Tax Return of any Seller Entity by any Governmental Body has occurred in the last three (3) years or is currently underway, pending or, to the Knowledge of Seller, threatened.

(d) Since January 1, 2013, no claim has been made against a Seller Entity by any Governmental Body in a jurisdiction where such Seller Entity does not file a Tax Return that such Seller Entity is or may be subject to taxation in such jurisdiction with respect to Taxes that are the subject of such Tax Return.

(e) Each Seller Entity has complied in all material respects with all applicable Laws, rules and regulations relating to the payment and withholding of Taxes in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, nonresident or other third party, and has withheld and timely paid to the appropriate Governmental Body all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, nonresident or other third party.

(f) No Seller Entity has executed or filed with any Governmental Body any agreement or waiver extending the period for assessment, reassessment or collection of any Taxes (other than as the result extending the time to file a Tax Return) which agreement or waiver is still in effect. Seller has not made an election, nor is Seller required, to treat any Acquired Asset as owned by another Person or as tax exempt bond-financed property or tax-exempt use property within the meaning of Section 168 of the Code or under any comparable provision of state or local Tax Law.

(g) No Seller Entity has Liability for Taxes of any other Person as a transferee or successor, by Law, Contract or otherwise.

(h) No Seller Entity has engaged in any "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(b).

(i) No Seller Entity has constituted either a "distributing corporation" or a "controlled corporation" in a distribution intended to qualify for tax-free treatment under Section 355 of the Code.

(j) Section 5.17(j) of the Seller Disclosure Schedule sets forth the U.S. federal income tax entity classification of each Seller Entity that is a Subsidiary of Seller. No election has been made under Treasury Regulations Section 301.7701-3 to change the tax entity classification of any such Subsidiary.

5.18 Employees.

(a) Seller has delivered to Purchasers a true and correct list of the Employees as of a date no earlier than five (5) Business Days prior to the Execution Date, specifying their position, annual salary or wage rate, and date of hire. No Seller Entity is delinquent in payments to any Employees for any wages, salaries, commissions, vacation pay, bonuses or other direct compensation for any services performed for them or amounts required to be reimbursed to Employees in any material respects. With respect to the Employees, to Seller's Knowledge, the applicable Seller Entity is in material compliance with all applicable Laws respecting labor, labor relations, employment, employment standards, fair employment practices, terms and conditions of employment, human rights, immigration, workers' compensation, occupational safety, pay equity, plant closings and wages and hours. The Seller Entities have withheld all material amounts required by Law or by agreement to be withheld from the wages, salaries and other payments to Employees and are not liable for any arrears of wages, salaries, commissions, vacation pay, bonuses or other compensation due to Employees or any Taxes or any penalty or interest for failure to comply with any of the foregoing in any material respect. To Seller's Knowledge, no Seller Entity has direct or indirect Liability with respect to any misclassification of any Person as an independent contractor rather than as an Employee.

(b) No Seller Entity is party to or bound by, either directly or by operation of Law, any collective bargaining agreement, labor contract, letter of understanding, letter of intent, voluntary recognition agreement or legally binding commitment or written communication to any labor union, trade union or employee organization or group which qualifies as a trade union in respect of or affecting Employees nor is Seller aware of any union organization effort regarding the Employees, nor is any Seller Entity engaged in any labor negotiation with any labor union, trade union or employee organization or group which qualifies as a trade union in respect of or affecting Employees. There are no, and within the prior three years there have not been any organized, collective (i) strikes, work stoppages, work slowdowns or lockouts pending or, to the Knowledge of Seller, threatened against or involving any Seller Entity, or (ii) unfair labor practice charges, grievances or complaints under the National Labor Relations Act or other equivalent legislation pending or, to the Knowledge of Seller, threatened by or on behalf of any trade union, Employee or group of Employees. Except as set forth in Section 5.18(b) of the Seller Disclosure Schedule, no Seller Entity has any obligation to make any severance or termination payment to any Employee in excess of any amount payable under common law principles or applicable Law.

5.19 Seller Plans. Except as provided in Section 5.19 of the Seller Disclosure Schedule:

(a) Each Seller Plan is listed in Section 5.19 of the Seller Disclosure Schedule. Seller has made available to Purchasers true and complete copies of (i) all Seller Plans and related trust agreements, annuity contracts or other funding instruments or agreements, (ii) the latest Internal Revenue Service determination or opinion letter obtained with respect to any such Seller Plan qualified or exempt under Section 401 or 501 of the Code, as applicable, and the results of discrimination testing for the most recently completed three (3) fiscal years for each such Seller Plan, (iii) Forms 5500 and certified financial statements for the most recently completed three (3) fiscal years for each Seller Plan required to complete or file such form, together with the most recent actuarial report, if any, prepared by Seller Plan's enrolled actuary, (iv) the current summary plan descriptions for each Seller Plan required to prepare, file and distribute summary plan descriptions, and (v) the form notifications to Employees of their rights under Section 4980B of the Code.

(b) None of the Seller Plans is a "multiemployer plan" (as defined in Section 3(37) of ERISA), is or has been subject to Sections 4063 or 4064 of ERISA, or is or has been subject to subject to Title IV of ERISA or Code Section 412 or 430. None of the Seller Entities or any of their ERISA Affiliates has any Liability under Title IV of ERISA or Code Section 412 or 430.

(c) No Seller Plan or International Plan provides post-retirement or post-termination employee benefits (including death, medical or health benefits) to or in respect of any Employees or former Employees or their beneficiaries, and none of the Seller Entities has any obligation to provide such benefits other than as required under Section 4980B of the Code or other applicable law. All material contributions or premiums required to be made by the applicable Seller Entity to or under each Seller Plan within the past twelve (12) months have been made in a timely fashion in accordance with applicable Law, the terms of the applicable Seller Plan, or any applicable collective bargaining agreement.

5.20 Insurance Policies.

(a) Section 5.20(a) of the Seller Disclosure Schedule lists all material insurance policies owned or held by the Seller Entities (the "**Insurance Policies**"). All such policies (or substitute policies with substantially similar terms and underwritten by insurance carriers with substantially similar or higher ratings) are in full force and effect, all premiums with respect thereto covering all periods up to and including the Execution Date have been paid, and no written notice of cancellation or termination (or any other threatened termination) has been received with respect to any such policy. Except as set forth in Section 5.20(b) of the Seller Disclosure Schedule, there are no pending, or to Seller's Knowledge, material threatened claims, or circumstances that might give rise to a material claim under any Insurance Policy. To Seller's Knowledge, all material claims relating to any of the Seller Entities, the Business or any of the Assets under the Insurance Policies have been filed in a due and timely fashion. No notice of cancellation or nonrenewal with respect to, disallowance of any claim, or reservation of rights with respect to any claim under, or increase of premium for, any Insurance Policy has been received by Seller.

(b) (i) No Seller Entity is in default under any material provision of any Insurance Policy, (ii) to Seller's Knowledge, no insurer under any Insurance Policy is the subject of any bankruptcy, receivership or insolvency proceeding and (iii) the Insurance Policies are for amounts and against such losses and risks as are consistent with industry practice.

(c) Insurance policies under which the Seller Entities, the Business or any of the Acquired Assets are insured that are provided by or on behalf of vendors, contractors or third party service providers (collectively, the "**Third Party Insurance Policies**") are, to the Knowledge of Seller, in full force and effect.

ARTICLE VI.

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as set forth in the correspondingly numbered Sections of the Purchase Disclosure Schedule delivered as of the date hereof by Purchasers to Seller (the "**Purchaser Disclosure Schedule**") (it being understood that any matter disclosed in any Section of the Purchaser Disclosure Schedule will be deemed to be disclosed in any other Section of the Purchaser Disclosure Schedule to the extent that it is readily apparent on the face of such disclosure that such disclosure is applicable to such other Section), each Purchaser hereby represents and warrants to Seller as follows:

6.1 Organization. Such Purchaser is duly organized, validly existing and, as of the date of this Agreement, in good standing under the laws of its jurisdiction of organization. Such Purchaser has all requisite power and authority to own, lease, develop and operate its properties and to carry on its business as now being conducted. Such Purchaser is duly licensed or qualified to do business in each jurisdiction in which the conduct of its businesses or the ownership of its properties requires such qualification or authorization, except where failure to be so qualified would not materially delay or impair the ability of such Purchaser to perform its obligations under this Agreement or any of the Ancillary Agreements.

6.2 Authorization and Validity. Such Purchaser has all requisite corporate (or equivalent) power and authority to enter into this Agreement and any Ancillary Agreement to which it is a party and to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Ancillary Agreements and the performance of such Purchaser's obligations hereunder and thereunder have been duly authorized by all necessary corporate (or equivalent) action on behalf of such Purchaser, and no other proceedings on the part of such Purchaser are necessary to authorize such execution, delivery, and performance. This Agreement and the Ancillary Agreements have been duly executed by such Purchaser and constitute its valid and binding obligation, enforceable against it in accordance with the terms herein and therein (subject to the Exceptions).

6.3 No Conflict. The execution, delivery and performance by such Purchaser of this Agreement and the Ancillary Agreements does not, and the consummation by such Purchaser of the transactions contemplated hereunder and thereunder will not, (a) conflict with or result in the breach of any provision of the organizational documents of such Purchaser, (b) conflict with,

violate or result in the breach by such Purchaser of any applicable Law, (c) require such Purchaser to make any filing with or give notice to, or obtain any consent from, any Governmental Body, other than the Sale Order and, if required, any clearance under the HSR Act, or (d) conflict with, violate, result in the breach or termination of or the loss of a benefit under, or constitute (with or without notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, payment or acceleration) or adverse modification of any terms or rights under, any Contract to which such Purchaser is party; other than, in the case of the foregoing subclause (iv), any of the foregoing that would not reasonably be expected to, individually or in the aggregate, materially impair such Purchaser's ability to consummate the transactions contemplated by this Agreement and the Ancillary Agreements.

6.4 Law and Legal Proceedings. There are no Legal Proceedings pending or, to such Purchaser's knowledge, threatened in writing against such Purchaser before any Governmental Body, which, if adversely determined, would reasonably be expected to prohibit the consummation of the transactions contemplated by this Agreement or materially delay or impair the ability of such Purchaser to perform its obligations under this Agreement or any of the Ancillary Agreements to which it is a party.

6.5 Adequate Assurances Regarding Assigned Contracts. As of the Closing, such Purchaser will be capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assigned Contracts.

ARTICLE VII.

EMPLOYEES

7.1 Employee Matters. Purchasers (or their Affiliates) may offer employment to the Employees of Seller, as selected by Purchasers, on such terms and conditions as may be acceptable to the Employees and Purchasers in Purchasers' sole discretion and need not bear any relationship to terms and provisions applicable to their employment by Seller. Each Employee to whom Purchasers or one of their Affiliates has made an offer of employment or offer of another type of services relationship and who has accepted such offer and commences employment or other services relationship with Purchasers or any of their Affiliates on or following the Closing Date is hereinafter referred to as a "**Transferred Employee.**" Seller shall provide any required notice and otherwise satisfy all liabilities relating to the WARN Act with respect to any event affecting employees of any Seller Entities on or prior to the Closing Date.

7.2 Excluded Plans. Except as provided by applicable Law, Seller shall be solely responsible and shall retain all Liabilities with respect to the Seller Plans.

7.3 COBRA and Benefits Coverage. Only to the extent required by Law, Purchasers will be responsible for providing continued medical coverage pursuant to its group health plans for employees under Part 6, Title I of ERISA and Section 4980B of the Code ("**COBRA Continuation Coverage**"), for each "M&A qualified beneficiary" (within the meaning of Treasury Regulation § 54.4980B-9 Q&A-4) applicable to the Acquired Assets. As soon as practicable prior to the Closing, Seller will provide to Purchasers a list of all M&A qualified

beneficiaries who are receiving or eligible to elect COBRA Continuation Coverage on the Closing Date.

7.4 No Third-Party Beneficiaries.

(a) Notwithstanding anything set forth in this Article VII, nothing contained herein, whether express or implied, shall be treated as an amendment or other modification of any Seller Plan.

(b) Seller and Purchasers acknowledge and agree that all provisions contained in this Article VII, with respect to current or former Employees are included for the sole benefit of Seller and Purchasers, and that nothing herein, whether express or implied, shall create any third-party beneficiary or other rights (i) in any other Person, including, without limitation, any current or former employees, directors, officers or consultants of the Seller Entities, any participant in any Seller Plan, or any dependent or beneficiary thereof, or (ii) to continued employment with Purchasers or any of their Affiliates.

ARTICLE VIII.

BANKRUPTCY COURT MATTERS

8.1 Competing Bid and Other Matters.

(a) No later than [__] days after the Petition Date, Seller shall file with the Bankruptcy Court an application or motion seeking approval of (i) the Bidding Procedures Order, (ii) the Sale Order and (iii) the transactions contemplated in this Agreement (subject to higher or otherwise better offers).

(b) This Agreement, the parties' obligations hereunder and the transactions contemplated hereby are subject to approval of the Bankruptcy Court and Seller's right and ability to pursue and consider higher or otherwise better competing bids with respect to the Aurix Business, the Angel Business, the Business or a material portion of the Acquired Assets pursuant to the Bidding Procedures Order (each a "**Competing Bid**"). From and after the date on which the Bidding Procedures Order is entered until the conclusion of the Auction, Seller is permitted to, and may cause its Representatives and Affiliates to, initiate contact with, provide information to, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Purchasers and their Affiliates, agents and Representatives) in connection with any sale or other disposition of the Aurix Business, the Angel Business, the Business or a material portion of the Acquired Assets or the continuation of the Business as a reorganized, going concern, subject only to the provisions of the Bidding Procedures Order. From and after the date on which the Bidding Procedures Order is entered until the conclusion of the Auction, Seller shall have the responsibility and obligation to respond to any inquiries or offers to purchase all or any part of the Business, and perform any and all other acts related thereto which are required or permitted under the Bankruptcy Code or other applicable Law, including, without limitation, supplying information relating to the Business and the

assets of Seller to prospective purchasers, subject only to the provisions of the Bidding Procedures Order.

(c) If an Auction is conducted, and Purchasers are not the prevailing parties at the conclusion of such Auction (such prevailing party, the “**Prevailing Bidder**”) with respect to the Aurix Business, the Angel Business or the Business, Purchasers may at their sole discretion agree to serve as a back-up bidder (the “**Back-up Bidder**”) with respect to the Aurix Business, the Angel Business or the Business and keep Purchasers’ bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) open and irrevocable until 11:59 p.m. (prevailing Eastern time) on the date that is the earliest of (i) sixty (60) days after the date of the Sale Hearing, (ii) such date upon which Seller will notify the Back-up Bidder, and (iii) the date of closing of an Alternative Transaction with the Prevailing Bidder (the “**Outside Back-up Date**”). Following the Sale Hearing and prior to the Outside Back-up Date, if the Prevailing Bidder fails to consummate the applicable Alternative Transaction as a result of a breach or failure to perform on the part of such Prevailing Bidder, the Back-up Bidder (if the Back-up Bidder is the next highest bidder at the Auction) will be deemed to have the new prevailing bid, and Seller will be authorized, but not required, without further Order of the Bankruptcy Court or any action on the part of the Back-up Bidder, to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) with the Back-up Bidder pursuant to the procedures set forth in the Bidding Procedures Order.

(d) Seller shall (i) promptly serve true and correct copies of the Sale Motion and all related pleadings in accordance with the Bidding Procedures Order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules for the United States Bankruptcy Court for the District of Delaware and any other applicable Order of the Bankruptcy Court; (ii) promptly advise Purchasers of the identify of each Potential Bidder (as defined in the Bid Procedures Order) and (iii) promptly, but in no event more than two (2) days following the receipt thereof by Seller, provide to the Purchasers copies of all information and documents furnished to the Seller by any Potential Bidder that are necessary, useful or appropriate for determining whether such Potential Bidder is a “Qualified Bidder” within the meaning of the Bid Procedures Order.

8.2 Sale Order. An Order approving the sale transaction shall be entered by the Bankruptcy Court, and shall be in a form and substance acceptable to Seller and Purchasers (the “**Sale Order**”). The Sale Order shall, among other things, (a) approve, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, (i) the execution, delivery and performance by Seller of this Agreement, (ii) the sale of the Acquired Assets to Purchasers on the terms set forth herein and free and clear of all Encumbrances (other than Encumbrances included in the Assumed Liabilities and Permitted Encumbrances), and (iii) the performance by Seller of its obligations under this Agreement; (b) authorize and empower Seller to assume and assign to Purchasers the Assigned Contracts; (c) find that each Purchaser is a “good faith” buyer within the meaning of Section 363(m) of the Bankruptcy Code and grant each Purchaser the protections of Section 363(m) of the Bankruptcy Code; (d) include an injunction against any holder of a Claim against Seller or the Acquired Assets from asserting, prosecuting or otherwise pursuing such Claim

against any Purchaser (other than with respect to the Assumed Liabilities); (e) include a finding that, upon payment of Cure Costs, all Assigned Contracts that are subject to the provisions of Section 365 of the Bankruptcy Code or otherwise pursuant to applicable Law, remain in full force and effect with all parties to the Assigned Contracts enjoined from asserting against any Purchaser any default, breach, acceleration, assignment fees, increases, or any other fees resulting from Seller's assumption and assignment of the Assigned Contracts to Purchasers; and (f) include a finding that the sale does not and will not subject any Purchaser to any liability by reason of such sale pursuant to any bulk-transfer laws, successor liability, or similar theories to the maximum extent permitted by applicable Law, in all cases except as expressly provided in this Agreement. Purchasers agrees that they will promptly take such actions as are reasonably requested by Seller to assist in obtaining the Sale Order, including, without limitation, furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of (1) demonstrating that each Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code, and (2) establishing adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code. In the event that the Bankruptcy Court's entry of the Sale Order shall be appealed, Seller and Purchasers shall use reasonable efforts to defend such appeal(s).

8.3 Expense Reimbursement; Seller Remedies.

(a) Seller shall pay, or cause to be paid, to Purchasers the Reimbursable Expenses if this Agreement is terminated for any reason, other than a termination of this Agreement by pursuant to Section 4.4(a), Section 4.4(c), Section 4.4(d), Section 4.4(j), Section 4.4(1) or Section 4.4(m), which Reimbursable Expenses shall be paid no later than three (3) Business Days following such termination.

(b) In the event of a termination of this Agreement in the circumstances described in Section 8.3(a), the receipt of the Reimbursable Expenses shall be the sole and exclusive remedy of Purchasers against Seller under this Agreement (other than in the case of fraud), and Purchasers shall irrevocably waive and release Seller, as a condition to receipt of the Reimbursable Expenses (but subject to the receipt thereof), from any and all statutory, equitable, legal or common law claims or remedies that Purchasers may have against Seller in respect of any breach of or default under this Agreement, other than in the case of fraud.

(c) Seller acknowledges and agrees that (i) the payment of the Reimbursable Expenses is an integral part of the transactions contemplated by this Agreement, (ii) in the absence of Seller's obligations to make these payments, Purchasers would not have entered into this Agreement, (iii) time is of the essence with respect to the payment of the Reimbursable Expenses and (iv) the Reimbursable Expenses shall constitute an administrative expense of the Seller's estates under Section 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code. If Seller fails to take any action necessary to cause the delivery of the Reimbursable Expenses under circumstances where Purchasers are entitled to the Reimbursable Expenses and, in order to obtain such Reimbursable Expenses Purchasers commence a suit which results in a judgment in favor of Purchasers, Seller shall pay to Purchasers, in addition to the Reimbursable Expenses, an amount in cash equal to the

costs and expenses (including reasonable attorney's fees) incurred by Purchasers in connection with such suit.

(d) The parties further acknowledge that the damages resulting from termination of this Agreement under circumstances where Purchasers are entitled to the Reimbursable Expenses are uncertain and incapable of accurate calculation and that the delivery of the Reimbursable Expenses to Purchasers is not a penalty but rather shall constitute liquidated damages in a reasonable amount that will compensate Purchasers in the circumstances where Purchasers are entitled to the Reimbursable Expenses for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, and that, without these agreements, Purchasers would not enter into this Agreement.

ARTICLE IX.

COVENANTS AND AGREEMENTS

9.1 Conduct of Business of Seller.

(a) During the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 4.4 or the Closing, except (1) for any limitations on operations imposed by the Bankruptcy Court or the Bankruptcy Code, (2) as required by applicable Law, (3) as otherwise expressly contemplated by this Agreement or as set forth on Schedule 9.1(a), or (4) with the prior written consent of Purchasers (such consent not to be unreasonably withheld, conditioned or delayed), Seller shall, and shall cause its Subsidiaries to:

(i) conduct each Business and operate and maintain the Acquired Assets and the assets of its Subsidiaries in the Ordinary Course of Business;

(ii) use commercially reasonable efforts to (x) preserve the goodwill of and relationships with Governmental Bodies, customers, suppliers, vendors, lessors, licensors, licensees, contractors, distributors, agents, Employees and others having business dealings with the Aurix Business and/or the Angel Business; and (y) comply with all applicable Laws and, to the extent consistent therewith, preserve its assets (tangible and intangible), including the IT Assets; and

(iii) diligently prosecute and maintain all Seller Entity Registered Intellectual Property Rights, including by making all requisite filings, renewals, and payments.

(b) During the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 4.4 or the Closing, except (1) for any limitations on operations imposed by, or actions required by, the Bankruptcy Court or the Bankruptcy Code, (2) as required by applicable Law, (3) as otherwise expressly contemplated by this Agreement or as set forth on Schedule 9.1(a),

or (4) with the prior written consent of Purchasers (such consent not to be unreasonably withheld, conditioned or delayed), Seller shall not, and shall cause its Subsidiaries not to:

(i) mortgage, pledge or subject to any Encumbrance (other than a Permitted Encumbrance) the Business or any of the Acquired Assets or the assets of its Subsidiaries;

(ii) sell, assign, license, transfer, convey, lease, surrender, relinquish, abandon, permit to lapse or otherwise dispose of any of the Acquired Assets or the assets of its Subsidiaries except to the extent permitted by the DIP Loan Documents or this Agreement;

(iii) cancel or compromise any material debt or Claim or waive or release any material right of Seller that constitutes an Acquired Asset or an asset of its Subsidiaries;

(iv) (A) enter into any (1) new Contract or renew any existing Contract requiring payments by any Seller Entity in excess of \$30,000 over the twelve-month period immediately following the execution thereof outside the Ordinary Course of Business or (2) new Contract that would constitute a Material Contract if in existence as of the date of this Agreement, and (B) cancel, terminate, amend, modify, supplement or rescind any Material Contract or any terms of any Material Contract with future payments in excess of \$30,000, except for the purpose of effecting any changes in applicable Law or implementing regulatory requirements or in response to a breach or default by the other party thereto;

(v) abandon any rights under any Material Contract or breach any Material Contract outside the Ordinary Course of Business outside the Ordinary Course of Business;

(vi) incur any long-term expenditure associated with the Acquired Assets that would be an Assumed Liability except to the extent permitted by the DIP Loan Documents or incur any long-term expenditure associated with the assets of its Subsidiaries;

(vii) incur or permit to be incurred any Liability (other than in connection with the performance of any Non-Assumed Contracts or execution of any Contracts that are not Material Contracts in the Ordinary Course of Business) that would be an Assumed Liability outside the Ordinary Course of Business except to the extent permitted by the DIP Loan Documents, or that would increase the amount of an Assumed Liability except to the extent permitted by the DIP Loan Documents;

(viii) incur or permit to be incurred any Liability (other than in connection with the execution of any Contracts that are not Material Contracts in the Ordinary Course of Business) with respect to any of its Subsidiaries;

(ix) (A) with respect to any Employee set forth on Schedule 9.1(b)(ix), increase the salary, bonus or severance arrangements of such Employee or amend, modify, terminate or enter into any employment or severance Contract with such Employee and (B) with respect to all other Employees, take any of the foregoing actions other than in the Ordinary Course of Business;

(x) (A) enter into, amend or terminate any Seller Plan, (B) exercise any discretion to accelerate the vesting or payment of any compensation or benefit under any Seller Plan to any current or former employee, officer or director, or other service provider of the Seller Entities, (C) grant any new awards under any Seller Plan or (D) take any action to fund the payment of compensation or benefits under any Seller Plan to any current or former employee, officer or director, or other service provider of the Seller Entities, except (X) in the case of clauses (A) or (D), in the Ordinary Course of Business with respect to Employees of the Seller Entities who are not currently, and have never been, officers or directors of any Seller Entity and (Y) in the case of all clauses (A) through (D), to conform to applicable Law or as may be required under any Seller Plan that is in effect as of the date hereof;

(xi) (A) enter into, amend or renew any collective bargaining agreements and (B) recognize any union or works council as the bargaining representative of any Employee of the Seller Entities;

(xii) make or rescind any material Tax election, file any amended Tax Return, change its fiscal year or financial or Tax accounting methods, policies or practices, settle or compromise any Tax Liability, enter into a closing agreement with respect to Taxes or agree to an extension of the period for assessment, reassessment or collection of any Taxes;

(xiii) institute, settle or agree to settle or modify in any manner that is adverse to the Business, the Acquired Assets or the assets of its Subsidiaries, any litigation, action or other Legal Proceeding before any court or Governmental Body relating to the Acquired Assets and that is or will be an Assumed Liability except any such litigation, action or other Legal Proceeding involving payment by or to a Seller Entity that is less than \$15,000 individually and \$30,000 in the aggregate;

(xiv) (A) take any action that reasonably jeopardizes the validity of or results in the revocation, surrender or forfeiture of, any of the Permits necessary for the continued operation of the Business, (B) fail to use commercially reasonable efforts to prosecute with due diligence any material pending applications with respect to the Permits, including any renewals thereof, (C) with respect to the Permits, fail to make all filings and reports and pay all material fees necessary or reasonably appropriate for the continued operation of the Business of the Seller Entities, as and when such filings, reports or payments are necessary or appropriate or (D) fail to initiate appropriate steps to renew any Permits held by

any Seller Entity that are scheduled to terminate prior to or within sixty (60) days after the Closing or to prosecute any pending applications for any Permit;

(xv) transfer, sell, assign, abandon, permit to lapse or grant any rights or modify any existing rights under any Seller Intellectual Property Rights other than in the Ordinary Course of Business, or enter into any settlement regarding the breach or infringement, misappropriation, dilution or other violation of any Intellectual Property Rights;

(xvi) make, commit to make or incur any Liability in excess of \$20,000 for capital expenditures except to the extent permitted by the DIP Loan Documents;

(xvii) enter into a plan of consolidation, merger, share exchange or reorganization with any Person or adopt a plan of complete or partial liquidation;

(xviii) authorize, declare or pay any dividends on or make any distribution with respect to its outstanding shares of capital stock (whether in cash, assets, stock or other securities);

(xix) amend the charter documents, bylaws or similar governing documents of any Seller Entity;

(xx) make any change in accounting policies, practices, principles, methods or procedures, other than as required by GAAP or by a Governmental Body; or

(xxi) enter into any Contract to do any of the foregoing or agree to do anything prohibited by this Section 9.1(b).

(c) Promptly (and in any event within ten (10) days) after the Closing Date, Seller will (i) at Purchasers' expense and written request, prepare and file with the appropriate Governmental Body appropriate documents, including, but not limited to, articles of amendment, changing the Seller Entities' name so as to effectuate the transfer of the Acquired Names and any of like names or combinations of words or derivations thereof to Purchasers and promptly deliver evidence of such name change to Purchasers and (ii) cease using the Acquired Names, and any derivations thereof.

9.2 Access to Information.

(a) Seller acknowledges and agrees that Purchasers' due diligence of the Aurix Business and Angel Business has not been completed and further agrees that, between the Execution Date and the earlier of the Closing Date and the date on which this Agreement is terminated in accordance with Section 4.4, Purchasers shall be entitled, through their officers, managers, investment advisers, employees, counsel, accountants and other authorized representatives, agents and contractors ("**Representatives**"), to have such reasonable access to and make such reasonable investigation and examination of the books and records, properties, businesses, assets, Employees, accountants, auditors,

counsel and operations of the Seller Entities as Purchasers' Representatives may reasonably request (including for the avoidance of doubt, any attorneys or agents handling the prosecution or maintenance of the Seller Entity Registered Intellectual Property Rights), provided, however, that Seller shall not be obligated to provide information that it is not permitted to provide under applicable Law; provided, further, that Seller shall provide its consent, which shall not be unreasonably withheld or delayed, for Purchasers or their Representatives to have access to Employees pursuant to this Section 9.2(a). Any such investigations and examinations shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances, including Seller's right to have its Representatives accompany Purchasers and their Representatives upon the Leased Real Property at the time of any inspection or examination and shall be subject to restrictions under applicable Law. Pursuant to this Section 9.2, Seller shall furnish to Purchasers and its Representatives such financial, operating and property related data and other information as such Persons reasonably request. Seller shall use commercially reasonable efforts to cause its Representatives to reasonably cooperate with Purchasers and Purchasers' Representatives in connection with such investigations and examinations, and Purchasers shall, and use their commercially reasonable efforts to cause their Representatives to, reasonably cooperate with Seller and its Representatives and shall use their reasonable efforts to minimize any disruption to the Business. Purchasers and their Representatives shall be permitted to contact, or engage in discussions or otherwise communicate with the Seller Entities' landlords, clients, suppliers and other Persons with which the Seller Entities have material commercial dealings, provided, that Purchasers must obtain the prior consent of Seller, which consent shall not be unreasonably withheld or delayed, to initiate such communications and give Seller the opportunity to be present therefor; and provided, further, that in lieu of obtaining Seller's consent in accordance with the preceding proviso, the Purchasers shall only be required to notify the Seller prior to initiating communications with a landlord of any Seller Entity, and to give Seller the opportunity to be present therefor.

(b) From and after the Closing Date, Seller shall, and shall cause its Subsidiaries to, give Purchasers and Purchasers' Representatives reasonable access during normal business hours to the offices, facilities, properties, assets, Employees, Documents (including, without limitation, any Documents included in the Excluded Assets), personnel files and books and records of the Seller Entities pertaining to the Business. In connection with the foregoing, Seller shall, and shall cause its Subsidiaries to, use commercially reasonable efforts to cause their respective Representatives to furnish, at Purchasers' expense, to Purchasers such financial, technical, operating and other information pertaining to the Business as Purchasers' Representatives shall from time to time reasonably request and to discuss such information with such Representatives. Without limiting the generality of the foregoing, at Purchasers' expense, Seller shall, and shall use commercially reasonable efforts to cause its Affiliates to, cooperate with Purchasers as may reasonably be requested by any of Purchasers or their Representatives for purposes of (i) enabling an independent accounting firm selected by Purchasers to conduct an audit of the Business, including access to Seller's independent auditors' working papers pertaining to the Business or the Acquired Assets including any environmental assessment; (ii) undertaking, with the consent of Seller, which consent shall not be unreasonably withheld or delayed, any study of the condition

or value of the Acquired Assets; and (iii) undertaking any study relating to the Seller Entities' compliance with Laws; and Seller acknowledges that information or access may be requested and used for such purpose; provided, however, that the access, and related rights to investigate and examine, granted to Purchasers and their Representatives pursuant to this Agreement shall not constitute nor be construed as a waiver of any applicable legal privilege of Seller, including the attorney-client and work product privileges.

(c) From and after the Closing Date until the first (1st) anniversary of the Closing Date, Purchasers shall give Seller and Seller's Representatives reasonable access during normal business hours to the offices, facilities, properties, assets, Employees, Documents (including, without limitation, any Documents included in the Acquired Assets), personnel files and books and records of Purchasers pertaining to (i) the conduct of the Business or ownership of the Acquired Assets prior to the Closing Date or (ii) the Excluded Assets and Excluded Liabilities. In connection with the foregoing, Purchasers shall use commercially reasonable efforts to cause their Representatives to furnish to Seller such financial, technical, operating and other information pertaining to (i) the conduct of the Business or ownership of the Acquired Assets prior to the Closing Date, or (ii) the Excluded Assets and Excluded Liabilities, in each case, as Seller's Representatives shall from time to time reasonably request and to discuss such information with such Representatives. Without limiting the generality of the foregoing, Purchasers shall, and shall use commercially reasonable efforts to cause each of their Affiliates to, cooperate with Seller as may reasonably be requested by Seller for purposes of enabling an independent accounting firm selected by Seller to conduct an audit of the Business for periods prior to the Closing Date, including access to Purchasers' independent auditors' working papers pertaining to the Business or the Acquired Assets.

(d) No information received pursuant to an investigation made under this Section 9.2 shall be deemed to (i) qualify, modify, amend or otherwise affect any representations, warranties, covenants or other agreements of Seller set forth in this Agreement or any certificate or other instrument delivered to Purchasers in connection with the transactions contemplated hereby, (ii) amend or otherwise supplement the information set forth in the Seller Disclosure Schedule, (iii) limit or restrict the remedies available to the parties under applicable Law arising out of a breach of this Agreement or otherwise available at Law or in equity, or (iv) limit or restrict the ability of either party to invoke or rely on the conditions to the obligations of the parties to consummate the transactions contemplated by this Agreement set forth in Article X.

(e) One month prior to the scheduled Closing Date, Seller shall provide Purchasers with a list of all payments, filings, and other actions which are due to be made or taken in connection with the prosecution and maintenance of the Seller Entity Registered Intellectual Property Rights during the period beginning on the date thereof and extending to the date that is three (3) months following the scheduled Closing Date. Such list will be promptly updated by Seller if the scheduled Closing Date is postponed.

9.3 Rejected Contracts. Seller shall not obtain an order approving the rejection or assumption of any Assigned Contract in any bankruptcy proceeding following the date hereof unless in accordance with this Agreement without the prior written consent of Purchasers.

9.4 Further Agreements. Purchasers authorize and empower Seller from and after the Closing Date to receive and to open all mail received by any Seller Entity relating to the Acquired Assets, the Business or the Assumed Liabilities and to deal with the contents of such communications in accordance with the provisions of this Section 9.4. Seller shall, and shall cause its Subsidiaries to, (a) promptly deliver to Purchasers or their Affiliates any mail or other communication received by it after the Closing Date and relating to the Acquired Assets, the Business or the Assumed Liabilities, (b) promptly transfer in immediately available funds to Purchasers or their Affiliates any cash, electronic credit or deposit received by any Seller Entity but solely to the extent that such cash, electronic credit or deposit are Acquired Assets and (c) promptly forward to Purchasers or their Affiliates any checks or other instruments of payment that it receives but solely to the extent that such checks or other instruments are Acquired Assets. Purchasers or their Affiliates shall (x) promptly deliver to Seller any mail or other communication received by them after the Closing Date and relating to the Excluded Assets or the Excluded Liabilities, (y) promptly wire transfer in immediately available funds to Seller, any cash, electronic credit or deposit received by it but solely to the extent that such cash, electronic credit or deposit are Excluded Assets and (z) promptly forward to Seller any checks or other instruments of payment that they receive but solely to the extent that such checks or other instruments are Excluded Assets. From and after the Closing Date, Seller shall refer all inquiries with respect to the Business, the Acquired Assets and the Assumed Liabilities to Purchasers, and Purchasers shall refer all inquiries with respect to the Excluded Assets and the Excluded Liabilities to Seller.

9.5 Further Assurances.

(a) Subject to the terms and conditions of this Agreement (including Section 8.2) and applicable Law, Seller and Purchasers shall use their respective commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement as soon as practicable, and shall coordinate and cooperate with each other in exchanging information, keeping the other party reasonably informed with respect to the status of the matters contemplated by this Section 9.5 and supplying such reasonable assistance as may be reasonably requested by the other party in connection with the matters contemplated by this Section 9.5. Without limiting the foregoing, following the Execution Date and until the date on which the Closing occurs or this Agreement is terminated in accordance with Section 4.4, the parties shall use their commercially reasonable efforts to take the following actions but solely to the extent that such actions relate to the transactions contemplated by this Agreement:

(i) obtain any required consents, approvals (including Regulatory Approvals), waivers, Permits, authorizations, registrations, qualifications or other permissions or actions by, and give all necessary notices to, and make all filings with, and applications and submissions to, any Governmental Body or third party

and provide all such information concerning such party as may be necessary or reasonably requested in connection with the foregoing;

(ii) avoid the entry of, or have vacated or terminated, any injunction, decree, Order, or judgment that would restrain, prevent, or delay the consummation of the transactions contemplated hereby;

(iii) take any and all reasonably necessary steps to avoid or eliminate every impediment under any applicable Law that is asserted by any Governmental Body with respect to the transactions contemplated hereby so as to enable the consummation of such transactions to occur as expeditiously as possible;

(iv) execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquaintances and such other instruments, and cooperate and take such further actions, as may be reasonably necessary or appropriate to transfer and assign fully to Purchasers and their successors and assigns, all of the Acquired Assets, and for Purchasers and their successors and assigns, to assume the Assumed Liabilities as contemplated in this Agreement, and to otherwise make effective the transactions contemplated hereby and thereby; and without limiting the foregoing, Seller agrees that upon request it will, in a timely manner execute or arrange for execution of such further documents as may be required, if any, from Seller, or take such other actions as Purchasers may reasonably request, to permit Purchasers to record the assignment of the Seller Entity Registered Intellectual Property Rights required to be sold by Seller hereunder free and clear of all Encumbrances, and to correct any defect in the record title to any of such Seller Entity Registered Intellectual Property Rights. In the event that Seller fails to do so, Seller hereby grants Buyer power of attorney to execute such further documents as may be required, if any, to record the assignment of such Seller Entity Registered Intellectual Property Rights, or to correct any defect in the record title to any of such Seller Entity Registered Intellectual Property Rights;

(v) take any and all commercially reasonable actions necessary to effect the transfer of all of the Permits and include all such Permits in the Acquired Assets to the extent transferrable under applicable Law; and

(vi) provide Purchasers with assistance in identifying and obtaining the Permits necessary to operate the Business.

Subject to the terms and conditions of this Agreement, the parties shall not take any action or refrain from taking any action the effect of which would be to delay or impede the ability of Seller and Purchasers to consummate the transactions contemplated by this Agreement, unless in such party's reasonable judgment, taking such action or refraining from taking such action is consistent with achieving the ultimate objective of consummating the transactions contemplated hereby or is required by applicable Law.

(b) Following the Execution Date and until the earlier of the Closing Date and the date on which this Agreement is terminated in accordance with Section 4.4, Seller, on the one hand, and Purchasers, on the other hand, shall keep each other reasonably informed as to the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by Seller or Purchasers or by any of their respective Affiliates (as the case may be), from any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement.

(c) Notwithstanding anything in this Agreement to the contrary, the obligations of Seller pursuant to this Section 9.5 shall be subject to any Orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code (including in connection with the Chapter 11 Case), and Seller's obligations as a debtor in possession to comply with any Order of the Bankruptcy Court (including the Bidding Procedures Order and the Sale Order) and Seller's duty to seek and obtain the highest or otherwise best price for the Business as required by the Bankruptcy Code.

9.6 Preservation of Records. Seller and Purchasers agree that each of them shall, and Seller shall cause its Subsidiaries to, preserve and keep the Documents held by them or their Affiliates relating to the Business, the Acquired Assets and Assumed Liabilities for a period of one (1) year from the Closing Date, in the case of Purchasers, and until the closing of the Chapter 11 Case or the liquidation and winding up of Seller's estates, in the case of Seller, and shall make such Documents available to the other party as may be reasonably required by such other party in connection with, among other things, any insurance claims by, actions or Tax audits against or governmental investigations of the Seller Entities or Purchasers or any of their respective Affiliates or in order to enable Seller or Purchasers to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event that any Seller Entity or Purchasers wish to destroy such Documents at the end of such one (1) year period, such party shall first give sixty (60) days prior written notice to the other party and such other party shall have the right at its option and expense, upon prior written notice given to such party within such sixty (60) day period, to take possession of the Documents within one hundred and twenty (120) days after the date of such notice, or such shorter period as the liquidation and winding up of Seller's estate shall permit.

9.7 Publicity. Except as required by applicable Law (including by the Bankruptcy Court or the Bankruptcy Code or Federal securities laws), each of Seller and Purchasers shall not issue a press release or make any other public announcement concerning this Agreement or the matters or transactions contemplated hereby without the prior written approval of the other parties hereto (which approval shall not be unreasonably withheld, conditioned or delayed).

9.8 Notification of Certain Matters. Seller shall, and shall cause its Subsidiaries to, give prompt notice to Purchasers, and Purchasers shall give prompt notice to Seller, of (a) any notice or other communication from any Person alleging that the consent of such Person which is or may be required in connection with the transactions contemplated by this Agreement is not likely to be obtained prior to Closing and (b) any written objection or proceeding that challenges the transactions contemplated hereby or the entry of the approval of the Bankruptcy Court. To

the extent permitted by applicable Law, Seller shall, and shall cause its Subsidiaries to, give prompt notice to Purchasers of (w) any notice of any alleged violation of Law applicable to any Seller Entity, (x) the commencement of any investigation, inquiry or review by any Governmental Body with respect to the Business or that any such investigation, inquiry or review, to the Knowledge of Seller, is contemplated, and (y) the infringement or unauthorized use by any Person of any material Intellectual Property Rights (of which Seller has Knowledge).

9.9 DIP Loan Documents. Notwithstanding anything in this Agreement to the contrary, between the date of this Agreement and the earlier of the termination of this Agreement in accordance with Section 4.4 and the Closing Date, it shall not be a breach of this Agreement for, and nothing in this Agreement shall (or shall be deemed to) limit or affect the ability of, Seller to incur Indebtedness or borrow funds under the DIP Loan or the DIP Loan Documents in accordance with the terms and conditions of the DIP Loan Documents.

9.10 Insurance Policies. Seller shall use commercially reasonable efforts to:

(a) to the extent Purchasers are not a Named Insured on Seller's Insurance Policies or otherwise do not have the right to directly make claims under such Insurance Policies, provide Purchasers with all the rights of Seller to make claims thereunder related to the Business (to the extent not specifically related to the Excluded Assets or Excluded Liabilities) or the Acquired Assets;

(b) maintain, solely at Purchasers' cost, each Purchaser Named Insurance Policy in full force and effect through such Insurance Policy's scheduled expiration date in accordance with its terms;

(c) take all action and furnish all assistance as is reasonably necessary to assist Purchasers in tendering and pursuing claims under the Insurance Policies including but not limited to settling, compromising or modifying coverage under the Insurance Policies, or establishing the right to make claims under the Insurance Policies with respect to the Business (to the extent not specifically related to the Excluded Assets or Excluded Liabilities) or Acquired Assets under the Insurance Policies and Third Party Insurance Policies; and

(d) promptly remit to Purchasers all proceeds and recoveries under the Insurance Policies and Third Party Insurance Policies with respect to the Business (to the extent not specifically related to the Excluded Assets or Excluded Liabilities) or the Acquired Assets.

Notwithstanding any other provision of this Agreement to the contrary, the parties hereto shall be entitled to specifically enforce this Section 9.10.

9.11 Regulatory Affairs. Seller shall, and shall cause its Subsidiaries to, to the fullest extent permitted by applicable Law, (i) promptly advise Purchasers of the receipt of any communication from the FDA or any similar state or foreign Governmental Body or other U.S. Governmental Body whether oral, written, electronic or otherwise, (ii) provide Purchasers with a reasonable opportunity to participate in the preparation of any response thereto and the preparation of any other substantive submission or communication to any such Governmental

Body and to review any such response, submission or communication prior to the filing or delivery thereof; and (iii) provide Purchasers with the opportunity to participate in any meetings or substantive telephone conversations that any Seller Entity or its representatives may have from time to time with any such Governmental Body. At Purchasers' request, Seller shall assist Purchasers in obtaining any meetings with, or facilitating communications between, Purchasers and the FDA or any similar state or foreign Governmental Body or other U.S. Governmental Body.

9.12 Recharacterization. If Purchasers request that Seller commence a proceeding in Bankruptcy Court seeking to recharacterize any lease obligation of Seller to financing obligations (a "**Recharacterization**"), Seller shall use its commercially reasonable efforts to obtain a Final Order or judgment with respect to a Recharacterization at Purchasers' sole expense.

9.13 Sale Process. Seller shall promptly, but in no event more than three (3) days, after receipt thereof share with Purchasers all formal and informal offers and deliver to Purchasers copies of written expressions of interest with respect to its assets and property.

9.14 Leases. For the period commencing on the Closing Date and ending on the earlier of (i) the date the Purchasers elect to assume certain Seller Real Estate Leases to be identified by the Purchasers at or prior to the Closing ("Designated Leases") or (ii) the date the Purchasers notify the Seller that they do not intend to assume the Designated Lease, the Seller shall, and shall cause its Subsidiaries to, at the Purchasers' expense, timely pay, perform and discharge all monetary obligations of the Seller arising under the Designated Leases. In the event that, following the Closing, the Chapter 11 Case is converted to a case under Chapter 7 of the Bankruptcy Code, or if a chapter 11 trustee or examiner with expanded powers to operate and manage the financial affairs, business or other reorganization of Seller is appointed in the Chapter 11 Case, the provisions of this Section 9.14 shall be binding upon the trustee, or upon any such chapter 11 trustee or examiner then operating and/or managing the Designated Leases.

ARTICLE X.

CONDITIONS TO CLOSING

10.1 Conditions Precedent to the Obligations of Purchasers and Seller. The respective obligations of each party to this Agreement to consummate the transactions contemplated by this Agreement are subject to the satisfaction or written waiver, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by Seller and Purchasers in whole or in part to the extent permitted by applicable Law):

- (a) there shall not be in effect any statute, rule, regulation, Law or Order enacted, issued, entered or promulgated by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; and

(b) the Bankruptcy Court shall have entered the Bidding Procedures Order and Sale Order and each of such orders shall be a Final Order and in form and substance reasonably satisfactory to Seller and Purchasers.

10.2 Conditions Precedent to the Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by Seller in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Purchasers set forth in Article VI hereof shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date (except for such representations and warranties made as of a certain date, which shall be true and correct as of such date as though made on and as of such date) and Seller shall have received from Purchasers a certificate signed by an authorized officer of the general partner of Purchasers, dated the Closing Date, to the foregoing effect;

(b) Purchasers shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Purchasers on or prior to the Closing Date, and Seller shall have received from Purchasers a certificate signed by an authorized officer of the general partner of Purchasers, dated the Closing Date, to the foregoing effect;

(c) Purchasers shall have delivered, or caused to be delivered, to Seller all of the items set forth in Section 4.3;

(d) all portions of the applicable Purchase Price shall have been delivered in accordance with Section 3.1; and

10.3 Conditions Precedent to the Obligations of Purchasers. The obligations of Purchasers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by Purchasers in whole or in part to the extent permitted by applicable Law):

(a) Seller shall have delivered to Purchasers (i) a certified copy of the Sale Order (which shall contain, among other things, the terms described in Section 8.2 and no Order staying, reversing, modifying or amending the Sale Order shall be in effect on the Closing Date) and (ii) copies of all affidavits of service of the Sale Motion or notice of such motion filed by or on behalf of Seller (which service shall comply with Section 8.1(d));

(b) the representations and warranties of Seller set forth in Article V hereof shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date (except for such representations and warranties made as of a certain date, which shall be true and correct as of such date as though made on and as of such date) and Purchasers shall have received a certificate signed by an authorized officer of Parent, dated the Closing Date, to the foregoing effect;

(c) Seller shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by Seller on or prior to the Closing Date, and Purchasers shall have received a certificate signed by an authorized officer of Seller, dated such Closing Date, to the forgoing effect;

(d) Except as provided in Section 2.6, all of the Assigned Contracts (unless otherwise expired) set forth in Section 10.3(d) of the Seller Disclosure Schedule, shall (i) be assignable to Purchasers without the consent of the counterparty to such Assigned Contract for such assignment (or such consent shall have been received prior to the Closing Date) and (ii) have had all of the applicable Seller Entity's monetary breaches and monetary defaults thereunder cured as of the Closing Date by payment of the Cure Costs by Purchasers (or creation of reserves therefor) in accordance with the Sale Order or otherwise;

(e) Seller shall have delivered, or caused to be delivered, to Purchasers all of the items set forth in Section 4.2;

(f) Purchasers shall have obtained all of the permits and licenses necessary for it to acquire and own the Acquired Assets and to conduct each Business immediately after the Closing Date, including, reimbursement of the Aurix System pursuant to the Coverage with Evidence Development Program and the ability and right to manufacture, distribute and ship the products of each Business in the United States and in each of the states in which there are customers, and all of such permits and licenses shall be in full force and effect;

(g) Prior to the Closing Date, the Centers for Medicare & Medicaid reimbursement rate for the Aurix System shall be in excess of \$1,400 as a national average;

(h) The total amount of the Cure Costs with respect to the Aurix Assigned Contracts shall not exceed \$[●] in the aggregate and the total amount of the Cure Costs with respect to the Angel Assigned Contracts shall not exceed \$[●];

(i) All consents required for the assignment of the Acquired Intellectual Property, without any material modification in the terms of any such Acquired Intellectual Property, shall have been obtained and shall be in full force and effect; and

(j) Between the Execution Date and the Closing Date, there shall not have occurred a Regulatory Negative Event.

(k) the Bankruptcy Court shall have permitted the Facility Lenders to credit bid the Facility Indebtedness and the DIP Loan as contemplated by Section 3.1 of this Agreement.

10.4 Failure Caused by Party's Failure to Comply. Neither Seller nor Purchasers may rely on the failure of any condition set forth in Sections 10.1, 10.2 or 10.3, as the case may be, if such failure was caused directly by such party's failure to comply with any provision of this Agreement.

ARTICLE XI.

TAXES²

11.1 Additional Tax Matters.

(a) Any sales, use, transfer, deed, fixed asset, stamp, documentary stamp or other similar type Taxes and recording charges (each, a “**Transfer Tax**”) which may be payable by reason of the acquisition of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated herein shall be borne and timely paid by Purchasers. Purchasers and Seller shall cooperate to prepare and timely file any Tax Returns required to be filed in connection with Transfer Taxes described in the immediately preceding sentence.

(b) All real and personal property Taxes imposed on, or levied with respect to, the Acquired Assets for any Tax Period commencing on or prior to the Closing Date and ending on or after the Closing Date (a “**Straddle Period**”) shall be prorated between Purchasers and Seller as of the end of the Closing Date, with (a) Seller being liable for such Taxes attributable to any portion of a Straddle Period ending on the Closing Date and (b) Purchasers being liable for such Taxes attributable to any portion of a Straddle Period beginning after the Closing Date. All such proration shall be allocated so that items relating to the portion of a Straddle Period ending on the Closing Date shall be allocated to Seller based upon the number of days in the Straddle Period ending on the Closing Date and items related to the portion of a Straddle Period beginning after the Closing Date shall be allocated to Purchasers based upon the number of days in the Straddle Period beginning after the Closing Date. For purposes of Section 2.3 (other than Sections 2.3(f) and 2.4(b)(ii)), all Liabilities for Taxes other than real and personal property Taxes imposed for a Straddle Period shall be determined for the portion of the Straddle Period ending on the Closing Date as if the Closing Date was the last day of the relevant Taxable Period.

(c) Purchasers shall, within one-hundred twenty (120) days after the Closing Date, prepare and deliver to Seller for its consent (which consent shall not be unreasonably withheld, delayed or conditioned) a schedule allocating the purchase price and any other item of consideration, including Assumed Liabilities, to the extent properly taken into account for U.S. tax purposes, among the Acquired Assets in accordance with Section 1060 of the Code (such schedule, the “**Allocation Schedule**”). If Seller raises any objection to the Allocation Schedule within twenty (20) days of the receipt thereof, Purchasers and Seller will negotiate in good faith to resolve such objection(s). In the case of any adjustment to the Purchase Price or any other items of consideration requiring an amendment to the Allocation Schedule, such amended Allocation Schedule shall be

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2 NTD: Subject to tax review.

prepared by Purchasers, subject to review by Seller and subject to dispute resolution pursuant to the same procedures set forth in this Section 11.1(c) applicable to the initial Allocation Schedule. Purchasers and Seller shall report and file all Tax Returns (including amended Tax Returns and claims for refund) consistent with the Allocation Schedule as finally agreed upon, and shall take no position contrary thereto or inconsistent therewith (including, without limitation, in any audits or examinations by any Governmental Body or any other proceeding); provided, however, that nothing contained herein shall prevent Purchasers or Seller from settling any proposed deficiency or adjustment by any Governmental Body based upon or arising out of the Allocation Schedule, and neither Purchasers nor Seller shall be required to litigate before any court any proposed deficiency or adjustment by any Governmental Body challenging the contents of the Allocation Schedule. Purchasers and Seller shall cooperate in the filing of any forms (including IRS Form 8594 under Section 1060 of the Code) with respect to the contents of the Allocation Schedule, including any amendments to such forms required pursuant to this Agreement with respect to any adjustment to the Purchase Price. If and to the extent the parties are unable to agree on the contents of the Allocation Schedule, the parties shall retain a mutually agreed-upon accounting firm of national repute to resolve such dispute. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 11.1(c) shall survive the Closing without limitation.

ARTICLE XII.

MISCELLANEOUS

12.1 Payment of Expenses. Whether or not the transactions contemplated hereby are consummated, Seller shall be responsible for all of its expenses incurred or to be incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby. Subject to Section 8.3(a) and the expense reimbursement provisions of the DIP Loan Documents and the Facility Loan Documents, whether or not the transactions contemplated hereby are consummated, Purchasers shall be responsible for all of their expenses incurred or to be incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby.

12.2 Survival of Representations and Warranties; Survival of Confidentiality. The parties hereto agree that the representations and warranties, and the covenants and agreements to be performed prior to the Closing, contained in this Agreement shall not survive, and thus shall expire upon, the Closing. The parties hereto agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive in accordance with the terms of the particular covenant, until fully performed or, if earlier, upon Seller's dissolution.

12.3 Entire Agreement; Amendments and Waivers. This Agreement (including the schedules and exhibits hereto and other documents specifically referred to herein) represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. This Agreement may be amended, supplemented or changed, and any provision hereof

may be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including without limitation, any investigation by or on behalf of any party shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable Law.

12.4 Counterparts. For the convenience of the parties hereto, this Agreement may be executed (by facsimile or PDF signature) in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

12.5 Governing Law. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE AND WHERE STATE LAW IS IMPLICATED, THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN, WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES THEREOF, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

12.6 Jurisdiction, Waiver of Jury Trial.

(a) THE BANKRUPTCY COURT WILL HAVE JURISDICTION OVER THE PARTIES HERETO AND ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY; PROVIDED, HOWEVER, THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTE, THE COURTS OF THE STATE OF NEW YORK AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE SOUTHERN DISTRICT OF THE STATE OF NEW YORK WILL HAVE SOLE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY.

(b) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12.7 Notices. Unless otherwise set forth herein, any notice, request, instruction or other document to be given hereunder by any party to the other parties shall be in writing and shall be deemed duly given (i) upon delivery, when delivered personally, (ii) one (1) day after being sent by overnight courier or when sent by facsimile transmission or email PDF format (with a confirming copy sent by overnight courier), and (iii) three (3) days after being sent by registered or certified mail, postage prepaid, as follows:

If to Seller, to:

Nuo Therapeutics, Inc.
209 Perry Parkway, Suite 7
Gaithersburg, MD 20877
Attention: [●]
Facsimile: [●]
E-mail: [●]

With a copy (which shall not constitute effective notice) to:

[●]
[●]
[●]
Attention: [●]
Facsimile: [●]
E-mail: [●]

If to Purchasers, to:

c/o Deerfield Management Company, L.P.
780 Third Avenue, 37th Floor
New York, NY 10017
Attention: [●]
Facsimile: [●]
E-mail: [●]

with copies to (which shall not constitute effective notice):

Katten Muchin Rosenman LLP
575 Madison Avenue
New York, New York 10022
Attention: [●]
Facsimile: [●]
E-mail: [●]

or to such other Persons or addresses as may be designated in writing by the party to receive such notice.

12.8 Binding Effect; Assignment. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this

Agreement will create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement. No assignment of this Agreement or of any rights or obligations hereunder may be made by Seller (by operation of Law or otherwise) without the prior written consent of Purchasers and any attempted assignment without the required consent will be void. Purchasers may assign all of their rights and all of their obligations hereunder prior to the Closing without the consent of the Seller. For the avoidance of doubt, the parties hereto acknowledge and agree that following an assignment of their rights and obligations hereunder (i) Purchasers shall not receive any Acquired Assets or assume any Assumed Liabilities, respectively, and (ii) Purchasers shall have no rights or obligations hereunder or in connection herewith. Except as otherwise expressly provided in this Section 12.8, no assignment of any obligations hereunder will relieve the parties hereto of any such obligations. Upon any permitted assignment, the references in this Agreement to Seller or Purchasers will apply to any such assignee unless the context otherwise requires.

12.9 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

12.10 Injunctive Relief; Limitations on Relief.

(a) The parties agree that damages at Law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement by Seller, and, accordingly, Purchasers shall be entitled to injunctive relief with respect to any such breach, including without limitation, specific performance of such covenants, promises or agreements or an Order enjoining Purchasers from any threatened, or from the continuation of any actual breach of the covenants, promises or agreements contained in this Agreement by Seller. The rights set forth in this Section 12.10 shall be in addition to any other rights which Purchasers may have at Law or in equity pursuant to this Agreement.

(b) Notwithstanding anything to the contrary contained herein, in the event that Seller incurs any damages, liabilities, costs and out-of-pocket expenses, including reasonable attorneys' fees (including such fees which are incurred in connection with a good-faith dispute of the provisions of this Agreement), fines, penalties, costs of investigation or settlement, other professionals' and experts' fees, and court or arbitration costs (but specifically excluding any punitive, exemplary, special or speculative damages except to the extent such damages specifically excluded herein are awarded to a third party) (hereinafter collectively referred to as "**Damages**") as a result of the breach by Purchasers of this Agreement, the claim of each Facility Lender and the DIP Lender, respectively, against Seller arising under the Facility Agreement and the DIP Loan Agreement, respectively, shall, without any further action on the part of Seller,

Purchasers, each Facility Lender and the DIP Lender, be reduced in an amount equal to the Damages incurred by Seller; provided, however, in no event shall the Damages payable to Seller pursuant to this Section 12.10(b) exceed an amount equal to two percent (2%) of the Credit Bid Amount in the aggregate. The right of Seller to receive Damages pursuant to this Section 12.10(b) shall be the sole and exclusive remedy of Seller against Purchasers, each Facility Lender, the DIP Lender and any of their respective Affiliates or Subsidiaries for any Damages suffered as a result of the breach by Purchasers of this Agreement by Seller and in no event will Seller (or Person acting on behalf of Sellers) seek to recover (or be entitled to obtain) any other money damages or any equitable relief or equitable remedies of any kind whatsoever or any other remedy from Purchasers each Facility Lender, the DIP Lender or any of their respective Affiliates or Subsidiaries with respect thereto, regardless of whether such monetary damages or other remedies are based on a claim in law or equity, and Seller (on their own behalf and on behalf of their estates) hereby waive all such claims except in the case of fraud by Purchasers, each Facility Lender, the DIP Lender or any of their respective Affiliates or Subsidiaries.

12.11 Non-Recourse. Except as expressly contemplated by this Agreement, no past, present or future director, officer, employee, advisor, lawyer, agent, representative, incorporator, member, partner or equityholder of Seller or Purchasers shall have any liability for (i) any obligations or liabilities of Seller or Purchasers under this Agreement or the certificate of incorporation and by-laws or comparable organizational documents of Seller or Purchasers, or (ii) any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby.

12.12 No Waiver or Release. Notwithstanding anything herein to the contrary, all terms, conditions, covenants, representations and warranties contained in the DIP Loan Documents or Facility Finance Documents, and all rights, powers and remedies of the DIP Lender, each Facility Lender and all of the obligations of the Debtors (as defined in the DIP Loan Documents or Facility Finance Documents, as applicable) and other Loan Parties (as defined in the DIP Loan Documents or Facility Finance Documents, as applicable) thereunder (and Seller acknowledges its obligation to reimburse each Facility Lender for fees and expenses incurred in accordance with the Facility Finance Documents), are reserved and are not amended, modified, limited or otherwise affected by the terms and conditions of this Agreement.

12.13 Time of the Essence. Time is of the essence in the performance of each of the obligations of the parties and with respect to all covenants and conditions to be satisfied by the parties in this Agreement and all documents, acknowledgments and instruments delivered in connection herewith.

12.14 Miscellaneous.

(a) Certain Interpretations. Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(i) All references in this Agreement to Articles, Sections, Schedules and Exhibits shall be deemed to refer to Articles, Sections, Schedules and Exhibits to this Agreement.

(ii) All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(iii) The Article, Section and paragraph captions herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

(iv) The words “include,” “includes” and “including,” when used herein, shall be deemed in each case to be followed by the words “without limitation” (regardless of whether such words or similar words actually appear).

(v) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded.

(vi) Any reference in this Agreement to \$ shall mean U.S. dollars.

(vii) Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(viii) The words such as “herein,” “hereinafter,” “hereof,” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(b) The parties hereto agree that they have been represented by legal counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any Law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

(c) This Agreement is the result of the joint efforts of the parties hereto, and each provision hereof has been subject to the mutual consultation, negotiation, and agreement of the parties and there is to be no construction against any party based on any presumption of that party’s involvement in the drafting thereof.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

PURCHASER:

**DEERFIELD SPECIAL SITUATIONS
FUND, L.P.**

By: Deerfield Mgmt, L.P., General Partner

By: J.E. Flynn Capital LLC, General Partner

By: _____
Name:
Title:

**DEERFIELD PRIVATE DESIGN FUND II,
L.P.**

By: Deerfield Mgmt, L.P., General Partner

By: J.E. Flynn Capital LLC, General Partner

By: _____
Name:
Title:

**DEERFIELD PRIVATE DESIGN
INTERNATIONAL II, L.P.**

By: Deerfield Mgmt, L.P., General Partner

By: J.E. Flynn Capital LLC, General Partner

By: _____
Name:
Title:

SELLER:

NUO THERAPEUTICS, INC.

By: _____
Name:
Title:

EXHIBIT A

FORM OF BILL OF SALE

THIS BILL OF SALE dated as of _____, 2016, by and among **[DEERFIELD ENTITY]**, a Delaware **[●]** (“**Purchasers**”), and NUO THERAPEUTICS, INC., a Delaware corporation (“**Seller**”).

WHEREAS, the parties hereto have entered into an Asset Purchase Agreement dated as of **[●]**, 2016 (the “**Purchase Agreement**”) providing for the acquisition by Purchasers of certain assets of Seller, and the parties now desire to carry out such transaction by Seller’s execution and delivery to Purchasers of this instrument evidencing the vesting in Purchasers of all of the assets and rights of Seller hereinafter described. Capitalized terms used but not defined herein have the meanings given them in the Purchase Agreement.

NOW, THEREFORE, in consideration of the premises and of other valuable consideration to Seller in hand paid pursuant to the Purchase Agreement, at or before the execution and delivery hereof, the receipt and sufficiency of which by Seller is hereby acknowledged, Seller hereby conveys, grants, sells, transfers, sets over, assigns, remises, releases and delivers unto Purchasers, their successors and assigns forever, effective as of 11:59 p.m. EDT on the date hereof (the “**Effective Time**”), all of Seller’s right, title and interest in and to the Acquired Assets, free and clear of any Encumbrances other than Permitted Encumbrances, without representation or warranty, express or implied.

PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE ACQUIRED ASSETS OTHER THAN AS SET FORTH IN THE PURCHASE AGREEMENT. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLER HEREBY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE ACQUIRED ASSETS. PURCHASER FURTHER ACKNOWLEDGES THAT PURCHASER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE ACQUIRED ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE ACQUIRED ASSETS AS PURCHASER DEEMED NECESSARY OR APPROPRIATE AND THAT, IN PROCEEDING WITH ITS ACQUISITION OF THE ACQUIRED ASSETS, PURCHASER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, PURCHASER WILL ACCEPT THE ACQUIRED ASSETS AT THE CLOSING “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS.”

Seller hereby covenants that, from time to time after the delivery of this instrument, at Purchasers’ request and without further consideration, Seller will do, execute, acknowledge, and deliver, or will cause to be done, executed, acknowledged and delivered, all and every such further acts, deeds, conveyances, transfers, assignments, powers of attorney and assurances as reasonably may be required, and in form and substance reasonably acceptable to Seller, to

effectively convey, transfer to and vest in Purchasers, and to put Purchasers in possession of, any of the Acquired Assets.

Nothing in this instrument, express or implied, is intended or shall be construed to confer upon, or give to, any person, firm or corporation other than Purchasers and their successors and assigns, any remedy or claim under or by reason of this instrument or any terms, covenants or condition hereof, and all of the terms, covenants and conditions, promises and agreements in this instrument contained shall be for the sole and exclusive benefit of Purchasers and their successors and assigns.

This instrument is executed by, and shall be binding upon, Seller and its successors and assigns for the uses and purposes above set forth and referred to, effective as of the Effective Time.

This instrument shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of New York, without regard to its conflict of law principle provisions.

To the extent this Bill of Sale is inconsistent with any terms or conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall control.

This instrument may be executed in counterpart signature pages, all of which when so executed and attached hereto shall constitute one and the same original.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have executed this Bill of Sale or caused this Bill of Sale to be executed on their behalf by a duly authorized officer as of the date first set forth above.

SELLER:

NUO THERAPEUTICS, INC.

By: _____
Name:
Title:

PURCHASER:

[DEERFIELD ENTITY]

By: _____
Name:
Title:

EXHIBIT B

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (the “**Agreement**”) is entered into as of _____, 2016, by and among [**DEERFIELD ENTITY**], a Delaware [●] (“**Assignee**”), and NUO THERAPEUTICS, INC., a Delaware corporation (“**Assignor**”).

WITNESSETH:

WHEREAS, Assignors and Assignee entered into that certain Asset Purchase Agreement dated as of [●], 2016 (the “**Purchase Agreement**”; capitalized terms used but not otherwise defined herein have the meanings given them in the Purchase Agreement); and

WHEREAS, pursuant to the Purchase Agreement, Assignors have agreed to assign certain rights and agreements to Assignee, and Assignee has agreed to assume certain obligations of Assignors, as set forth therein and herein.

NOW, THEREFORE, in consideration of the premises, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. Effective as of 11:59 p.m. EDT on the date hereof, Assignors hereby sell, transfer and assign (collectively the “**Assignment**”) to the Assignee, and Assignee hereby assume and agree to pay, perform and discharge, each and all of the Assumed Liabilities, as that term is defined in, and in accordance with, Section 2.3 of the Purchase Agreement.

2. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

3. This Agreement shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of New York, without regard to its conflict of law principle provisions and rules.

4. To the extent this Agreement is inconsistent with any terms or conditions in the Purchase Agreement, the Purchase Agreement shall control.

5. This Agreement may be executed in counterpart signature pages, all of which when so executed and attached hereto shall constitute one and the same original.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption Agreement as of the date first set forth above.

ASSIGNOR:

NUO THERAPEUTICS, INC.

By: _____
Name:
Title:

ASSIGNEE:

[•]

By: _____
Name:
Title:

EXHIBIT C

FORM OF BIDDING PROCEDURES ORDER

EXHIBIT D
DIP ORDERS

DRAFT 2/1/2016

SUBJECT TO COMPLETION AND REVISION

Schedule 1.1(ddd)
Knowledge Parties

David Jordan
Peter Clausen
Jennifer Linsky
Richard DeMaio
Jay Alimusa,
Dan Goldstein
Jennifer Mirth
Heather Roth
Catherine Van Doren

SUBJECT TO COMPLETION AND REVISION

Schedule 1.1(jjj)
Non-Assumed Contracts

BLDG Holding Inc

Corporate Traveler

Health Advances LLC

Randstad

Stegman & Company

The Ruth Group

DRAFT 2/1/2016

SUBJECT TO COMPLETION AND REVISION

Schedule 1.1(zzz)
Seller Entities

[Aldagen, Inc.]¹

[Cytomedix Acquisition Company, LLC]

¹ NTD: Need to confirm whether subsidiaries own any of the Acquired Assets or are parties to Assigned Contracts.

DRAFT 2/1/2016

SUBJECT TO COMPLETION AND REVISION

Schedule 2.1(a)(i)
Seller Real Estate Leases

[TBD]

DRAFT 2/1/2016

SUBJECT TO COMPLETION AND REVISION

Schedule 2.1(a)(viii)

Seller Claims

[TBD]

DRAFT 2/1/2016

SUBJECT TO COMPLETION AND REVISION

Schedule 2.1(a)(iii)
Employment Contracts

[EMPLOYEE ARRANGEMENTS TO BE DISCUSSED AND NEGOTIATED]

DRAFT 2/1/2016

SUBJECT TO COMPLETION AND REVISION**Schedule 2.1(b)(i)**
Aurix Assigned Contracts**Manufacturing Agreement**

Counterparty	Contract Name	Date
<i>Manufacturing Agreements</i>		
Pfizer, Inc.	Pharmaceutical Supplier Agreement for Injectable Products	
Pfizer, Inc.	Amendment to Pharmacy Supplier Agreement	
Relion G3 Medical, Inc.	Assignment of Contracts	
Sarsstedt, Inc.	Quality and Supply Agreement	
McGuff Pharmaceuticals, Inc.	Agreement for Domestic Sale and Delivery of Ascor L500 for use in Nuo Therapeutics Aurix System	

CED Operations

Counterparty	Contract Name	Date
Net Health	Data License and Service Agreement	
Amarex (Aurix)	Project Management	
Amarex (Aurix)	Statement of Work Amended	
Covance Market Access Services Inc.	Proposal and Agreement	

CED Site Agreements

Counterparty	Contract Name	Date
United Regional Wound Care Center	CED Site Education and Data Management Agreement	
Christus St. Micheal Health System	CED Site Education and Data Management Agreement	
Amputation Prevention Center at Valley Presbyterian Hospital	CED Site Education and Data Management Agreement	
Valley Presbyterian Hospital	Business Associate Addendum	
Dr. Robert Abraham	Refrigerator Ownership	
Kaweah Delta Healthcare District	BAA	
Kaweah Delta Hospital Foundation	CED Site Education and Data Management Agreement	
Enloe Medical Center	CED Site Education and Data	

DRAFT 2/1/2016

SUBJECT TO COMPLETION AND REVISION

	Management Agreement	
Physicians Wound Center	CED Site Education and Data Management Agreement	
Uniontown Hospital Wound Center	CED Site Education and Data Management Agreement	
Fort Healthcare	CED Site Education and Data Management Agreement	
Northwest Hospital LLC dba Northwest Medical Center and TLC Healthcare Specialists	Clinical Research Study Agreement	
St. Joseph's Medical Group	Letter of indemnification between Intellicure (acting as CRO for Sponsor) and St. Joseph's	
Piedmont Healthcare Inc.	CED Site Education and Data Management Agreement	
SSM Healthcare of OK (non profit owning St. Anthony's hospital	CED Site Education and Data Management Agreement	
Blanchard Valley Regional Health Center (Wound Care Solutions)	CED Site Education and Data Management Agreement	
Mercy Hospital of Buffalo and Sisters of Charity Hospital (member of Catholic Health System)	CED Site Education and Data Management Agreement	
Christus St. Vincent Wound and Hyperbaric Center	CED Site Education and Data Management Agreement	
Uvalde County Hospital Authority DBA Uvalde County Hospital	CED Site Education and Data Management Agreement	
Advanced Wound Care Technologies	CED Site Education and Data Management Agreement	
St. Luke's Community Health Services DBA St. Luke's the Woodlands Hospital	CED Site Education and Data Management Agreement	
St. Luke's Regional Medical Center ltd	CED Site Education and Data Management Agreement	
Mid West Foot and Ankle Clinic	CED Site Education and Data Management Agreement	
City Hospital, Inc. DBA Berkeley Medical Center	Standard addendum for vendor contracts	
Berkeley Medical Center	CED Site Education and Data Management Agreement	
Barnabas Health Inc.	HIPAA Business Associate Agreement	
Valley Wound Healing Center	CED Site Education and Data Management Agreement	
Fairfield County Foot Surgeons	CED Site Education and Data Management Agreement	
Physicians Research Group II LLC	CED Site Education and Data Management Agreement	
Stockdale Podiatry Group	CED Site Education and Data Management Agreement	

DRAFT 2/1/2016

SUBJECT TO COMPLETION AND REVISION**Licenses**

Counterparty	Contract Name	Date
Biotherapy services, LTD	License and Distribution	
Biotherapy services, LTD	Distribution Agreement	
Rohto Pharma, LTD	License and Distribution	
Charles E. Worden Sr	Substitute Royalty Agreement	
Charles E. Worden Sr	Patent License Agreement	

Contracts

<u>Counter Party</u>	<u>Effective Date</u>
Fairview Health Services	11/1/2015
Taylor Regional	12/18/2014
Aventura Hospital and Medical Center	10/6/2015
Sherman Oaks Hospital, Amputation Prevention Center	1/12/2015
United Regional Wound Care Center	12/29/2014
Valley Presbyterian Hospital	7/1/2015
Kaweah Delta Healthcare District Wound Care Center	7/27/2015
Enloe Wound and Hyperbaric Center	5/11/2015
Uniontown Hospital	1/27/2015
Northwest Medical Center	12/10/2015
Rochester General Hospital	10/6/2014
Singing River Health System	8/25/2014
St. Luke's Health System	1/7/2015
Orange Regional Medical Center	10/1/2015

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SUBJECT TO COMPLETION AND REVISION

East Valley Foot and Ankle Specialists	8/28/2015
Stockdale Podiatry Group	9/8/2015
Center for Wound Care & Hyperbaric Medicine at Berkeley Medical Center	4/1/2015
Piedmont Healthcare	5/28/2015
Hyperbaric Medicine & Wound Treatment Center of Utah	3/17/2014
Kindred Hospital Pittsburgh North Shore	7/29/2013
Chugo Rinoie, DPM	10/8/2013
Dr. Jian Zhang	11/25/2013
Zak Weis	12/9/2013
Fort Healthcare	6/8/2015
North Georgia Foot and Ankle Specialists	2/3/2015
Physicians Wound Center	2/13/2015
Wake Forest University School of Medicine	3/13/2013
Catholic Health Mercy Hospital	[not dated]
Catholic Health Sisters of Charity	[not dated]
Christus St Vincent Wound and Hyperbaric Center	1/8/2015
Fairfield County Foot Surgeons	6/10/2015
Health South	3/6/2015
Dr. Helen Gelly	7/17/2013
Infusio	10/2/2014
Intellicure, Inc.	8/18/2014

DRAFT 2/1/2016

SUBJECT TO COMPLETION AND REVISION

Olean General Hospital	10/24/2014
St. Joseph Hospital	4/21/2015
Valley Wound Healing Center	6/9/2015

[Aurix Operating and Business Licenses TBD]

DRAFT 2/1/2016

SUBJECT TO COMPLETION AND REVISION**Schedule 2.1(c)(i)
Angel Assigned Contracts****Manufacturing Agreements**

Counterparty	Contract Name	Date
Master Service Agreement	Gilero LLC	
Manufacturing and Supply Agreement (subject to assignment already)	Biomedicinski (BioProd)	
Asset Purchase Agreement	Sparton BP Medical Denver, LLC	
Supply Agreement	Buyers Peak, Inc.	
Manufacturing and Supply Agreement Amendment	Buyers Peak, Inc.	
Mutual confidentiality and non disclosure Agreement Catalent Pharma Solutions, LLC.	Catalent Pharma Solutions, LLC	
First Amendment to Quotation	Catalent Pharma Solutions, LLC	
Agreement to Act as Fiscal Representative for VAT Purposes	Dutch VAT REP BV	

Licenses

Counterparty	Contract Name	Date
Distributor Agreement and License/Amended and Restated as of October 2015	Arthrex, Inc.	
Quality Agreement	Arthrex, Inc.	
Distribution Agreement	Biotherapy services, LTD	

Non-Disturbance letter among Deerfield Private Design Fund II, L.P., Deerfield Private Design International II, L.P., Deerfield Special Situations Fund, L.P. and Deerfield Special Situations International Master Fund, L.P.; Arthrex, Inc. and Nuo Therapeutics, Inc.

[Angel Services Agreements TBD]

[Angel Operating and Business Licenses TBD]

[Day to Day Agreements TBD]

DRAFT 2/1/2016

SUBJECT TO COMPLETION AND REVISION

Schedule 2.2
Excluded Assets

[TBD]

DRAFT 2/1/2016

SUBJECT TO COMPLETION AND REVISION

Schedule 2.2(b)
Excluded Contracts

[TBD]

BLDG Holding Inc

Corporate Traveler

Health Advances LLC

Randstad

Stegman & Company

The Ruth Group

DRAFT 2/1/2016

SUBJECT TO COMPLETION AND REVISION

Schedule 2.3(a)
Assumed Aurix Liabilities

[TBD

DRAFT 2/1/2016

SUBJECT TO COMPLETION AND REVISION

Schedule 2.3(b)
Assumed Angel Liabilities

DRAFT 2/1/2016

SUBJECT TO COMPLETION AND REVISION

Schedule 4.2(g)

Purchaser Named Insurance Policies

[AFCO]

[ACE American Insurance Company]

[Beazley Insurance Company Inc.]

DRAFT 2/1/2016

SUBJECT TO COMPLETION AND REVISION

Schedule 9.1(a)

Conduct of Business of Seller

DRAFT 2/1/2016

SUBJECT TO COMPLETION AND REVISION

Schedule 9.1(b)(ix)
Certain Employees

Exhibit C

(Bidding Procedures Order)

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

In re:

Nuo Therapeutics, Inc.,

Debtor.

Chapter 11

Case No. 16-10192 (MFW)

Related to Docket No. _____

ORDER (A) APPROVING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS; (B) SCHEDULING THE RELATED AUCTION AND HEARING TO CONSIDER APPROVAL OF SALE; (C) APPROVING PROCEDURES RELATED TO THE ASSUMPTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF; (E) APPROVING EXPENSE REIMBURSEMENT; AND (F) GRANTING RELATED RELIEF

This matter coming before the Court on the motion (the “Motion”)¹ of the above-captioned debtor and debtor in possession (the “Debtor”) for the entry of Interim and Final Orders, as applicable, pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the “Bankruptcy Rules”), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedures of the Bankruptcy Court for the District of Delaware (the “Local Rules”) (i)(a) approving procedures in connection with the sale of substantially all of the Debtor’s assets; (b) scheduling the related auction and hearing to consider approval of sale; (c) approving procedures related to the assumption of certain executory contracts and unexpired leases; (d) approving the form and manner of notice thereof; and (e) approving the Stalking Horse Purchaser and the form of the Stalking Horse Agreement, and the Expense Reimbursement; and (ii)(a) authorizing the sale of such assets free and clear of liens, claims, encumbrances, and other interests, except as provided in a Purchase Agreement; (b) approving the assumption and assignment of certain of the Debtor’s executory contracts and

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

unexpired leases related thereto; and (iii) granting related relief; the Court having found that (i) the Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (iv) notice of the Motion was sufficient under the circumstances and properly given, and it appearing that no other or further notice need be provided; and a hearing on the proposed bid and sale procedures as detailed in the Motion having been held; and after due deliberation the Court having determined that the relief requested in the Motion with respect to proposed bid and sale procedures is in the best interests of the Debtor, its estate, and its creditors; and good and sufficient cause having been shown;

AND IT IS FURTHER FOUND AND DETERMINED THAT:²

A. The statutory and legal predicates for the relief requested in the Motion and provided for herein are sections 105(a), 363, and 365 of title 11 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, and Local Rule 6004-1.

B. In the Motion and at the hearing on the Motion, the Debtor demonstrated that good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

C. The Debtor's proposed notice of the Bidding Procedures, the Cure Procedures, the Auction and the hearing to approve the sale of the Debtor's Offered Assets (the "Sale Hearing")

² The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

is appropriate and reasonably calculated to provide all interested parties with timely and proper notice, and no other or further notice is required.

D. The Bidding Procedures substantially in the form attached hereto as Exhibit 1 are fair, reasonable, and appropriate and are designed to maximize the recovery from the Sale of the Offered Assets.

E. The Expense Reimbursement (i) is reasonable and appropriate given, among other things, the size and nature of the Sale and the efforts that will have been expended, and will continue to be expended, by the Stalking Horse Purchaser, and (ii) is a material inducement for, and a condition of, the Stalking Horse Purchaser's entry into the Stalking Horse Agreement.

F. The form of the Stalking Horse Agreement is fair and reasonable and provides flexibility in the process to sell the Offered Assets in a manner designed to maximize the value of the Offered Assets;

F. The Assumption and Assignment Procedures provided for herein and the Cure Notice are reasonable and appropriate and consistent with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006. The Assumption and Assignment Procedures and the Cure Notice have been narrowly tailored to provide an adequate opportunity for all non-debtor counterparties to the Assumed Executory Contracts to assert any Assumption Objection.

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

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** as set forth herein.
2. All objections to the relief requested in the Motion that have not been withdrawn, waived or settled are overruled.

3. The Bidding Procedures attached hereto as Exhibit 1 are **APPROVED**.³

4. Deerfield Private Design Fund II, L.P. , Deerfield Private Design International II, L.P. and Deerfield Special Situations Fund, L.P. (in their capacity as prepetition secured lenders and DIP lenders, collectively, “Lenders”; in their capacity as the purchasers under the Stalking Horse Agreement, the “Stalking Horse Purchaser”) is hereby **APPROVED** to be and designated as the Stalking Horse Purchaser and the form of the Stalking Horse Agreement is hereby **APPROVED**.

5. Subject to the Bidding Procedures and approval of the Sale at the Sale Hearing, the Debtor’s entry into the Stalking Horse Agreement (including any amendments thereto) attached hereto as Exhibit 3 is hereby **APPROVED**.

6. The Expense Reimbursement is **APPROVED** and shall be paid at closing of a sale to a Successful Bidder other than the Stalking Horse Bidder as an administrative claim of the estate under Sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code and shall not be subordinate to any other administrative expense claims against the Debtor. Notwithstanding anything to the contrary contained herein, upon timely payment of the Expense Reimbursement to the Stalking Horse Purchaser, the Debtor and its representatives and affiliates, on the one hand, and Stalking Horse Purchaser and its respective representatives and affiliates, on the other hand, will be deemed to have fully released and discharged each other from any liability resulting from the termination of the Stalking Horse Agreement, and neither Debtor and its representatives and affiliates, on the one hand, and Stalking Horse Purchaser and its respective representatives and affiliates, on the other hand, nor any other Person, will have any other remedy or cause of action under or relating to the Stalking Horse Agreement, including for

³ For the convenience of parties in interest, a chart listing important dates set forth in this Order is attached hereto as Exhibit 2.

reimbursement of any additional expenses incurred by the Stalking Horse Purchaser in connection with the negotiation and documentation of the Stalking Horse Agreement and all proceedings held in connection therewith. Any Expense Reimbursement shall be payable without any further order of the Bankruptcy Court.

7. The Bid Deadline shall be **March 7, 2016 at 4:00 p.m. (prevailing Eastern Time)**.

8. The Debtor, after consultation with the Lenders and any official committee appointed in this case (“Official Committee”), shall have the exclusive right to determine whether a bid is a Qualified Bid and shall notify Qualified Bidders whether their bids have been recognized as such as promptly as practicable after a Qualified Bidder delivers all of the materials required by the Bidding Procedures.

9. The Auction, if necessary, shall be held on **March 9, 2016 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Dentons US LLP, 1221 Avenue of the Americas, New York, NY 10020, or at such other location as shall be identified in a notice filed with the Bankruptcy Court at least 24 hours before the Auction.

10. At such Auction, each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale, and the Auction shall be conducted openly and transcribed.

11. The Stalking Horse Purchaser shall be permitted to credit bid up to \$15.55 million of its secured indebtedness (inclusive of amounts credit bid in the Stalking Horse Agreement) without prejudice to any challenge rights of the Committees or other parties set forth in the interim and final orders of the Court approving debtor-in-possession financing (the “DIP Financing”) by the Lenders to the Debtor.

12. The Debtor, after consultation with the Lenders and any Official Committee, shall determine which offer is the highest and otherwise best offer for the Offered Assets, giving effect to the Expense Reimbursement payable to the Stalking Horse Purchaser as well as any additional liabilities to be assumed by the Stalking Horse Bidder or another Qualified Bidder and any additional costs which may be imposed on the Debtor.

13. The Sale Hearing shall be held on **March 11, 2016 at _____:00 .m. (prevailing Eastern Time)** before this Court, the U.S. Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801, 5th Floor, Courtroom 4. Any objections to the Sale (other than an Assumption Objection (defined herein) which shall be governed by the procedures set forth below) (a "Sale Objection"), must (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) set forth the specific basis for the Sale Objection; (iv) be filed with the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, **on or before 4:00 p.m. (prevailing Eastern Time) on March 4, 2016** (the "Sale Objection Deadline") and (v) be served, so as to be actually received on or before the Sale Objection Deadline, upon (i) counsel to the Debtor: Dentons US LLP, 1301 K Street NW, Suite 600 – East Tower, Washington, DC 20006 (Attn: Sam J. Alberts (sam.alberts@dentons.com)) and Ashby & Geddes, PA, 500 Delaware Avenue, 8th Fl, Wilmington DE 19801 (Attn: Bill Bowden) (wbowden@ashby-geddes.com), (ii) counsel to the Stalking Horse Purchaser: Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, New York 10022 (Attn: Jeff J. Friedman (jeff.friedman@kattenlaw.com)) and Connolly Gallagher, 1000 West Street, Suite 1400, Wilmington, DE 19801 (Attn.: Jeffrey C. Wisler (jwisler@connollygallagher.com)), (iii) the Office of the United States Trustee (the "US Trustee"): US Trustee, 844 King Street, Suite 2207, Lockbox #35, Wilmington, Delaware,

19801 (Fax: 302-573-6497) (Attn: Juliet M. Sarkessian (juliet.m.sarkessian@usdoj.gov)) (collectively, the “Notice Parties”). If a Sale Objection is not filed and served on or before the Sale Objection Deadline, the objecting party may be barred from objecting to the Sale and may not be heard at the Sale Hearing, and this Court may enter the Sale Order without further notice to such party.

14. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, and the Debtor, shall have the exclusive right, in the exercise of its fiduciary obligations and business judgment, and after consultation with the Lenders and any Official Committee, to cancel the Sale at any time subject to the terms of this Order, in accordance with the terms of this Order and the Stalking Horse Agreement. Nothing herein shall modify or authorize the modification of the deadlines imposed in the Senior Secured, Superpriority Debtor-in-Possession Credit Agreement between the Debtor and the Lenders (the “DIP Financing Agreement”) with respect to the Sale of the Offered Assets as set forth in the definition of Case Milestones therein.

15. The following forms of notice are approved: (a) the Procedures Notice, in the form substantially similar to that attached hereto as Exhibit 4 and (b) the Cure Notice, in the form substantially similar to that attached hereto as Exhibit 5.

16. The Debtor shall, within two (2) business days after the entry of this Order, file with the Court and serve the Procedures Notice by first class mail, postage prepaid on (i) the U.S. Trustee, (ii) the Official Committee, if any, (iii) any parties requesting notices in this case pursuant to Bankruptcy Rule 2002, (iv) counsel to the Stalking Horse Purchaser, (v) all Potential Bidders, (vi) all parties known by the Debtor to assert a lien on any of the Offered Assets, (vii)

all persons known or reasonably believed to have asserted an interest in any of the Offered Assets, (viii) all non-Debtor parties to any assumed contracts and leases, (ix) the Office of the United States Attorney for the District of Delaware, (x) the Office of the Attorney General in each state in which the Debtor operates, (xi) the Office of the Secretary of State in each state in which the Debtors operate or are organized, (xii) all taxing authorities having jurisdiction over any of the Assets, including the IRS, and (xiii) all environmental authorities having jurisdiction over any of the Offered Assets (collectively with the parties specified in this paragraph, the “Procedures Notice Parties”).

17. The Debtor shall also post the Procedures Notice and the Bidding Procedures Order on the website of its claims and noticing agent, Epiq Bankruptcy Solutions, LLC, at <http://dm.epiq11.com/NUO>.

18. If the Successful Bidder is determined to be a Chapter 11 Plan Bid (which Chapter 11 Plan Bid shall not be accepted or approved unless it includes a binding commitment of the Qualified Bidder to provide the necessary financing to enable the Debtor to confirm and consummate a chapter 11 plan and provide for the repayment, in full in cash, of the DIP Financing provided by the Lenders, upon maturity (including by acceleration in the case of an event of default) in accordance with the DIP Financing Agreement, the Debtor will, as soon as possible after such determination, file and serve a notice on the Procedures Notices Parties indicating that the Sale Hearing will not go forward and that the Debtor will seek to prosecute confirmation of the plan of reorganization proposed by such Chapter 11 Plan Bid.

19. The Debtor shall file with the Court and serve the Cure Notice (along with a copy of this Motion) upon each counterparty to the Assumed Executory Contracts by no later than **February 23, 2016**. The Cure Notice shall state the date, time and place of the Sale Hearing as

well as the date by which any Assumption Objection must be filed and served. The Cure Notice also will identify the amounts, if any, that the Debtor believes are owed to each counterparty to an Assumed Executory Contract in order to cure any defaults that exist under such contract (the “Cure Amounts”).

20. To the extent there is a contract added to the list of contracts to be assumed by the Successful Bidder pursuant to the Successful Bidder’s Purchase Agreement selected at the Auction, the Motion constitutes a separate motion to assume and assign that contract to the Successful Bidder pursuant to section 365 of the Bankruptcy Code; each such contract will be listed on an exhibit to the Successful Bidder’s Purchase Agreement, and shall be given a separate Cure Notice filed and served by overnight delivery by the Debtor within 5 business days of the conclusion of the Auction and announcement of the Successful Bidder.

21. The inclusion of a contract, lease, or other agreement on the Cure Notice shall not constitute or be deemed a determination or admission by the Debtor and its estates or any other party in interest that such contract, lease, or other agreement is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights with respect thereto shall be reserved.

22. If any counterparty to an Assumed Executory Contract wishes to file an Assumption Objection, such counterparty must file and serve it so as to be actually received by the Notice Parties by no later than: **(i) 4:00 p.m. (prevailing Eastern Time) on March 4, 2016** or (ii) the date otherwise specified in the Cure Notice (or, alternatively, the date set forth in the motion to assume such Assumed Executory Contract if such contract is to be assumed and assigned after the Auction) (the “Assumption Objection Deadline”), provided, however, that if the Successful Bidder is not the Stalking Horse Bidder, any counterparty may raise at the Sale

Hearing an objection to the assumption and assignment of the Assumed Executory Contract solely with respect to such Successful Bidder's ability to provide adequate assurance of future performance under the Assumed Executory Contract. The Court will make any and all determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to sections 365(b) and (f)(2) of the Bankruptcy Code at the Sale Hearing.

23. To the extent the Assumed Executory Contract counterparty wishes to object to the Cure Amount, if any, set forth in the Cure Notice, its Assumption Objection must set forth with specificity each and every asserted default in any executory contract or unexpired lease and the monetary cure amount asserted by such counterparty to the extent it differs from the amount, if any, specified by the Debtor in the Cure Notice.

24. Any counterparty to an Assumed Executory Contract that fails to timely file and serve an objection to the Cure Amounts shall be forever barred from asserting that a Cure Amount is owed in an amount in excess of that set forth in the Cure Notice.

25. If a Contract or Lease is assumed and assigned pursuant to Court order, then except for Disputed Cure Amounts (as defined herein), the Assumed Executory Contract counterparty shall receive no later than three (3) business days following the closing of the Sale, the Cure Amount, if any, as set forth in the Cure Notice.

27. Assumption Objections (including those related to adequate assurance of future performance) will be resolved by the Court at the Sale Hearing. Notwithstanding, in the event that the Debtor and the counterparty cannot resolve the Cure Amount, such dispute may be resolved by the Court at the Sale Hearing or such later date as may be agreed to or ordered by the Court. The Debtor shall segregate from the sale proceeds any disputed Cure Amounts

(“Disputed Cure Amounts”) pending the resolution of any such disputes by the Court or mutual agreement of the parties.

28. The Successful Bidder shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under section 365(b) of the Bankruptcy Code in connection with the proposed assignment of any Assumed Executory Contract, and the failure to provide adequate assurance of future performance to any counterparty to any Assumed Executory Contract shall not excuse the Successful Bidder from performance of any and all of its obligations pursuant to the Successful Bidder’s Purchase Agreement.

29. Except to the extent otherwise provided in the Successful Bidder’s Purchase Agreement, the Debtor and its estate shall be relieved of all liability accruing or arising after the assumption and assignment of the Assumed Executory Contracts pursuant to section 365(k) of the Bankruptcy Code.

30. Upon Closing of the Sale, the proceeds of the Sale shall be paid by the Successful Bidder to the Debtor and all liens, claims, interests and encumbrances on the Offered Assets sold pursuant to the Sale shall attach to the proceeds of Sale with the same force, effect, validity and priority as such liens, claims, interests and encumbrances had on such Offered Assets prior to the Closing.

31. To the extent the provisions of this Order are inconsistent with the provisions of any Exhibit referenced herein or with the Motion, the provisions of this Order shall control.

32. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

33. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable.

Dated: February __, 2016
Wilmington, Delaware

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1
(Bidding Procedures)

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed in connection with the sale of substantially all assets (the “Offered Assets”) of the Debtor, in connection with the chapter 11 case pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), case number 16-10192 (MFW).

The Debtor entered into that certain asset purchase agreement, dated January [•], 2016 between the Debtor on the one hand and Deerfield Private Design Fund II, L.P., Deerfield Private Design International II, L.P. and Deerfield Special Situations Fund, L.P. (collectively, in their capacity as secured lenders to the Debtor the “Lenders” and in their capacity as purchasers of the Offered Assets the “Stalking Horse Purchaser”), on the other hand, pursuant to which the Stalking Horse Purchaser shall acquire the Offered Assets on the terms and conditions specified therein (together with the schedules and related documents thereto, the “Stalking Horse Agreement”). The sale transaction pursuant to the Stalking Horse Agreement is subject to competitive bidding as set forth herein. The Bidding Procedures provide that the Debtor may also consider bids in the form of a recapitalization transaction effectuated through a chapter 11 plan of reorganization subject to the requirements set forth herein (a “Chapter 11 Plan Bid”); provided that any such Chapter 11 Plan Bid must provide for debtor-in-possession financing in an amount reasonably determined by the Debtor, after consultation with the Lenders and any official committee appointed in this case (“Official Committee”), to be adequate to confirm and consummate such chapter 11 plan and which provides for the payment in full in cash of the DIP financing provided by Lenders (upon maturity of such DIP financing (including maturity caused by acceleration), (“Plan Bid DIP Financing”). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Stalking Horse Agreement

I. ASSETS TO BE SOLD

The Debtor seeks to complete a sale of all or substantially all of the Offered Assets (the “Sale”). The Stalking Horse Agreement will serve as the “stalking-horse” bid for the Offered Assets.

II. THE BID PROCEDURES

In order to ensure that the Debtor receives the maximum value for the Offered Assets, it intends to hold a sale process for the Offered Assets pursuant to the procedures and on the timeline proposed herein

A. Provisions Governing Qualifications of Bidders

Unless otherwise ordered by the Court, in order to participate in the bidding process, prior to the Bid Deadline (defined herein), each person, other than the Stalking Horse Bidder who wishes to participate in the bidding process (a “Potential Bidder”) must deliver the following to the Notice Parties (defined herein):

- (i) a written disclosure of the identity of each entity that will be bidding for the Offered Assets or otherwise participating in connection with such bid; and

(ii) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtor to a Potential Bidder) in form and substance satisfactory to the Debtor and which shall inure to the benefit of any purchaser of the Offered Assets; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.

A Potential Bidder that delivers the documents and information described above and that the Debtor determines in its reasonable business judgment, after consultation with its advisors, the Lenders and any Official Committee, is likely (based on availability of financing, experience and other considerations) to be able to consummate the sale, will be deemed a “Qualified Bidder.” The Debtor will limit access to due diligence to those parties it believes, in the exercise of its reasonable judgment are pursuing the transaction in good faith.

As promptly as practicable after a Potential Bidder delivers all of the materials required above, the Debtor will determine and will notify the Potential Bidder if such Potential Bidder is a Qualified Bidder.

B. Due Diligence

The Debtor will afford any Qualified Bidder such due diligence access or additional information as the Debtor, in consultation with its advisors, deems appropriate, in its reasonable discretion. The due diligence period shall extend through and include the Auction Date (defined herein); provided, however, that any Qualified Bid (defined herein) submitted shall be irrevocable until the selection of the Successful Bidder and any Back-Up Bidder (defined herein).

C. Provisions Governing Qualified Bids

A bid submitted will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder and complies with all of the following (a “Qualified Bid”):

- a) it states that the applicable Qualified Bidder offers to purchase any or all of the Offered Assets either (i) in cash or (ii) through a recapitalization transaction effectuated through a plan of reorganization;
- b) it identifies with particularity which one or more of the following asset pools that the Qualified Bidder is offering to purchase: (i) Lot A – Aurix, (ii) Lot B – Angel, (iii) Lot C – Aldagen, (iv) Lot D – Aurix and Angel, and/or (v) Lot E – all Offered Assets;
- c) it includes a signed writing that the Qualified Bidder’s offer is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder, provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder then (x) if the Successful Bid concerns an asset sale, the offer shall remain irrevocable until the earlier of (i) the closing of the transaction with the Successful Bidder and (ii) the date that is fifteen (15) business days after entry of the Sale Order with respect to the Successful Bidder and sixteen (16) business days after entry of the Sale Order with respect to the Back-Up Bidder and (y) if the Successful Bid is a

Chapter 11 Plan Bid and such bidder is the Successful Bidder, its offer shall remain irrevocable until the effective date of such plan of reorganization (For the avoidance of doubt, there will be no Back-Up Bidder if the Successful Bid is a Chapter 11 Plan Bid.);

- d) confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;
- e) it sets forth each regulatory and third-party approval required for the Qualified Bidder to consummate the transaction and the time period within which the Qualified Bidder expects to receive such approvals;
- f) it includes a duly authorized and executed copy of a purchase or acquisition agreement in the form of the Stalking Horse Agreement (a "Purchase Agreement"), including the purchase price for the Offered Assets expressed in U.S. Dollars, or, in the case of a Chapter 11 Plan Bid, the amount of the capital investment contemplated by such bid (the "Purchase Price"), together with all exhibits and schedules thereto, together with copies marked ("Marked Agreement") to show any amendments and modifications to the Stalking Horse Agreement and the proposed order to approve the sale by the Court;
- g) it includes written evidence of a firm, irrevocable commitment for financing (and in the case of a Chapter 11 Plan Bid for Plan Bid DIP Financing), or other evidence of ability to consummate the proposed transaction, that will allow the Debtor to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement;
- h) if the bid is for all or substantially all of the Offered Assets (or in the case of a Chapter 11 Plan Bid, a bid for the equity of the reorganized Debtors), it must have a value to the Debtor, in the Debtor's exercise of its reasonable business judgment, after consultation with its advisors, the Lenders and any Official Committee, that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement plus the amount of the Expense Reimbursement and \$100,000. If the bid is for less than all or substantially all of the Offered Assets to be acquired by the Stalking Horse Bidder, it must have a value to the Debtor, in the Debtor's exercise of its reasonable business judgment, after consultation with its advisors, the Lenders and any Official Committee, that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement for the Offered Assets sought in the bid, plus and the Expense Reimbursement and \$100,000; provided, however, that the Debtor, in consultation with its advisors, the Lenders and any Official Committee, may accept a single Qualified Bid or multiple bids for non-overlapping material portions of the Offered Assets such that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid;

- i) it identifies with particularity which executory contracts and unexpired leases the Qualified Bidder wishes to assume and provides for the Qualified Bidder to pay related cure costs;
- j) it contains sufficient information concerning the Qualified Bidder's ability to provide adequate assurance of performance with respect to executory contracts and unexpired leases;
- k) it includes an acknowledgement and representation that the bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Offered Assets prior to making its offer; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Offered Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Offered Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;
- l) it includes evidence, in form and substance reasonably satisfactory to the Debtor, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Purchase Agreement;
- m) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtor), certified check or such other form acceptable to the Debtor, payable to the order of the Debtor (or such other party as the Debtor may determine) in an amount equal to ten percent (10%) of the Purchase Price which deposit shall be forfeited if such bidder is the Successful Bidder and breaches its obligation to close;
- n) it contains a detailed description of how the Qualified Bidder intends to treat current employees of the Debtor;
- o) it contains such other information reasonably requested by the Debtor; and
- p) it is received prior to the Bid Deadline.

The Debtor, in consultation with the Lenders and any Official Committee, may qualify any bid as a Qualified Bid that meets the foregoing requirements. Notwithstanding the foregoing, the Stalking Horse Purchaser is deemed a Qualified Bidder and the Stalking Horse Agreement is deemed a Qualified Bid, for all purposes in connection with the Bidding Process, the Auction, and the Sale.

The Debtor shall notify the Stalking Horse Purchaser and all Qualified Bidders in writing as to whether or not any bids constitute Qualified Bids (and with respect to each Qualified Bidder that submitted a bid as to whether such Qualified Bidder's bid constitutes a Qualified Bid) and

provide copies of the Purchase Agreements relating any such Qualified Bid to the Stalking Horse Purchaser and such Qualified Bidders no later than one (1) business day following the expiration of the Bid Deadline.

D. Bid Deadline

A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the “Notice Parties”): (i) counsel to the Debtor: Dentons US LLP, 1301 K Street NW, Suite 600 – East Tower, Washington, DC 20006 (Attn: Sam J. Alberts (sam.alberts@dentons.com)) and 303 Peachtree St. NE, Atlanta, GA 30308 (Attn: Bryan Bates (bryan.bates@dentons.com)) and Ashby & Geddes, PA, 500 Delaware Avenue, 8th Fl, Wilmington DE 19801 (Attn: Bill Bowden (wbowden@ashby-geddes.com)), (ii) the Debtor’s investment banker: Gordian Group, LLC, 950 Third Avenue, 17th Floor, New York, NY 10022 (Attn: Philip Engel (pe@gordiangroup.com) and Antonio Grassia (ajg@gordiangroup.com)), (iii) counsel to the Stalking Horse Purchaser: Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, New York 10022 (Attn: Jeff J. Friedman (jeff.friedman@kattenlaw.com)) and Connolly Gallagher, 1000 West Street, Suite 1400, Wilmington, DE 19801 (Attn.: Jeffrey C. Wisler (jwisler@connollygallagher.com)), (iv) the Office of the United States Trustee (the “U.S. Trustee”): U.S. Trustee, 844 King Street, Suite 2207, Lockbox #35, Wilmington, Delaware, 19801 (Fax: 302-573-6497) (Attn: Juliet M. Sarkessian (juliet.m.sarkessian@usdoj.gov)), and (v) any Official Committee appointed in the Debtor’s chapter 11 case, so as to be received by the Notice Parties not later than **March 7, 2016 at 4:00 p.m.** (prevailing Eastern Time) (the “Bid Deadline”).

E. Credit Bidding

The Stalking Horse Purchaser holds a security interest in the Offered Assets and has submitted a credit bid for the Offered Assets. It may submit additional credit bids for the Offered Assets as it deems necessary and desirable up to the limit fixed by the Court.

F. Evaluation of Competing Bids

A Qualified Bid will be valued based upon several factors including, without limitation, (1) the amount of such bid, (2) the risks and timing associated with consummating such bid, (3) any proposed revisions to the form of Stalking Horse Agreement, and (4) any other factors deemed relevant by the Debtor in its reasonable discretion.

G. No Qualified Bids

If the Debtor does not receive any Qualified Bids other than the Stalking Horse Agreement, the Debtor will not hold an auction and the Stalking Horse Purchaser will be named the Successful Bidder for the Offered Assets.

H. Auction Process

If the Debtor receives one or more Qualified Bids in addition to the Stalking Horse Agreement, the Debtor will conduct an auction of the Offered Assets (the “Auction”), which shall be transcribed, on **March 9, 2016** (the “Auction Date”) at 10:00 a.m. (prevailing Eastern Time), at

the offices of Dentons US LLP, 1221 Avenue of the Americas, New York, NY 10020, or such other location as shall be timely communicated to all entities entitled to attend the Auction. The Auction shall run in accordance with the following procedures:

- a) only the Debtor, the Stalking Horse Purchaser, Qualified Bidders who have timely submitted a Qualified Bid, and any Official Committee, and their respective advisors may attend the Auction;
- b) only the Stalking Horse Purchaser and the Qualified Bidders who have timely submitted a Qualified Bid will be entitled to make any subsequent bids at the Auction;
- c) each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;
- d) at least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtor whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the date of the selection of the Successful Bidder and the Back-Up Bidder (defined below) at the conclusion of the Auction. At least one (1) business day prior to the Auction, the Debtor will provide copies of the Qualified Bid or combination of Qualified Bids which the Debtor believes in its reasonable discretion is the highest or otherwise best offer (the "Starting Bid") to all Qualified Bidders;
- e) all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (defined herein) at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction; provided that all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction in person;
- f) the Debtor, after consultation with its advisors, the Lenders and any Official Committee, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules are (i) not inconsistent with the Bidding Procedures, the Bankruptcy Code, or any order of the Court entered in connection herewith, and (ii) disclosed to each Qualified Bidder at the Auction; and
- g) bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each a "Subsequent Bid") providing a net value to the Debtor's estate of at least an additional \$100,000 above the prior bid. After the first round of bidding and between each subsequent round of bidding, the Debtor, after consultation with the Lenders and any Official Committee, shall announce the bid that it believes to be the highest or otherwise better offer (the "Leading Bid"). A round of bidding will conclude after each participating Qualified Bidder has had

the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid. Qualified Bidders will not have the opportunity to pass. Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by Subsequent Bids, the Debtor will give effect to the Expense Reimbursement payable to the Stalking Horse Purchaser as well as any additional liabilities to be assumed by the Stalking Horse Purchaser or a Qualified Bidder, as applicable, and any additional costs which may be imposed on the Debtor.

I. Selection of Successful Bid

Prior to the conclusion of the Auction, the Debtor, in consultation with its advisors, the Lenders and any Official Committee, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer or offers are the highest or otherwise best from among the Qualified Bidders submitted at the Auction (one or more such bids, collectively the “Successful Bid” and the bidder(s) making such bid, collectively, the “Successful Bidder”), and communicate to the Qualified Bidders the identity of the Successful Bidder and the details of the Successful Bid. The Successful Bid may be a single Qualified Bid or multiple bids. The determination of the Successful Bid by the Debtor at the conclusion of the Auction shall be final, subject only to approval by the Court.

Unless otherwise agreed to by the Debtor and the Successful Bidder, within two (2) business days after the conclusion of the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made. Within one (1) business day following the conclusion of the Auction, the Debtor shall file a notice identifying the Successful Bidder with the Court and shall serve such notice by fax, email or overnight mail to all counterparties whose contracts are to be assumed and assigned.

The Debtor will sell the Offered Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Court at the Sale Hearing. In the event that the Successful Bid is a Chapter 11 Plan Bid, the Sale Hearing will not go forward and the Debtor will seek to prosecute confirmation of the plan of reorganization proposed by such Chapter 11 Plan Bid.

J. Return of Deposits

All deposits shall be returned to each bidder not selected by the Debtor as the Successful Bidder or the Back-Up Bidder no later than five (5) business days following the conclusion of the Auction.

K. Back-Up Bidder

If an Auction is conducted and the Successful Bid is not a Chapter 11 Plan Bid, the Qualified Bidder or Qualified Bidders with the next highest or otherwise best Qualified Bid, as determined by the Debtor in the exercise of its business judgment, at the Auction shall be required to serve as a back-up bidder (the “Back-Up Bidder”) and keep such bid open and irrevocable until sixteen (16) business days after the Sale Hearing. The Stalking Horse Purchaser, may, but is not

required to, act as a Back-Up Bidder. If the Successful Bidder fails to consummate the approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Successful Bidder will forfeit its deposit, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtor will be authorized, but not required, to consummate the sale with the Back-Up Bidder without further order of the Court. For the avoidance of doubt, there will be no Back-Up Bidder if the Successful Bid is a Chapter 11 Plan Bid.

L. Expense Reimbursement

In recognition of this expenditure of time, energy, and resources, the Debtor has agreed that if the Stalking Horse Purchaser is not the Successful Bidder, the Debtor will pay the Stalking Horse Purchaser at closing of the sale an amount in cash equal to the aggregate amount of the reasonable fees, costs and expenses paid or incurred by the Stalking Horse Purchaser and its affiliates relating to or in connection with its bid (the "Expense Reimbursement"), subject to a cap of \$300,000. The Stalking Horse Purchaser shall provide reasonable documentation of the Expense Reimbursement to the Debtor, the U.S. Trustee, and any Official Committee. The Expense Reimbursement shall be payable at closing of the sale from the sale proceeds.

The Debtor has further agreed that its obligation to pay the Expense Reimbursement pursuant to the Stalking Horse Agreement shall survive termination of the Stalking Horse Agreement, shall, to the extent owed by the Debtor, constitute an administrative expense claim under section 503(b) of the Bankruptcy Code and shall be payable at closing of the sale to the Successful Bidder.

III. Sale Hearing

The Debtor will seek entry of the Sale Order from the Court at the Sale Hearing to begin on **March 11, 2016** (or at another date and time convenient to the Court) to approve and authorize the sale transaction to the Successful Bidder on terms and conditions determined in accordance with the Bidding Procedures. If, however, the Successful Bid is a Chapter 11 Plan Bid, the Sale Hearing will not go forward and the Debtor will seek to prosecute confirmation of the plan of reorganization proposed by such Chapter 11 Plan Bid.

IV. Reservation

The Debtor reserves the right, as it may determine in its discretion and in accordance with its business judgment to be in the best interest of its estate, in consultation with its professionals, the Lenders and any Official Committee to modify any portion of the Bidding Procedures including, without limitation, to: (i) modify the Bidding Procedures to discontinue incremental bidding and then require that any and all bidders or potential purchasers must submit their sealed, highest and best offer for the Offered Assets; (ii) determine which bidders are Qualified Bidders; (iii) determine which bids are Qualified Bids; (iv) determine which Qualified Bid is the highest or otherwise best bid and which is the next highest or otherwise best bid; (v) waive terms and conditions set forth herein with respect to all potential bidders; (vi) impose additional terms and conditions with respect to all potential bidders; (vii) extend the deadlines set forth herein; (viii) continue or cancel the Auction and/or Sale Hearing in open court without further notice; and (ix) modify the Bidding Procedures and implement additional procedural rules that the Debtor

determines, in its reasonable business judgment and in consultation with its professionals, will better promote the goals of the bidding process; provided that such modifications are (a) not inconsistent with the Bidding Procedures Order, the Bankruptcy Code, or any Order of the Bankruptcy Court entered in connection herewith, including the right of the Stalking Horse Purchaser to credit bid up to the limit set by the Court; and (b) disclosed to each Qualified Bidder participating in the Auction. Notwithstanding the foregoing, the provisions of this paragraph shall not operate or be construed to permit the Debtor to (i) designate a Successful Bid for the Offered Assets that (a) does not equal or exceed the sum of the value provided to the Debtor under the Stalking Horse Agreement, plus the Expense Reimbursement and \$100,000, or (ii) impose any terms and conditions upon the Stalking Horse Purchaser that are contradictory to or in breach of the terms of the Stalking Horse Agreement.

Exhibit 2

(Significant Dates)

- **Assumption Objection Deadline:** **March 4, 2016 at 4:00 p.m. (Eastern Time)**
- **Sale Objection Deadline:** **March 4, 2016 at 4:00 p.m. (Eastern Time)**
- **Bid Deadline:** **March 7, 2016 at 4:00 p.m. (Eastern Time)**
- **Auction:** **March 9, 2016 at 10:00 a.m. (Eastern Time)**
- **Sale Hearing:** **March 11, 2016 at __:00 __.m. (Eastern Time)**

Exhibit 3

(Procedures Notice)

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

In re:

Nuo Therapeutics, Inc.,

Debtor.

Chapter 11

Case No. 16-10192 (MFW)

**NOTICE OF SALE PROCEDURES,
AUCTION DATE AND SALE HEARING**

PLEASE TAKE NOTICE that on February 1, 2016, the above-captioned debtor and debtor in possession (the “Debtor”) filed the Motion of the Debtor and Debtor in Possession Pursuant to Section 105(a), 363 and 365 of the Bankruptcy Code for an Order (i)(a) Approving Procedures in Connection with the Sale of Substantially All of the Debtor’s assets, (b) Scheduling the Related Auction and Hearing to Consider Approval of Sale, (c) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases, (d) Approving the Form and Manner of Notice Thereof; and (e) Approving Expense Reimbursement; (ii)(a) Authorizing the Sale of Substantially All of the Debtor’s assets Pursuant to the Successful Bidder’s Asset Purchase Agreement Free and Clear of Liens, Claims, Encumbrances, and Other Interests and (b) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (iii) Granting Related Relief (the “Motion”).¹ The Debtor seeks, among other things, to sell substantially all assets (the “Offered Assets”) of the Debtor to the successful bidder (the “Successful Bidder”), at an auction free and clear of all liens, claims, encumbrances and other interests pursuant to sections 363 and 365 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that, on February __, 2016, the Bankruptcy Court entered an order (the “Bidding Procedures Order”) approving the Motion and the bidding procedures (the “Bidding Procedures”), which set the key dates and times related to the Sale of the Offered Assets. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures. To the extent that there are any inconsistencies between the Bidding Procedures Order (including the Bidding Procedures) and the summary description of its terms and conditions contained in this Notice, the terms of the Bidding Procedures Order shall control.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bidding Procedures, an auction (the “Auction”) to sell the Offered Assets will be conducted on **March 9, 2016 at 10:00 a.m.** (prevailing Eastern Time) at the offices of Dentons US LLP, 1221 Avenue of the Americas, New York, NY 10020, or at such other location as shall be identified in a notice filed with the Bankruptcy Court at least 24 hours before the Auction.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

PLEASE TAKE FURTHER NOTICE that a hearing will be held to approve the sale of the Offered Assets to the Successful Bidder (the “Sale Hearing”) before the Honorable Mary F. Walrath, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801, 5th Floor, Courtroom 4, on **March 11, 2016** at __:00 __.m. (prevailing Eastern Time), or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing. Objections to the Sale shall be filed and served **so as to be received no later than 4:00 p.m. (prevailing Eastern Time) on March 4, 2016** by: (i) counsel to the Debtor: Dentons US LLP, 1301 K Street NW, Suite 600 – East Tower, Washington, DC 20006 (Attn: Sam J. Alberts (sam.alberts@dentons.com)) and Ashby & Geddes, PA, 500 Delaware Avenue, 8th Fl, Wilmington DE 19801 (Attn: Bill Bowden) (wbowden@ashby-geddes.com), (ii) counsel to the Stalking Horse Purchaser: Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, New York 10022 (Attn: Jeff J. Friedman (jeff.friedman@kattenlaw.com)) and Connolly Gallagher, 1000 West Street, Suite 1400, Wilmington, DE 19801 (Attn.: Jeffrey C. Wisler (jwisler@connollygallagher.com)), (iii) the Office of the United States Trustee (the “U.S. Trustee”): U.S. Trustee, 844 King Street, Suite 2207, Lockbox #35, Wilmington, Delaware, 19801 (Fax: 302-573-6497) (Attn: Juliet M. Sarkessian (juliet.m.sarkessian@usdoj.gov)), and (iv) any Official Committee (collectively, the “Notice Parties”).

PLEASE TAKE FURTHER NOTICE that this Notice of the Auction and Sale Hearing is subject to the full terms and conditions of the Motion, Bidding Procedures Order and Bidding Procedures, which Bidding Procedures Order shall control in the event of any conflict, and the Debtor encourages parties in interest to review such documents in their entirety. Any party that has not received a copy of the Motion or the Bidding Procedures Order that wishes to obtain a copy of the Motion or the Bidding Procedures Order, including all exhibits thereto, may make such a request in writing to Dentons US LLP, Attn: James A. Copeland, 1221 Avenue of the Americas, New York, NY 10020 or by emailing james.copeland@dentons.com.

Dated: February ___, 2016
Wilmington, Delaware

ASHBY & GEDDES, P.A.

By:

William P. Bowden (No. 2553)
Karen B. Skomorucha Owens (No. 4759)
Stacy L. Newman (No. 5044)
500 Delaware Avenue, P.O. Box 1150
Wilmington, DE 19899-1150
Phone: 302.654.1888
Fax: 302.654.2067
Email: wbowden@ashby-geddes.com
kowens@ashby-geddes.com
snewman@ashby-geddes.com

-and-

DENTONS US LLP

Sam J. Alberts (admitted pro hac vice)
1301 K Street, NW
Suite 600. East Tower
Washington, D.C. 20005
Tel: 202.408.7004
Fax: 202.408.6399
Email: sam.alberts@dentons.com

Bryan E. Bates (admitted pro hac vice)
303 Peachtree Street, NE
Suite 5300
Atlanta, Georgia 30308
Tel.: 404.527.4073
Fax: 404.527.4198
Email: bryan.bates@dentons.com

*Proposed Attorneys for Debtor
and Debtor-in-Possession*

Exhibit 4

(Cure Notice)

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

In re:

Chapter 11

Nuo Therapeutics, Inc.,

Case No. 16-10192 (MFW)

Debtor.

**NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS
AND UNEXPIRED LEASES OF THE DEBTOR
THAT MAY BE ASSUMED AND ASSIGNED**

PLEASE TAKE NOTICE that on February 1, 2016, the above-captioned debtor and debtor in possession (the “Debtor”) filed the Motion of the Debtor and Debtor in Possession Pursuant to Section 105(a), 363, and 365 of the Bankruptcy Code for an Order (i)(a) Approving Procedures in Connection with the Sale of Substantially All of the Debtor’s assets, (b) Scheduling the Related Auction and Hearing to Consider Approval of Sale, (c) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases, (d) Approving the Form and Manner of Notice Thereof, and (e) Approving Expense Reimbursement; (ii)(a) Authorizing the Sale of Substantially All of the Debtor’s assets Pursuant to the Successful Bidder’s Asset Purchase Agreement Free and Clear of Liens, Claims, Encumbrances, and Other Interests and (b) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (iii) Granting Related Relief (the “Motion”).¹

PLEASE TAKE FURTHER NOTICE that, on February ____, 2016, the Court entered an Order (the “Bidding Procedures Order”) approving, among other things, the Bidding Procedures requested in the Motion, which Bidding Procedures Order governs (i) the bidding process for the sale of substantially all of the assets (the “Offered Assets”) of the Debtor and (ii) procedures for the assumption and assignment of certain of the Debtor’s executory contracts and unexpired leases.

PLEASE TAKE FURTHER NOTICE that the Motion also seeks Court approval of the sale (the “Sale”) of the Offered Assets to the Successful Bidder, free and clear of all liens, claims, interests and encumbrances pursuant to section 363 of the Bankruptcy Code, including the assumption by the Debtor and assignment to the buyer of certain executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code (the “Assumed Executory Contracts”), with such liens, claims, interests and encumbrances to attach to the proceeds of the Sale with the same priority, validity and enforceability as they had prior to such Sale. Within one (1) business day following the conclusion of the Auction, the Debtor shall file a notice identifying the Successful Bidder with the Bankruptcy Court and serve such notice by fax, email or overnight mail to all counterparties whose contracts are to be assumed and assigned.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

PLEASE TAKE FURTHER NOTICE that an evidentiary hearing (the “Sale Hearing”) to approve the Sale and authorize the assumption and assignment of the Assumed Executory Contracts will be held on **March 11, 2016 at __:__ .m** (prevailing Eastern Time), before the, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801, 5th Floor, Courtroom 4. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, consistent with the Bidding Procedures Order, the Debtor may seek to assume an executory contract or unexpired lease to which you may be a party. The Assumed Executory Contract(s) are described on Exhibit A attached to this Notice. The amount shown on Exhibit A hereto as the “Cure Amount” is the amount, if any, based upon the Debtor’s books and records, which the Debtor asserts is owed to cure any defaults existing under the Assumed Executory Contract.

PLEASE TAKE FURTHER NOTICE that if you disagree with the Cure Amount shown for the Assumed Executory Contract(s) on Exhibit A to which you are a party, you must file in writing with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, Wilmington, Delaware 19801, an objection on or before **March 4, 2016 at 4:00 p.m. (prevailing Eastern Time)**. Any objection must set forth the specific default or defaults alleged and set forth any cure amount as alleged by you. If a contract or lease is assumed and assigned pursuant to a Court order approving same, then unless you properly file and serve an objection to the Cure Amount contained in this Notice, you will receive at the time of the closing of the sale (or as soon as reasonably practicable thereafter), the Cure Amount set forth herein, if any. Any counterparty to an Assumed Executory Contract that fails to timely file and serve an objection to the Cure Amounts shall be forever barred from asserting that a Cure Amount is owed in an amount in excess of the amount, if any, set forth in the attached Exhibit A.

PLEASE TAKE FURTHER NOTICE that if you have any other objection to the Debtor’s assumption and assignment of the Assumed Executory Contract to which you may be a party, you also must file that objection in writing no later than 4:00 p.m. (prevailing Eastern Time) on **March 4, 2016 at 4:00 p.m. (prevailing Eastern Time)** provided, however, that if the Stalking Horse Purchaser is not the Successful Bidder, any counterparty to an Assumed Executory Contract may file and serve an objection to the assumption and assignment of the Assumed Executory Contract solely with respect to such Successful Bidder’s ability to provide adequate assurance of future performance under the Assumed Executory Contract up to the time of the Sale Hearing, or raise it at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that any objection you may file must be served so as to be received by the following parties by the applicable objection deadline date and time (i) counsel to the Debtor: Dentons US LLP, 1301 K Street NW, Suite 600 – East Tower, Washington, DC 20006 (Attn: Sam J. Alberts (sam.alberts@dentons.com)) and Ashby & Geddes, PA, 500 Delaware Avenue, 8th Fl., Wilmington DE 19801 (Attn: Bill Bowden) (wbowden@ashby-geddes.com), (ii) counsel to the Stalking Horse Purchaser: Katten Muchin Rosenman LLP, 575 Madison Avenue, New York, New York 10022 (Attn: Jeff J. Friedman (jeff.friedman@kattenlaw.com)) and Connolly Gallagher, 1000 West Street, Suite 1400, Wilmington, DE 19801 (Attn.: Jeffrey C. Wisler (jwisler@connollygallagher.com)), (iii) the

Office of the United States Trustee (the “U.S. Trustee”): U.S. Trustee, 844 King Street, Suite 2207, Lockbox #35, Wilmington, Delaware 19801 (Attn: Juliet M. Sarkessian (juliet.m.sarkessian@usdoj.gov)), and (iv) the Official Committee, if any, 19899-0035 (Fax: 302-573-6497) (collectively, the “Notice Parties”).

PLEASE TAKE FURTHER NOTICE that the Successful Bidder shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under sections 365(b) and (f) of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, in connection with the proposed assignment of any Assumed Executory Contract. The Court shall make its determinations concerning adequate assurance of future performance under the Assumed Executory Contracts pursuant to 11 U.S.C. §§ 365(b) and (f) at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, in the event that the Debtor and the counterparty cannot resolve the Cure Amount, the Debtor shall segregate from the proceeds of sale any disputed Cure Amounts (“Disputed Cure Amounts”) pending the resolution of any such disputes by the Court or mutual agreement of the parties. Assumption Objections may be resolved by the Court at the Sale Hearing, or at a separate hearing either before or after the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, except to the extent otherwise provided in the Purchase Agreement with the Successful Bidder, pursuant to section 365(k) of the Bankruptcy Code, the Debtor and its estate shall be relieved of all liability accruing or arising after the effective date of assumption and assignment of the Assumed Executory Contracts.

PLEASE TAKE FURTHER NOTICE that nothing contained herein shall obligate the Debtor to assume any Assumed Executory Contracts or to pay any Cure Amount.²

PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND SERVE AN OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITH NO FURTHER NOTICE.

ANY COUNTERPARTY TO ANY ASSUMED EXECUTORY CONTRACT WHO DOES NOT FILE A TIMELY OBJECTION TO THE CURE AMOUNT FOR SUCH ASSUMED EXECUTORY CONTRACT IS DEEMED TO HAVE CONSENTED TO SUCH CURE AMOUNT.

² “Assumed Executory Contracts” are those Contracts and Leases that the Debtor believes may be assumed and assigned as part of the orderly transfer of the Offered Assets; however, the Successful Bidder may choose to exclude certain of the Debtor’s Contracts or Leases from the list of Assumed Executory Contracts as part of their Qualifying Bid, causing such Contracts and Leases not to be assumed by the Debtor.

Dated: February ___, 2016
Wilmington, Delaware

ASHBY & GEDDES, P.A.

By: _____

William P. Bowden (No. 2553)
Karen B. Skomorucha Owens (No. 4759)
Stacy L. Newman (No. 5044)
500 Delaware Avenue, P.O. Box 1150
Wilmington, DE 19899-1150
Phone: 302.654.1888
Fax: 302.654.2067
Email: wbowden@ashby-geddes.com
kowens@ashby-geddes.com
snewman@ashby-geddes.com

-and-

DENTONS US LLP

Sam J. Alberts (admitted pro hac vice)
1301 K Street, NW
Suite 600. East Tower
Washington, D.C. 20005
Tel: 202.408.7004
Fax: 202.408.6399
Email: sam.alberts@dentons.com

Bryan E. Bates (admitted pro hac vice)
303 Peachtree Street, NE
Suite 5300
Atlanta, Georgia 30308
Tel.: 404.527.4073
Fax: 404.527.4198
Email: bryan.bates@dentons.com

*Proposed Attorneys for Debtor
and Debtor-in-Possession*

Exhibit A

(Assumed Executory Contracts)

Exhibit D

(Proposed Sale Order)

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

In re:

Nuo Therapeutics, Inc.,

Debtor.

Chapter 11

Case No. 16-10192 (MFW)

Related Docket No. ____

ORDER (A) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS PURSUANT TO THE SUCCESSFUL BIDDER'S ASSET PURCHASE AGREEMENT FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO; AND (C) GRANTING RELATED RELIEF

This matter coming before the Court on the motion (the "Motion")¹ of the above-captioned debtor and debtor in possession (the "Debtor") for the entry of an order pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the "Bankruptcy Rules"), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedures of the Bankruptcy Court for the District of Delaware (the "Local Rules") (I)(A) approving procedures in connection with the sale of substantially all of the Debtor's assets; (B) scheduling the related auction and hearing to consider approval of sale; (C) approving procedures related to the assumption of certain executory contracts and unexpired leases; (D) approving the form and manner of notice thereof; (E) approving expense reimbursement; and (F) granting related relief; and (II)(A) authorizing the sale of substantially all of the Debtor's assets pursuant to the successful bidder's asset purchase agreement free and clear of liens, claims, encumbrances, and other interests; (B) approving the assumption and assignment of certain executory contracts and unexpired leases related thereto; and (C) granting

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

related relief; the Court having reviewed the Motion and the Court having found that (i) the Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (iv) notice of the Motion was sufficient under the circumstances; and after due deliberation the Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate and its creditors; and good and sufficient cause having been shown;

AND IT IS FURTHER FOUND AND DETERMINED THAT:

A. The Debtor's notice of the Bidding Procedures, the Cure Procedures, the Auction and the hearing to approve any sale of the Offered Assets (the "Sale Hearing") was appropriate and reasonably calculated to provide all interested parties with timely and proper notice, and no other or further notice is required.

B. 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.

C. 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.

IT IS HEREBY ORDERED THAT:

1. As set forth below, the Motion is GRANTED.
2. All objections and responses to the Motion that have not been overruled, withdrawn, waived, settled or resolved, and all reservations of rights included therein, are hereby overruled and denied.

3. The Successful Bidder's offer for the Offered Assets, as embodied in the Successful Bidder's Purchase Agreement, is the highest and best offer for the Offered Assets and is hereby approved.

4. The Successful Bidder's Purchase Agreement annexed hereto as Exhibit 1 is hereby approved pursuant to section 363(b) of the Bankruptcy Code and the Debtor is authorized to consummate and perform all of its obligations under the Successful Bidder's Purchase Agreement and to execute such other documents and take such other actions as are necessary or appropriate to effectuate the Successful Bidder's Purchase Agreement.

5. Pursuant to section 363(f) of the Bankruptcy Code, the Offered Assets may be sold and transferred free and clear of all liens, claims, interests and encumbrances (collectively, "Liens") except as otherwise provided in the Successful Bidder's Purchase Agreement, with any and all such Liens to attach to proceeds of such sale with the same validity, priority, force and effect such Liens had on the Offered Assets immediately prior to the Sale and subject to the rights, claims, defenses, and objections, if any, of the Debtor and all interested parties with respect to any such asserted Liens.

6. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Sale by the Debtor to the Successful Bidder of the Offered Assets and transactions related thereto, upon the closing under the Successful Bidder's Purchase Agreement, are authorized and approved in all respects.

7. Pursuant to section 365 of the Bankruptcy Code, the assignment and assumption of the Assumed Contracts and Leases of the Debtor, as identified in the Successful Bidder's Purchase Agreement, by the Successful Bidder, is hereby authorized and approved in all respects.

8. Nothing contained in any chapter 11 plan confirmed in this case or the order confirming any chapter 11 plan, nor any order dismissing any case or converting it to chapter 7 shall conflict with or derogate from the provisions of the Successful Bidder's Purchase Agreement, any documents or instrument executed in connection therewith, or the terms of this Order.

9. The stays provided for in Bankruptcy Rules 6004(h) and 6006(d) are hereby waived and this Order shall be effective immediately upon its entry.

10. The terms of this Order shall be binding on the Successful Bidder and its successors, the Debtor, creditors of the Debtor and all other parties in interest in the Bankruptcy Case, and any successors of the Debtor, including any trustee or examiner appointed in this case or upon a conversion of this case to chapter 7 of the Bankruptcy Code.

11. The Successful Bidder is a good faith purchaser entitled to the benefits and protections afforded by section 363(m) of the Bankruptcy Code.

12. With respect to the transactions consummated pursuant to this Order, this Order shall be sole and sufficient evidence of the transfer of title to any particular purchaser, and the sale transaction consummated pursuant to this Order shall be binding upon and shall govern the acts of all persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the property sold pursuant to this Order, including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, administrative agencies, governmental departments, secretaries of state, and federal, state, and local officials, and each of such persons and entities is hereby directed to accept this Order as sole and sufficient

evidence of such transfer of title and shall rely upon this Order in consummating the transactions contemplated hereby.

13. This Court retains jurisdiction to interpret, implement and enforce the provisions of, and resolve any disputes arising under or related to, this Order and the Successful Bidder's Purchase Agreement, all amendments thereto, any waivers and consents thereunder and each of the agreements executed in connection therewith.

14. The failure specifically to include any particular provisions of the Successful Bidder's Purchase Agreement or any of the documents, agreements or instruments executed in connection therewith in this Order shall not diminish or impair the force of such provision, document, agreement or instrument, it being the intent of the Court that the Successful Bidder's Purchase Agreement and each document, agreement or instrument be authorized and approved in its entirety.

15. The Successful Bidder's Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate.

Dated: _____, 2016
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE