

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

In re:

TECHNIPLAS, LLC, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 20-11049 (LSS)

Jointly Administered

**Re: Docket No. 16**

**NOTICE OF FILING OF REVISED STOCK AND ASSET PURCHASE AGREEMENT**

**PLEASE TAKE NOTICE** that on May 7, 2020, the above-captioned debtors and debtors in possession (the “**Debtors**”), filed the *Motion of the Debtors for Orders (I)(A) Establishing Bidding Procedures; (B) Approving Bid Protections; (C) Establishing Procedures Relating to the Assumption or Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, Including Notice of Proposed Cure Amounts; (D) Approving Form and Manner of Notice of all Procedures, Protections, Schedules, and Agreements; (E) Scheduling a Hearing to Consider Any Proposed Sale; and (F) Granting Certain Related Relief; and (II)(A) Approving Any Sale of Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; and (C) Granting Related Relief* [Docket No. 16] (the “**Motion**”).<sup>2</sup> A proposed Stalking Horse Agreement (the “**Proposed Stalking Horse Agreement**”) was attached to the Motion as Exhibit C.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Techniplas, LLC (7921); DMP Monterrey Holdings, LLC (5888); DMP International Holdings, LLC (5922); Nyloncraft, Inc. (6035); Nyloncraft of Michigan, LLC (9613); DMP Exports Inc. (2366); Techniplas Finance Corp. (8207); WEIDPLAS North America, LLC (6945). The address of the Debtors’ corporate headquarters is N44 W33341 Watertown Plank Road, Nashotah, Wisconsin 53058.

<sup>2</sup> Capitalized terms used herein but not otherwise defined shall have meanings ascribed to them in the Motion.

**PLEASE TAKE FURTHER NOTICE** that the Debtors have revised the Stalking Horse Agreement to conform to changes to the proposed Bid Procedures Order made in response to discussions with other parties including the Official Committee of Unsecured Creditors and the Office of the United States Trustee. The change to the Stalking Horse Agreement have been agreed by the Stalking Horse Bidder. The Revised Stalking Horse Agreement (the “**Revised Stalking Horse Agreement**”) is attached hereto as Exhibit A. For the convenience of the Court and other interested parties, a blackline comparing the Revised Stalking Horse Agreement against the Proposed Stalking Horse Agreement is attached hereto as Exhibit B.

**PLEASE TAKE FURTHER NOTICE** that the Debtor intends to present the Revised Proposed Order at the hearing (the “**Hearing**”) scheduled for **May 21, 2020 at 10:00 a.m. (ET)**. The Debtors reserve all rights to further revise the Revised Stock Asset Purchase Agreement prior to or during the Hearing.

*[Remainder of Page Intentionally Left Blank]*

Dated: May 21, 2020

Respectfully submitted,

**FOX ROTHSCHILD LLP**

/s/ Jeffrey M. Schlerf

Jeffrey M. Schlerf (No. 3047)

Carl D. Neff (No. 4895)

Johnna M. Darby (No. 5153)

Daniel B. Thompson (No. 6588)

919 North Market Street, Suite 300

Wilmington, DE 19801

(302) 654-7444

jschlerf@foxrothschild.com

cneff@foxrothschild.com

jdarby@foxrothschild.com

danielthompson@foxrothschild.com

David M. Turetsky (admitted *pro hac vice*)

Andrew T. Zatz (admitted *pro hac vice*)

Thomas E. MacWright (admitted *pro hac vice*)

John J. Ramirez admitted (admitted *pro hac vice*)

WHITE & CASE LLP

1221 Avenue of the Americas

New York, NY 10020

(212) 819-8200

david.turetsky@whitecase.com

azatz@whitecase.com

tmacwright@whitecase.com

john.ramirez@whitecase.com

Fan B. He (admitted *pro hac vice*)

Robbie T. Boone Jr. (admitted *pro hac vice*)

WHITE & CASE LLP

200 South Biscayne Boulevard

Suite 4900

Miami, FL 33131

(305) 371-2700

fhe@whitecase.com

robbie.boone@whitecase.com

*Proposed Counsel to Debtors and  
Debtors-in-Possession*

**Exhibit A**

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**AMENDED AND RESTATED STOCK AND ASSET PURCHASE AGREEMENT**

by and among

**TECHNIPLAS, LLC,**

**DMP MONTERREY HOLDINGS, LLC,**

**DMP INTERNATIONAL HOLDINGS, LLC**

**NYLONCRAFT, INC.**

**NYLONCRAFT OF MICHIGAN, LLC**

**AND**

**WEIDPLAS NORTH AMERICA, LLC,**

as the Sellers

and

**TECHNIPLAS ACQUISITION CO, LLC,**

as the Buyer

Dated as of May 21, 2020

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EXHIBIT A FORM OF SALE ORDER

## AMENDED AND RESTATED STOCK AND ASSET PURCHASE AGREEMENT

**AMENDED AND RESTATED STOCK AND ASSET PURCHASE AGREEMENT**, dated as of May 21, 2020 (this “Agreement”), by and among (i) Techniplas, LLC, a Delaware limited liability company (“Seller Parent”), DMP Monterrey Holdings, LLC, a Delaware limited liability company (“DMPM”), DMP International Holdings, LLC, a Delaware limited liability company (“DMPI”), Nyloncraft, Inc., an Indiana corporation (“NI”), Nyloncraft of Michigan, LLC, a Michigan limited liability company (“NM”), WEIDPLAS North America, LLC, a Delaware limited liability company (“WNA,” together with Seller Parent, DMPM, DMPI, NI and NM, each a “Seller” and collectively, the “Sellers”), and (ii) Techniplas Acquisition Co, LLC, a Delaware limited liability company (the “Buyer”).

### RECITALS

A. The Sellers directly and indirectly through their Subsidiaries, including the Transferred Subsidiaries (as defined below), are engaged in the business of (a) designing, engineering, manufacturing, marketing, selling and distributing (i) engineered custom injection molded plastic component parts, (ii) custom injection molded thermoplastic, thermoset and metal insert parts, (iii) custom injection molded thermoplastic and thermoset molding solutions, (iv) custom injection molded separation components of air and water in heating ventilation and cooling units, and (v) custom injection molded interior and exterior decorative parts, brake reservoirs and surge tanks and (b) using or implementing processes and technology for mold decorating and painting, microcellular injection molding, injection/compression and vacuum boost technology for purposes of designing, engineering and manufacturing the foregoing, in each case for automotive and industrial end markets (to the extent carried on by the Transferred Subsidiaries (as defined below) or carried on at the Facilities, the “Business”).

B. Seller Parent owns all of the issued and outstanding equity interests of Techniplas Holdings 1, S.a.r.l. (“Techniplas Holdings”) and DMPM and DMPI collectively own all of the issued and outstanding equity interests of Dickten Servicios, S. de R.L. de C.V. (“Dickten Servicios”) and DMP Monterrey, S. de R.L. de C.V. (“DMP Monterrey” and the equity interests of DMP Monterrey, Techniplas Holdings and Dickten Servicios being collectively referred to herein as the “Transferred Stock”).

C. Seller Parent and the other Sellers filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) and are being jointly administered for procedural purposes as *In re Techniplas, LLC, et. al.*, Case No. 20-11049 (LSS) (collectively, the “Bankruptcy Case”).

D. The Sellers are parties to that certain Senior Secured Superpriority Priming Debtor-in-Possession Credit Facility (the “DIP Credit Agreement”), dated as of May 8, 2020, among Seller Parent, the other borrowers and guarantors party thereto, the lenders party thereto, and Wilmington Savings Fund Society, as agent (the “DIP Agent”).

E. The DIP Agent holds valid, binding and perfected first-priority senior secured priming liens (the “DIP Liens”) securing all of the DIP Credit Agreement Indebtedness on substantially all of the assets of Sellers (collectively, the “Encumbered Assets”).

F. Buyer, on behalf of the DIP Term Lenders and the Prepetition Noteholders, desires to credit bid, for the benefit of and on behalf of the holders of the outstanding DIP Credit Agreement Indebtedness, an aggregate amount equal to one hundred five million (\$105,000,000) (the “Credit Bid Amount”), comprised of (i) in the first instance, all outstanding DIP Credit Agreement Indebtedness as of the Closing Date, plus (ii) outstanding indebtedness under the Prepetition Notes in an amount such that the total amount in (i) and (ii) equals the Credit Bid Amount, pursuant to section 363(k) of the Bankruptcy Code, the Sale Procedures Order, and the Sale Order with respect to the assets that are Encumbered Assets (the “Credit Bid”).

G. The Sellers desire to sell to the Buyer all of the Transferred Stock and Transferred Assets and transfer to the Buyer the Assumed Liabilities and the Buyer desires to purchase from the Sellers the Transferred Stock and Transferred Assets and assume the Assumed Liabilities in a sale authorized by the Bankruptcy Court pursuant to, *inter alia*, sections 105, 363 and 365 of the Bankruptcy Code, in accordance with the other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the local rules for the Bankruptcy Court, all on the terms and subject to the conditions set forth in this Agreement and the Sale Order.

H. The execution and delivery of this Agreement and the Sellers’ ability to consummate the transactions set forth in this Agreement are subject to, among other things, the entry of the Sale Order under, *inter alia*, sections 105, 363 and 365 of the Bankruptcy Code, as further set forth herein. The Parties desire to consummate the proposed transaction as promptly as practicable after the Bankruptcy Court enters the Sale Order.

## **AGREEMENT**

In consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the Parties agree as follows:

### **ARTICLE I. DEFINITIONS**

#### **Section 1.1 Certain Defined Terms.** For purposes of this Agreement:

“ABL Payment Amount” means an amount, payable in cash or by other form of consideration acceptable to Bank of America, N.A. in its sole discretion sufficient to satisfy in full all obligations owed under the Prepetition ABL Credit Agreement and under the DIP ABL Credit Agreement.

“Accounts Receivable” means all trade accounts and notes receivable and other miscellaneous receivables of the Asset Sellers for the sale or other disposition of goods or services by the Business or otherwise arising out of the Business, other than any intercompany receivables.

“Action” means any claim, action, suit, arbitration or proceeding by or before any Governmental Authority, other than an Avoidance Action.

“Affiliate” means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person, where “control,” “controlled by” and “under common control with,” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, as trustee or executor, as general partner or managing member, by contract or otherwise. In the case of the Buyer, Affiliates shall include all the DIP Term Lenders and the Prepetition Noteholders.

“Alternative Transaction” means the sale, transfer or other disposition, directly or indirectly, including through an asset sale, share sale, merger, amalgamation, liquidation or other similar transaction, including a plan of reorganization approved by the Bankruptcy Court, or resulting from the Auction, of a material portion of the Transferred Stock, the Transferred Subsidiaries or the Transferred Assets, in one transaction or a series of transactions with one or more Persons other than the Buyer or its Affiliates.

“Ancillary Agreements” means, collectively, the agreements, instruments or certificates to be executed in connection with the transactions contemplated by this Agreement, including the Assignment Agreement and the IP Assignment Agreement.

“Anti-Corruption Laws” means all Laws related to anti-bribery or anti-corruption (governmental or commercial) including, without limitation, the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and all applicable Laws enacted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.

“Antitrust Law” means the HSR Act, Foreign Competition Laws and any other competition, merger control or antitrust Law of any other applicable Law designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolizing or restraining trade or lessening competition of any other country or jurisdiction, in each case, to the extent applicable to the transactions contemplated by this Agreement.

“Asset Sellers” means NI, NM, WNA and, to the extent they own Transferred Assets, DMPM, DMPI and Seller Parent.

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

“Avoidance Actions” means any and all claims for avoidance, recovery, subordination or other relief of the Sellers or their estates under chapter 5 of the Bankruptcy Code or applicable state fraudulent conveyance, fraudulent transfer, or similar Laws.

“Back-Up Bidder” has the meaning set forth in the Sale Procedures Order.

“Business Day” means any day that is not a Saturday, a Sunday or other day on which banks are required by Law to be closed in the city of New York.

“Business Employees” means all (i) Transferred Subsidiary Employees and (ii) individuals employed by Equity Sellers or any of their Subsidiaries immediately prior to the Closing Date who are not Transferred Subsidiary Employees and whose duties relate primarily to

the Business or the Transferred Assets as reasonably determined by Buyer, in each case, regardless of the company payroll on which such individuals are listed.

“Buyer Material Adverse Effect” means any event, change, occurrence or effect that has or would reasonably be expected to materially and adversely affect the ability of the Buyer to perform its obligations under this Agreement or the Ancillary Agreements or to consummate the transactions contemplated hereby or thereby.

“Cash and Cash Equivalents” means all of Seller Parent’s and Asset Sellers’ cash (including petty cash and checks received on the Closing Date), checking account balances, marketable securities, short-term instruments, certificates of deposits, time deposits, bankers’ acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held.

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

“Competing Bid” means any bid contemplating an Alternative Transaction.

“Contract” means any contract, agreement, lease, license, sublicense, sales order, purchase order, instrument, or other commitment, in each case, that is binding on any Person or any part of its assets or properties under applicable Law.

“DIP ABL Credit Agreement” means that certain Superpriority Secured Debtor-In-Possession Loan and Security Agreement to be entered into in connection with the Bankruptcy Case, by and among Seller Parent, Techniplas Finance Corp., NI, DMP Exports, Inc., DMPM, NM, WNA and DMPI, as borrowers, the lenders from time to time party thereto, and Bank of America N.A., as administrative agent.

“DIP Credit Agreement Indebtedness” has the meaning set forth in the Financing Order.

“DIP Term Lenders” means the lenders under the DIP Credit Agreement.

“Employee Benefit Plans” means, other than any “multiemployer plan” (as defined in Section 3(37) of ERISA), each (i) “employee benefit plan” within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA, (ii) other benefit and compensation plan, contract, policy, program, practice, arrangement or agreement, including pension, profit-sharing, savings, termination, executive compensation, phantom stock, change-in-control, retention, salary continuation, vacation, sick leave, disability, death benefit, insurance, hospitalization, medical, dental, life (including all individual life insurance policies as to which any Asset Seller or Transferred Subsidiary is an owner, a beneficiary or both), employee loan, educational assistance, fringe benefit, deferred compensation, retirement or post-retirement, severance, equity or equity-based compensation, incentive and bonus plan, contract, policy, program, practice, arrangement or agreement and (iii) other employment, consulting or other individual agreement, plan, practice, policy, contract, program, and arrangement, in each case, (a) that is sponsored or maintained or contributed to by any Transferred Subsidiary or any of their ERISA Affiliates in respect of any current or former employees, directors, independent contractors, consultants or leased employees

of any Asset Seller engaged in the Business or Transferred Subsidiary or (b) with respect to which any Transferred Subsidiary has any Liability (including any such plan or arrangement formerly maintained by any Asset Seller or Transferred Subsidiary, including on account of any current or former ERISA Affiliates thereof).

“Encumbrance” means any charge, claim, mortgage, lien, encumbrance, option, pledge or security interest.

“Environmental Claim” means any action, cause of action, claim, suit, proceeding, Order, demand or notice by any Person alleging Liability (including Liability for investigatory costs, governmental response costs, remediation or clean-up or the costs thereof, natural resources damages, property damages, personal injuries, attorneys’ fees, fines or penalties) arising out of, based on, resulting from or relating to the presence, Release or threatened Release of, or exposure to any Hazardous Material.

“Environmental Law” means any Law relating to pollution, the protection of, restoration or remediation of the environment or natural resources, or the protection of human health and safety (regarding exposure to Hazardous Material), including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* (“CERCLA”), Clean Water Act, 33 U.S.C. § 1251 *et seq.*; Clean Air Act, 42 U.S.C. § 7401 *et seq.*, Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; and the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*, and similar laws in U.S. states and other countries, and including Laws relating to: (a) the exposure to, or Releases or threatened Releases of, Hazardous Material; (b) the presence, generation, manufacture, processing, labeling, distribution, use, transport, treatment, containment, storage, disposal, or handling of Hazardous Material; or (c) recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Material or any other matter for which Liability is imposed under Environmental Law.

“Environmental Permit” means any Permit required under or issued pursuant to any Environmental Law.

“Equity Sellers” means Seller Parent, DMPM and DMPI.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any corporation or other entity that is included in a controlled group of corporations within which the Sellers are also included, as provided in Section 414(b) of the Code; or which is a trade or business under common control with the Sellers, as provided in Section 414(c) of the Code; or which constitutes a member of an affiliated service group within which the Sellers are also included, as provided in Section 414(m) of the Code.

“Excluded Environmental Liabilities” means any Liability occurring or existing on or prior to the Closing Date (including any investigatory, corrective or remedial obligation) of any Asset Seller or any predecessor or Affiliate of any Asset Seller arising under Environmental Laws and relating to (a) the operation of the Business prior to the Closing, (b) any Excluded Asset, (c) any property, facility, or location other than the Facilities, or (d) any operations, events, conditions,

or circumstances occurring or existing on or prior to the Closing Date at any location including, without limitation, at the Facilities, including any Release, threatened Release, treatment, storage, disposal, or arrangement for disposal of or any exposure of any Person to Hazardous Materials occurring or existing on or prior to the Closing Date.

“Facilities” means the plants of the Asset Sellers located at (a) 616 W. McKinley Avenue, Mishawaka, St. Joseph County, Indiana 64545, (b) 1640 E. Chicago Road, Jonesville, Michigan, 49250, (c) N44 W33341 Watertown Plank Road, Nashotah, Waukesha County, Wisconsin 53058, (d) DMP Monterrey, S. de R.L de C.V. – Blvd. TLC #200, Parque Industrial Stiva Aeropuerto, Apodaca, N.L., México, 66600 and (e) Rogelio Gonzalez Caballero #415, Parque Industrial Stiva Aeropuerto, Apodaca, N.L., México, 66600.

“Final Order” means an Order 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 the Bankruptcy Case or the docket of such other court, which is and remains in full force and effect, has not been modified, amended, reversed, vacated or stayed and (a) as to which the time to appeal, petition for certiorari or move for a new trial, reargument or rehearing shall have expired and as to which no appeal, petition for certiorari or motion for new trial, reargument or rehearing shall then be pending or (b) if a timely appeal, writ of certiorari, new trial, reargument or rehearing thereof shall have been filed or sought, either (i) no stay of the Order shall be in effect, (ii) no motion or application for a stay of the Order shall be filed and pending or such motion or application shall have been denied, or (iii) if such a stay shall have been granted, then (A) the stay shall have been dissolved or (B) a final order of the district court or circuit court having jurisdiction to hear such appeal shall have affirmed the Order and the time allowed to appeal from such affirmance or to seek review or rehearing (other than a motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure) thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible, and if a timely appeal of such district court or circuit court Order or timely motion to seek review or rehearing of such Order shall have been made, any appellate court having jurisdiction to hear such appeal or motion (or any subsequent appeal or motion to seek review or rehearing) shall have affirmed the district court’s (or lower appellate court’s) order upholding the Order of the Bankruptcy Court and the time allowed to appeal from such affirmance or to seek review or rehearing thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible; provided, however, that the Buyer in its sole discretion may treat any Order for which a motion or application for a stay is filed or pending as a Final Order by affirmatively agreeing to such treatment in a writing signed by the Buyer.

“Financing Order” means the Interim Financing Order (as defined in the DIP Credit Agreement) as it may be modified by the Final Financing Order (as defined in the DIP Credit Agreement).

“Fraud” means an act in the making of a specific representation or warranty expressly set forth in Article III, committed by the party making such express representation or warranty, with intent to deceive another party, and to induce him, her or it to enter into this Agreement and requires: (a) an intentional false representation of material fact expressly set forth in the representations and warranties set forth in Article III; (b) actual knowledge that such representation is false (as opposed to any fraud claim based on constructive knowledge, negligent



or reckless misrepresentation or a similar theory); (c) a specific intention to induce the party to whom such representation was made to act or refrain from acting in reliance upon it; (d) causing that party, in justifiable reliance upon such false representation and with ignorance to the falsity of such representation, to take or refrain from taking action; and (e) causing such party to suffer damage by reason of such reliance. A claim for Fraud may only be made against the party committing such Fraud.

“Fundamental Representations” means the representations and warranties set forth in Section 3.1, Section 3.2, Section 3.3(a), Section 3.4, Section 3.5 and Section 3.20.

“GAAP” means United States generally accepted accounting principles as in effect on the date hereof.

“Global Trade Laws” means the U.S. Export Administration Regulations; the U.S. International Traffic in Arms Regulations; the economic sanctions rules and regulations administered by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”); European Union (“E.U.”) Council Regulations on export controls; and other E.U. Council sanctions regulations, as implemented in E.U. Member States; and all Laws made under any of the foregoing, including other Laws related to economic sanctions or export and import control.

“Governmental Authority” means any United States or non-United States national, federal, state or local governmental, regulatory or administrative authority, agency, court or commission or any other judicial or arbitral body, including the Bankruptcy Court.

“Hazardous Material” means any petroleum, petroleum products and byproducts, or any material, substance, chemical, or waste (or combination thereof) that is listed, defined, designated, regulated or classified as hazardous, toxic, radioactive, a pollutant or a contaminant, or words of similar meaning or effect under any Environmental Law relating to pollution, hazardous or toxic waste, or protection of the environment, including without limitation asbestos, radon, urea-formaldehyde, explosives, polychlorinated biphenyls (“PCBs”) or substances containing PCBs, radioactive materials and Stachybotrys mold.

“Intellectual Property” means all intellectual property and intellectual property rights, including all U.S. and foreign (a) trade names, trademarks and service marks, business names, corporate names, internet addresses, domain names, websites, URLs, social media accounts and web pages, trade dress, logos, slogans, design rights, and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing (“Trademarks”); (b) patents, patent applications, invention disclosures, and all related continuations, continuations-in-part, divisionals, reissues, re-examinations, substitutions, and extensions thereof (“Patents”); (c) copyrights and copyrightable subject matter (whether registered or unregistered) (“Copyrights”); (d) rights in computer programs (whether in source code, object code, or other form) and software systems, algorithms, databases, compilations and data, technology supporting the foregoing, and all documentation, including user manuals and training materials, related to any of the foregoing (“Software”); (e) trade secrets and know-how, and all other inventions, proprietary processes, formulae, models, and methodologies; (f) all rights in the foregoing and in other similar intangible assets; (g) all applications and registrations for any of the foregoing and (g) all rights and remedies (including the right to sue for and recover damages) against past, present, and future infringement, misappropriation, or other violation relating to any of the foregoing.

“IRS” means the Internal Revenue Service of the United States.

“Knowledge” with respect to the Sellers means the actual (but not constructive or imputed) knowledge of the persons listed in Section 1.1(c) of the Disclosure Schedules after reasonable inquiry but without any requirement to consult with any other Person.

“Latest Balance Sheet” means the unaudited consolidated balance sheet of the Company Group, dated as of the Balance Sheet Date.

“Law” means any statute, law, ordinance, regulation, rule, code, injunction, judgment, decree or order of any Governmental Authority.

“Lease” means the Seller Leases and the Transferred Subsidiary Leases.

“Leased Real Property” means the Seller Leased Real Property and the Transferred Subsidiary Leased Real Property.

“Liability” means any debt, loss, claim, damage, demand, fine, judgment, penalty, liability or obligation (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due).

“Material Adverse Effect” means any event, change, condition, occurrence or effect that individually or in the aggregate has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, assets, financial condition or results of operations of the Business, including the Transferred Subsidiaries, Transferred Assets and Assumed Liabilities, taken as a whole; provided, that, any event, change, condition, occurrence or effect to the extent arising out of, attributable to or resulting from, alone or in combination, the following shall be deemed not to constitute a “Material Adverse Effect” and shall not be considered in determining whether a “Material Adverse Effect” has occurred: (i) general changes or developments in operating, business, regulatory or other conditions affecting the industries in which the Business operates, (ii) changes in general domestic or foreign economic, social, political, financial markets (including changes in interest or exchange rates) or geopolitical conditions (including the existence, occurrence, escalation, outbreak or worsening of any hostilities, war, sabotage, police action, acts of terrorism, cyberterrorism or military conflicts, whether or not pursuant to the declaration of an emergency or war), (iii) natural disasters (including any effects of climate change), calamities, epidemics, pandemics or disease outbreaks (including the COVID-19 virus to the extent they occurred before the date of this Agreement), (iv) changes in any applicable Laws, Orders or GAAP or interpretations thereof, (v) the execution, existence, performance, announcement, pendency or consummation of this Agreement or the transactions contemplated hereby or any communication by the Buyer or any of its Affiliates of its plans or intentions (including in respect of employees) with respect to the Business, (vi) the filing or pendency of the Bankruptcy Case, any Orders of, or action or omission approved by, the Bankruptcy Court (or any other Governmental Authority of competent jurisdiction in connection therewith) or any objections in the Bankruptcy Court to (1) this Agreement or any of the Ancillary Agreements or any of the transactions contemplated hereby or thereby, (2) the reorganization of the Sellers and any related plan of reorganization or disclosure statement, (3) the Sale Motion or (4) the assumption of any Transferred Contract or any actions approved by the Bankruptcy Court, (vii) any action taken by the Sellers or the Transferred Subsidiaries at the written request of Buyer

or that is required or permitted by this Agreement, (viii) the identity of Buyer or any of its Affiliates or any facts or circumstances relating to Buyer or any of its Affiliates, unless such identity, facts or circumstances are disclosed in writing by Sellers, (ix) any failure in and of itself, to achieve any budgets, projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics (but, for the avoidance of doubt, not the underlying causes of any such failure to the extent such underlying cause is not otherwise excluded from the definition of Material Adverse Effect), (x) any action required to be taken under any Law or Order or any existing Contract by which any of the Transferred Subsidiaries (or any of their respective properties) is bound and (xi) any matter disclosed on the Disclosure Schedules or in any filings by the Sellers or their Affiliates with the Bankruptcy Court prior to the date of this Agreement; provided, however, that (a) changes or developments set forth in clauses (i), (ii), (iii) or (iv) may be taken into account in determining whether there has been or is Material Adverse Effect to the extent such changes or developments have a disproportionate impact on the Business, taken as a whole, relative to the other participants in the industries in which the Business operates (b) the escalation or worsening of epidemics, pandemics or disease outbreaks (including the COVID-19 virus) occurring after the date of this Agreement may be taken into account in determining whether there has been or is Material Adverse Effect and (c) insolvency, bankruptcy or similar proceedings with respect to any of the Transferred Subsidiaries may be taken into account in determining whether there has been or is a Material Adverse Effect (but, for the avoidance of doubt, not the underlying causes of any such insolvency, bankruptcy or similar proceedings to the extent such underlying cause is not otherwise excluded from the definition of Material Adverse Effect).

“Order” means any award, writ, injunction, judgment, order or decree entered, issued, made, or rendered by any Governmental Authority.

“Ordinary Course of Business” means the operation of the Business in the ordinary course consistent with past practice of the Sellers and Transferred Subsidiaries, as such practice and custom is, or may have been, modified as a result of the Bankruptcy Case, in each case subject to (a) the filing of the Bankruptcy Case, (b) any Orders of the Bankruptcy Court, and (c) the conduct of the Auction process as contemplated by the bidding procedures set forth in the Sale Procedures Order.

“Owned Real Property” means the Seller Owned Real Property and the Transferred Subsidiary Owned Real Property, including all improvements and structures thereon and appurtenances belonging thereto.

“Party” or “Parties” means, individually or collectively, the Buyer and the Sellers.

“Permitted Encumbrance” means (a) statutory liens for current Taxes not yet due and payable or the validity or amount of which is being contested in good faith by appropriate proceedings, in each case for which adequate reserves have been established, (b) mechanics’, carriers’, workers’, repairers’ and other similar liens arising or incurred in the Ordinary Course of Business relating to obligations which are not yet due and payable by the Sellers or the Transferred Subsidiaries and which are not material liens on the Real Property, (c) with respect to the Real Property, minor survey exceptions, easement agreements and other customary title defects or irregularities, including all matters of record, that (i) do not, individually or in the aggregate, materially impair the value or the current use of such Real Property, (ii) were not incurred in

connection with any indebtedness and (iii) do not render title to the Real Property encumbered thereby unmarketable, (d) as to any Lease, any Encumbrance affecting the interest of the landlord thereunder and not the interest of the tenant thereunder that do not, individually or in the aggregate, materially impair the value or current use of the leasehold interest under the Leases, (e) zoning, building codes and other land use Laws regulating the use or occupancy of the Owned Real Property or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over the Owned Real Property which are not violated by the current use or occupancy of such Owned Real Property in any material respect, (f) any Encumbrances that will be removed or released by operation of the Sale Order, (g) any Encumbrances created by licenses granted in the Ordinary Course of Business in any Intellectual Property, (h) all DIP Liens and (i) any other Encumbrances not described in clauses (a) through (h) above created by the actions of Buyer or any of its Affiliates.

“Person” means an individual, corporation, partnership, limited liability company, limited liability partnership, syndicate, person, trust, association, organization or other entity, including any Governmental Authority, and including any successor, by merger or otherwise, of any of the foregoing.

“Prepetition ABL Credit Agreement” means that certain Loan and Security Agreement, dated as of April 29, 2015, by and among Seller Parent, Techniplas Finance Corp., NI, DMP Exports, Inc., DMPM, NM, WNA and DMPI, as borrowers, the lenders from time to time party thereto, and Bank of America N.A., as administrative agent.

“Prepetition Notes” means the 10.000% senior secured notes due in 2020 issued under the Prepetition Notes Indenture.

“Prepetition Noteholders” means the holders of the Prepetition Notes.

“Prepetition Notes Indenture” means that certain Indenture, dated as of April 15, 2015, entered into by and among Seller Parent and Techniplas Finance Group, as issuers, each of the Guarantors (as defined therein) and U.S. Bank National Association, a national banking association, as trustee, collateral agent, paying agent, transfer agent and registrar.

“Real Property” means the Leased Real Property and the Owned Real Property.

“Release” means any release, spill, emission, discharge, leaking, pouring, dumping, emptying, pumping, injection, deposit, disposal, dispersal, leaching or migration into the indoor or outdoor environment (including soil, ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property, including the migration of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

“Representatives” means, with respect to any Person, the officers, managers, directors, principals, employees, agents, auditors, advisors, bankers and other representatives of such Person.

“Restricted Country” means any country or geographic region subject to comprehensive economic sanctions administered by OFAC or the E.U., which currently includes: Cuba, Iran, North Korea, Sudan, Syria, the Crimea region of Ukraine and Venezuela.

“Sale Hearing” means the hearing conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement.

“Sale Procedures Order” means an order of the Bankruptcy Court, in form and substance reasonably acceptable to Buyer and Seller Parent that, among other things, approves (a) bidding procedures, (b) bid protections granted to the Buyer (if any), (c) the form and manner of notice of Auction(s), sale transaction(s), and Sale Hearing(s), and the conduct of the Auction, (d) the procedures for assumption and assignment of Contracts and Leases, (e) the date for Auction(s), if necessary, and Sale Hearing(s), and (f) affords Buyer the status of a party in interest in the Bankruptcy Cases.

“Sale Order” means an Order of the Bankruptcy Court approving this Agreement and the transactions contemplated hereby, the form of which Order is attached hereto as Exhibit A, with such changes as may be required by the Bankruptcy Court that are in form and substance reasonably acceptable to the Buyer and the Seller Parent.

“Seller Lease” means a lease, sublease, license, or other use or occupancy agreement with respect to the real property part of the Facilities to which an Asset Seller is a party as lessee, sublessee, tenant, subtenant or in a similar capacity.

“Seller Leased Real Property” means the leasehold interests held by an Asset Seller under a Seller Lease (other than any Leases withdrawn pursuant to Section 2.6).

“Straddle Period” means the portion of any taxable year that begins on or before and ends after the Closing Date.

“Subsidiary” of any Person means any entity (a) of which 50% or more of the outstanding share capital, voting securities or other voting equity interests are owned, directly or indirectly, by such Person, (b) of which such Person is entitled to elect, directly or indirectly, at least 50% of the board of directors or similar governing body of such entity or (c) if such entity is a limited partnership or limited liability company, of which such Person or one of its Subsidiaries is a general partner or managing member or has the power to direct the policies, management or affairs.

“Successful Bidder” shall have the meaning set forth in the Sale Procedures Order.

“Tax Return” means any return, document, declaration, report, claim for refund, statement, information statement or other information or filing relating to Taxes, including any schedule or attachment thereto or amendment thereof, that is filed with or supplied to, or required to be filed with or supplied to, any Governmental Authority.

“Taxes” means (a) any and all U.S. federal, state and local, foreign, and other taxes, charges, fees, duties, levies, tariffs, imposts, tolls, customs or other assessments, including all net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, branch profits, profit share, license, lease, service, service use, value added, unclaimed property, escheat, withholding, payroll, employment, fringe, fringe benefits, excise, estimated, severance, stamp, occupation, premium, property, windfall profits, wealth, net wealth, net worth, export and import fees and charges, registration fees, tonnage, vessel, deposits, or other taxes, fees, assessments,

customs, duties, levies, tariffs, imposts, tolls, or charges of any kind whatsoever imposed by any Governmental Authority, together with any interest, penalties, inflationary adjustments, additions to tax, fines or other additional amounts imposed thereon, with respect thereto, or related thereto, wherever and whenever imposed, (b) any and all liability for the payment of any items described in clause (a) above arising from, through, attributable to, or with respect to a place of business, permanent establishment, or a branch or as a result of being (or ceasing to be) a member of a fiscal unity, affiliated, consolidated, combined, unitary, or other similar group (or being included) in any Tax Return related to such group, (c) any and all liability for the payment of any amounts as a result of any successor or transferee liability, in respect of any items described in clause (a) or (b) above, and (d) any and all liability for the payment of any items described in clause (a) or (b) above as a result of, or with respect to, any express or implied obligation to indemnify any other Person pursuant to any tax sharing, tax indemnity or tax allocation agreement or similar agreement or arrangement with respect to taxes (in each case, other than any such agreement entered into in the Ordinary Course of Business the principal purpose of which is not to address taxes).

“Transferred Contracts” means all Contracts and Seller Leases of each Asset Seller that are listed in Section 1.1(d) of the Disclosure Schedules (as modified pursuant to Section 2.6).

“Transferred Subsidiaries” means DMP Monterrey, Techniplas Holdings and Dickten Servicios and each of their respective Subsidiaries listed on Section 1.1(a) of the Disclosure Schedules.

“Transferred Subsidiary Benefit Plan” means each Employee Benefit Plan that is solely sponsored or maintained by a Transferred Subsidiary.

“Transferred Subsidiary Employees” means all individuals employed by the Transferred Subsidiaries.

“Transferred Subsidiary Lease” means a lease, sublease, license, or other use or occupancy agreement with respect to the real property to which a Transferred Subsidiary is a party as lessee, sublessee, tenant, subtenant or in a similar capacity.

“Transferred Subsidiary Leased Real Property” means the leasehold interests held by a Transferred Subsidiary under a Transferred Subsidiary Lease.

“Treasury Regulations” means the regulations promulgated by the U.S. Department of the Treasury pursuant to the Code.

“Wind-Down Amount” means an aggregate amount to be used for wind-down purposes not to exceed \$250,000, plus the amounts set forth in the Carve-Out (as defined in the Financing Order).

“Wind-Down Amount Payment” means (i) if the Cash and Cash Equivalents as of the Closing are greater than the Wind-Down Amount, an amount equal to zero and (ii) otherwise, an aggregate amount equal to the Wind-Down Amount minus the amount of Cash and Cash Equivalents as of the Closing.

**Section 1.2 Table of Definitions.** The following terms have the meanings set forth in the Sections referenced below:

<u>Definition</u>	<u>Location</u>
Agreement.....	Preamble
Allocation.....	Section 2.9
Antitrust Authority.....	Section 6.5(a)
Assignment Agreement.....	Section 2.8(b)(i)
Assumed Employee Liabilities .....	Section 2.3(a)(iii)
Assumed Liabilities .....	Section 2.3(a)
Balance Sheet Date .....	Section 3.6(a)
Bankruptcy Court.....	Recitals
Bidding Procedures Order Date .....	Section 9.1(c)(x)
Business .....	Recitals
Business Permits .....	Section 2.1(e)
Buyer.....	Preamble
Buyer Fundamental Representations .....	Section 8.2(a)(i)
Closing .....	Section 2.8(a)
Closing Date.....	Section 2.8(a)
Continuing Employees.....	<b>Error! Reference source not found.</b>
Copyrights.....	Section 1.1
Credit Bid.....	Recitals
Credit Bid Amount.....	Recitals
Cure Costs.....	Section 2.3(a)(ii)
Customer Contracts.....	Section 8.1(e)
DIP Agent .....	Recitals
DIP Credit Agreement .....	Recitals
DIP Lien.....	Recitals
Disclosure Limitations.....	Section 6.2(a)
Disclosure Schedules .....	ARTICLE III
DMPI.....	Preamble
DMPM .....	Preamble
Encumbered Assets.....	Recitals
Enforceability Exceptions.....	Section 3.2
Excluded Assets .....	Section 2.2
Excluded Liabilities .....	Section 2.4
Excluded Plans.....	Section 2.2(h)
Expense Reimbursement Amount.....	Section 5.1(a)
Foreign Benefit Plan .....	Section 3.10(h)
HSR Act.....	Section 3.3(a)
Inventory .....	Section 2.1(d)
IP Assignment Agreement .....	Section 2.8(b)(iii)
Lease Consents to Assignment .....	Section 3.12(c)
Legal Restraint .....	Section 7.1(a)
Material Contract .....	Section 3.16

Material Customers .....	Section 3.21(a)
Material Suppliers .....	Section 3.21(b)
Outside Date .....	Section 9.1(b)(iv)
Patents .....	Section 1.1
Permits .....	Section 3.8(b)
Petition Date .....	Section 2.3(a)
Products .....	Section 3.22(a)
Purchase Price .....	Section 2.7(a)
Regulatory Concession .....	Section 6.5(c)
Securities Act .....	Section 4.4
Seller .....	Preamble
Seller Customer Contracts .....	Section 8.3(e)
Seller Financial Statements .....	Section 3.6(a)
Seller Owned Real Property .....	Section 3.12(a)
Seller Parent .....	Preamble
Seller Return .....	Section 7.3
Sellers .....	Preamble
Software .....	Section 1.1
Trademarks .....	Section 1.1
Transfer Taxes .....	Section 7.1
Transferred Assets .....	Section 2.1
Transferred Plans .....	Section 2.1(k)
Transferred Stock .....	Recitals
Transferred Subsidiary Owned Real Property .....	Section 3.12(a)
WARN .....	<b>Error! Reference source not found.</b>

## ARTICLE II. PURCHASE AND SALE

**Section 2.1 Purchase and Sale.** Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, upon the terms and subject to the conditions set forth in this Agreement and in the Sale Order, at the Closing, (i) the Asset Sellers shall sell, assign, transfer, convey and deliver to the Buyer all of the Asset Sellers' right, title and interest as of the Closing Date in and to the Transferred Assets and assign to Buyer the Assumed Liabilities and (ii) the Equity Sellers shall sell, assign, transfer, convey and deliver to the Buyer all of the Equity Sellers' right, title and interest as of the Closing Date in and to the Transferred Stock, and the Buyer shall purchase, acquire and accept the Transferred Stock from the Equity Sellers and the Transferred Assets from the Asset Sellers and assume the Assumed Liabilities. "Transferred Assets" shall mean all right, title and interest of the Asset Sellers to or under the properties and assets of the Asset Sellers of every kind and description, wherever located, whether real, personal or mixed, tangible or intangible, relating to the Business, including all right, title and interest of the Asset Sellers in, to or under (but excluding in each case, any Excluded Assets):

- (a) all Transferred Contracts;



(b) all Seller Owned Real Property and Seller Leased Real Property (subject to Section 2.6), together in each case with the Asset Sellers' right, title and interest in and to all structures, facilities or improvements located thereon and all easements, licenses, rights and appurtenances relating to such Real Property;

(c) all machinery, equipment, furniture, furnishings, parts, spare parts, vehicles and other tangible personal property owned or leased (to the extent the underlying lease is a Transferred Contract) by the Asset Sellers related to the Business, including all such items located at the Facilities;

(d) all raw materials, works-in-progress, finished goods, supplies, packaging materials and other inventories owned by the Asset Sellers related to the Business (the "Inventory");

(e) all Permits held by the Asset Sellers related to the Business (the "Business Permits"), but only to the extent such Permits may be transferred under applicable Law;

(f) Cash and Cash Equivalents (other than Cash and Cash Equivalents in the amount of the Wind-Down Amount Payment), all bank accounts, all deposits (including maintenance deposits, customer deposits, and security deposits for rent, electricity, telephone or otherwise) or prepaid or deferred charges and expenses, including all lease and rental payments and insurance policies, that have been prepaid by any Asset Seller, and all Accounts Receivable, in each case, to the extent related to the Business;

(g) any interest in or right to any refund, rebate or credit of Taxes that relate to the Transferred Assets, including (for the avoidance doubt) any such refund rebate or credit of a Tax that becomes payable or available to any Asset Seller in the future in respect of a Tax paid or incurred by the Buyer;

(h) all Tax assets (including refunds, rebates or credits of Taxes, or other Tax benefits) relating to the Transferred Assets or the Asset Sellers;

(i) all goodwill associated with the Transferred Assets, Transferred Subsidiaries or the Business;

(j) all books and records related to the Business or to the extent related to the Transferred Assets, including copies of all materials described in Section 2.2(b)(ii);

(k) all rights and obligations under or arising out of all insurance policies relating to the Business or any of the Transferred Assets or Assumed Liabilities (including returns and refunds of any premiums paid, or other amounts due back to any Asset Seller, with respect to any cancelled insurance policies);

(l) all rights, claims and causes of action relating to any Transferred Asset or any Assumed Liability;

(m) all of the rights and claims of the Asset Sellers available under the U.S. Bankruptcy Code, of whatever kind or nature, as set forth in sections 544 through 551, inclusive,

553, 558 and any other applicable provisions of the Bankruptcy Code, including with respect to trade obligations paid prior to the Petition Date, and any related claims and actions arising under such sections by operation of Law or otherwise, including any and all proceeds of the foregoing (such rights and claims not to be prosecuted by the Buyer or any other Person);

(n) all Avoidance Actions of the Asset Sellers, including any and all proceeds of the foregoing;

(o) all plants, offices and manufacturing, processing, distribution, storage, warehousing and other facilities of Asset Sellers or any of their Subsidiaries used (or held for use) in connection with the ownership or operation of the Business at Sellers' or any of their Subsidiaries' following facilities: Ankeny, Iowa and Auburn, Alabama, together with all equipment, machinery, vehicles, fixtures, supplies, furniture, leasehold improvements, and other personal, movable and mixed property of Sellers or any of their Subsidiaries exclusively related to such facilities, in each case to the extent set forth in Schedule 2.1(o) of the Disclosure Schedules; and

(p) all assets under each Transferred Subsidiary Benefit Plan and each Employee Benefit Plan that is not an Excluded Plan (collectively, the "Transferred Plans"), together with all funding arrangements thereto (including all assets, trusts, insurance policies and administrative service Contracts), to the extent any such assets are attributable to the Business Employees.

**Section 2.2** Excluded Assets. Notwithstanding anything contained in Section 2.1 to the contrary, the Asset Sellers are not selling, transferring, assigning, conveying or delivering and the Buyer is not purchasing, any of the assets of the Asset Sellers set forth below, all of which shall be retained by the Asset Sellers (collectively, the "Excluded Assets");

(a) all assets expressly excluded or excepted from the definition of Transferred Assets pursuant to Section 2.1;

(b) the Asset Sellers' documents, written files, papers, books, reports and records (i) prepared in connection with this Agreement or the transactions contemplated hereby or relating to the Bankruptcy Case or (ii) that any Asset Seller is required by Law to retain; provided that, to the extent not prohibited by applicable Law or any of any Seller's applicable privacy policies or contractual restrictions and to the extent materially relevant to the Transferred Assets, Assumed Liabilities, or the Business, Buyer shall be entitled to copies of all or any portions of such documents;

(c) all accounting records and internal reports to the extent relating to the business activities of the Asset Sellers unrelated to the Business;

(d) all rights, claims and causes of action relating to any Excluded Asset or any Excluded Liability;

(e) shares of capital stock or other equity interests in any Subsidiary of Seller Parent or securities convertible into or exchangeable or exercisable for shares of capital stock or other equity interests in any Subsidiary of Seller Parent;

(f) all assets under each Employee Benefit Plan set forth on Section 2.2(f) of the Disclosure Schedules (collectively, the “Excluded Plans”), together with all funding arrangements related thereto (including all assets, trusts, insurance policies and administrative service Contracts);

(g) the rejected Contracts;

(h) all retainers or similar prepaid amounts paid to the accountants, attorneys, consultants, advisors, investment bankers or other professional service providers of the Sellers;

(i) the assets of the Asset Sellers listed in Section 2.2(i) of the Disclosure Schedules;

(j) except as set forth on Schedule 2.1(o) of the Disclosure Schedules, all plants, offices and manufacturing, processing, distribution, storage, warehousing and other facilities of Sellers or any of their Subsidiaries used (or held for use) in connection with the ownership or operation of the Business at Sellers’ or any of their Subsidiaries’ following facilities: Ankeny, Iowa and Auburn, Alabama, together with all equipment, machinery, vehicles, fixtures, supplies, furniture, leasehold improvements, and other personal, movable and mixed property of Sellers or any of their Subsidiaries exclusively related to such facilities;

(k) the Cash and Cash Equivalents that are included in the Wind-Down Payment Amount, if any;

(l) all Tax Returns of, with respect to, or related to the Transferred Assets or the Asset Seller (and all Tax books and records, including note papers and work papers, related thereto); provided that the Asset Sellers shall provide to the Buyer copies of any portions of such documents relating to the Transferred Assets or Assumed Liabilities; and

(m) all rights of the Asset Sellers under this Agreement and the Ancillary Agreements.

### **Section 2.3 Assumed Liabilities.**

(a) On the terms and subject to the conditions set forth herein and in the Confirmation Order and subject to the consummation of the Plan, effective as of the Closing, Buyer shall assume from the Asset Sellers (and from and after the Closing pay, perform, discharge, or otherwise satisfy in accordance with their respective terms), and the Asset Sellers shall irrevocably convey, transfer, and assign to Buyer, only the following Liabilities, in each case to the extent arising on or after the initial filing of the Bankruptcy Case (the “Petition Date”), without duplication (or such other time as set forth below) (the “Assumed Liabilities”):

(i) all Liabilities of the Asset Sellers under the Transferred Contracts and the transferred Business Permits that become due or are to be performed on or after, or in respect of periods following, the Closing Date;

(ii) all cure costs required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Transferred Contracts (the “Cure Costs”);

(iii) all Liabilities (1) arising out of, resulting from, or relating to the Transferred Plans, including sponsorship thereof, and (2) assumed by the Buyer pursuant to Section 6.4 (collectively, the “Assumed Employee Liabilities”);

(iv) all Liabilities relating to amounts required to be paid, or actions required to be taken or not to be taken, by the Buyer under this Agreement;

(v) any and all Liabilities for accounts payable incurred in the Ordinary Course of Business arising from or related to the ownership or operation of the Business or the Transferred Assets from and after the Petition Date; and

(vi) all Liabilities incurred in the Ordinary Course of Business, solely to the extent associated with the Transferred Assets for the period beginning on the Petition Date (to the extent such Liabilities are outstanding as of the Closing).

(b) Section 2.3(a) shall not limit any claims or defenses Buyer may have against any party other than the Asset Sellers. The transactions contemplated by this Agreement shall in no way expand the rights or remedies of any third party against the Buyer or the Asset Sellers as compared to the rights and remedies that such third party would have had against the Asset Sellers or the Buyer absent the Bankruptcy Case or the Buyer’s assumption of such Assumed Liabilities. Other than the Assumed Liabilities, the Buyer is not assuming and shall not be liable for any Liabilities of the Asset Sellers.

**Section 2.4** Excluded Liabilities. Buyer shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of, or Action against, the Asset Sellers or relating to the Transferred Assets, of any kind or nature whatsoever, whether absolute, accrued, contingent or otherwise, liquidated or unliquidated, due or to become due, known or unknown, currently existing or hereafter arising, matured or unmatured, direct or indirect, and however arising, whether existing on the Petition Date or arising thereafter as a result of any act, omission, or circumstances taking place prior to the Petition Date, other than the Assumed Liabilities (all such Liabilities that are not Assumed Liabilities being referred to collectively herein as the “Excluded Liabilities”), including but not limited to the following:

(a) any and all Liabilities for Taxes related to or arising from or with respect to (i) the Transferred Assets, the Assumed Liabilities or the operation of the Business by the Asset Sellers, in each case that are incurred in, or attributable to, any taxable period, or portion thereof, ending on or prior to the Closing Date, including any such Taxes which are not due or assessed until after the Closing Date, (ii) any Transfer Taxes for which any Seller is responsible pursuant to Section 7.1 or (iii) the Excluded Assets or Excluded Liabilities;

(b) any and all Liabilities of the Asset Sellers under any Contract of the Asset Sellers that is not a Transferred Contract whether accruing prior to, at, or after the Petition Date;

(c) any and all Liabilities resulting from the failure to comply with any applicable “bulk sales,” “bulk transfer” or similar Law;

(d) any Liabilities of the Asset Sellers, other than Assumed Employee Liabilities, arising out of, resulting from or relating to (i) the employment or service or termination of employment or service, or the provision of compensation, severance, benefits or payments of any nature owed to any current or former employees, officers, directors or service providers of the Asset Sellers, whenever arising, (ii) the employment or termination of employment of any Business Employee by the Asset Sellers on or prior to the Closing, including any gratuity payment, severance, notice or other payment or benefit due on the termination of employment of any such Business Employee by the Asset Sellers at the Closing, (iii) any Excluded Plans, whenever arising, and (iv) Liabilities expressly retained by the Asset Sellers pursuant to Section 6.4;

(e) any Liabilities of the Asset Sellers in respect of indebtedness for borrowed money, or guarantees thereof, of the Asset Sellers or any predecessors or Affiliates of Sellers;

(f) any Liability to distribute to any Asset Seller’s shareholders (or other equity holders) or otherwise apply all or any part of the consideration received hereunder;

(g) any and all Liabilities arising under any Environmental Law or with respect to Hazardous Materials or any other environmental matter and arising from or related to (i) the ownership or operation of the Business or the Transferred Assets on or before the Petition Date, (ii) any action or inaction of the Asset Sellers or any third party relating to the Business or Transferred Assets on or before the Petition Date, (iii) any formerly owned, leased or operated properties of the Asset Sellers that are not the Real Property, or (iv) any condition first occurring or arising on or before the Petition Date with respect to the Business or the Transferred Assets;

(h) any and all Liability for: (i) costs and expenses incurred by the Asset Sellers or owed in connection with the administration of the Bankruptcy Case (including the U.S. Trustee fees, the fees and expenses of attorneys, accountants, financial advisors, consultants and other professionals retained by the Asset Sellers, and any official or unofficial creditors’ or equity holders’ committee and the fees and expenses of the post-petition lenders or the pre-petition lenders incurred or owed in connection with the administration of the Bankruptcy Case); (ii) all costs and expenses of the Asset Sellers incurred in connection with the negotiation, execution and consummation of the transactions contemplated under this Agreement; and (iii) all costs and expenses of the Asset Sellers arising out of or related to services, products or product or service warranties of the Asset Sellers or any predecessor(s) or Affiliate(s) of the Asset Sellers arising under any Contract that is not a Transferred Contract, to the extent provided, developed, designed, manufactured, marketed, sold or distributed prior to the Petition Date;

(i) any and all Liabilities for Taxes of the Asset Sellers or any of their direct or indirect record holders or beneficial owners (including, for the avoidance of doubt, any such Liabilities arising out of the transactions contemplated by this Agreement);

(j) any Liability of the Asset Sellers under this Agreement or the Ancillary Agreements;

(k) all accounts payable of Asset Sellers or any predecessors of Asset Sellers, except for Cure Costs payable by the Buyer pursuant to Section 2.6(a) and accounts payable assumed by the Buyer pursuant to Section 2.3(a)(ii) or 2.3(a)(v);

(l) all Excluded Environmental Liabilities (regardless of whether such Liabilities accrue to the Asset Sellers or to the Buyer in the first instance);

(m) except for Cure Costs payable by the Buyer as contemplated in Section 2.6(a) and assumed by the Buyer pursuant to Section 2.3(a)(ii), all Liabilities of the Asset Sellers resulting from, caused by or arising out of, or which relate to, directly or indirectly, the conduct of the Asset Sellers (or any of their current or former officers, directors, employees or agents) anywhere or ownership or lease of any properties or assets or any properties or assets previously used by the Asset Sellers at any time, or other actions, omissions or events occurring prior to the Closing which (i) constitute, may constitute or are alleged to constitute a tort, breach of contract or violation of any Law or (ii) relate to any and all Actions against the Asset Sellers or their predecessors or Affiliates whether past, present, future, known or unknown, liquidated or unliquidated, accrued or unaccrued, pending or threatened;

(n) all Liabilities of the Asset Sellers arising out of any Action commenced against any Asset Seller or any predecessor or Affiliate of any Asset Seller after the Closing to the extent arising out of or relating to any occurrence or event happening prior to the Closing;

(o) all Liabilities of the Asset Sellers under any Transferred Contract which arises after the Closing but arises out of or relates to any breach that occurred prior to the Closing, excluding any Cure Costs;

(p) all Liabilities of the Asset Sellers arising out of or relating to any infringement or misappropriation of, or other conflict with, the Intellectual Property of any third-party to the extent arising out of or related to the conduct of the Business or any act or omission of the Asset Sellers or any predecessor or Affiliate of any Asset Seller prior to the Closing;

(q) all Liabilities arising out of, or relating to, any indemnification obligations of the Asset Sellers, including indemnification obligations pursuant to supply agreements, service agreements, purchase agreements, leases and any other type of Contract that, in each case does not arise pursuant to a Transferred Contract, to the extent arising out of or related to the conduct of the Business or any act or omission of the Asset Sellers or any predecessor or Affiliates of the Asset Sellers prior to the Petition Date and Liabilities to indemnify, reimburse or advance amounts to any officer, director, employee or agent of the Asset Sellers;

(r) all Liabilities of any Asset Seller to any current, former or prospective shareholder or other equity interest holder of any Asset Seller, including all Liabilities of any Asset Seller related to the right to or issuance of any capital stock or other equity securities;

(s) all Liabilities for any legal, accounting, investment banking, reorganization, restructuring (including bankruptcy administrative expenses), brokerage or similar fees or expenses incurred by the Asset Sellers in connection with, resulting from or attributable to the transactions contemplated by this Agreement, the Bankruptcy Case or otherwise;

(t) all Liabilities of the Asset Sellers or any predecessors of the Asset Sellers based upon such Person's acts or omissions occurring after the Closing;

(u) all Liabilities of the Asset Sellers to the Buyer, its Affiliates, and its Affiliate' agents, advisors and representatives, whether under this Agreement, any Ancillary Agreement or otherwise;

(v) all Liabilities pursuant to the Worker Adjustment and Retraining Notification Act or any similar state law (collectively referred to as "WARN") with respect to individuals employed by the Asset Sellers or Transferred Subsidiaries, and whose employment with such Asset Sellers or Transferred Subsidiaries terminates prior to or upon the Closing; and

(w) any Liability of the Asset Sellers or obligation to the extent relating to an Excluded Asset, including executory Contracts and unexpired Leases that are not Transferred Contracts;

provided, that in the event of any direct conflict between the terms of Section 2.3 and this Section 2.4, the terms of Section 2.3 will control.

#### Section 2.5 Consents to Certain Assignments.

(a) Notwithstanding anything in this Agreement or any Ancillary Agreement to the contrary, this Agreement and the Ancillary Agreements shall not constitute an agreement to transfer or assign any asset, permit, claim or right or any benefit arising thereunder or resulting therefrom if an attempted assignment thereof, without the consent of a third party, would constitute a breach or other contravention under any agreement or Law to which any Asset Seller is a party or by which it is bound, or materially and adversely affect the rights of the Asset Sellers or, upon transfer, the Buyer under such asset, permit, claim or right, unless the applicable provisions of the Bankruptcy Code permits and/or the Sale Order authorizes the assumption and assignment of such asset, permit, claim, or right irrespective of the consent or lack thereof of a third party. To the extent that the assignment to Buyer of any such asset, permit, claim, or right pursuant to this Agreement is not permitted without the consent of a third party and such restriction cannot be, or is not, effectively overridden or canceled by the Sale Order or other related order of the Bankruptcy Court, the Parties shall use commercially reasonable efforts to obtain such consent prior to the Closing. If, with respect to any such asset, permit, claim, or right, such consent is not obtained or such assignment is not attainable pursuant to the Bankruptcy Code or the Sale Order prior to the Closing, then such Transferred Asset shall not be transferred hereunder, and the Closing shall proceed with respect to the remaining Transferred Assets and the Sellers and Buyer shall, through the earlier of such time as such consent or assignment is so obtained and six (6) months following the Closing (or the remaining term of any such binding agreement or the closing of the Bankruptcy Case, if shorter), use their commercially reasonable efforts and shall cooperate to obtain any such consent and to resolve the impracticalities of assignment after the Closing. For the avoidance of doubt, the efforts contemplated by this Section 2.5(a) shall not include any obligation by any Seller or any of their respective Affiliates to pay money (advance or otherwise) to any third party or to incur out of pocket expenses unless Buyer funds such amounts.

(b) Except with respect to Transferred Contracts and Business Permits that are governed by Section 2.6(c) below, if (i) notwithstanding the applicable provisions of Sections 363 and 365 of the Bankruptcy Code and the Sale Order and the commercially reasonable efforts of the Sellers and Buyer, any consent is not obtained prior to Closing and as a result thereof the Buyer shall be prevented by a third party from receiving the rights and benefits with respect to a Transferred Asset intended to be transferred hereunder, (ii) any attempted assignment of a Transferred Asset would adversely affect the rights of the Asset Sellers thereunder so that the Buyer would not in fact receive all the rights and benefits contemplated, or (iii) any Transferred Asset is not otherwise capable of sale and/or assignment (after giving effect to the Sale Order and the Bankruptcy Code), then, in any such case, the Sellers shall, prior to the closing of the Bankruptcy Case and subject to any approval of the Bankruptcy Court that may be required and at the request of the Buyer, cooperate with Buyer in any lawful and commercially reasonable arrangement under which the Buyer would, to the extent practicable, obtain (for no additional cost or consideration) the economic claims, rights and benefits under such asset and assume the economic burdens and obligations with respect thereto in accordance with this Agreement, including by subcontracting, sublicensing or subleasing to the Buyer; provided, that Sellers' cooperation obligations contemplated by this Section 2.5(a) shall not include any obligation by any Seller or any of their respective Affiliates to pay money (advance or otherwise) to any third party or to incur out of pocket expenses unless Buyer funds such amounts. Buyer shall cooperate with Sellers in order to enable Sellers to provide to Buyer the benefits contemplated by this Section 2.5(b). Seller Parent shall as promptly as practicable pay to the Buyer when received all monies received by the Asset Sellers attributable to such Transferred Asset from and after the Closing Date and the Buyer shall indemnify and promptly pay the Asset Sellers for all Liabilities of the Asset Sellers associated with, arising or resulting from such arrangement.

(c) To the extent that the Buyer has not obtained all of the Permits included in the Transferred Assets that are necessary for the Buyer to take title to all of the Transferred Assets at the Closing and to operate all aspects of the Business as of immediately following the Closing in a substantially similar manner in all material respects as it was operated by the Sellers immediately prior to the Closing, the Sellers shall, to the extent permitted by applicable Laws, use commercially reasonable efforts to maintain after the Closing such Permits that the Buyer reasonably requests, at the Buyer's sole expense, until the earlier of the time the Buyer has obtained such Permits and six (6) months following the Closing (or the remaining term of any such Permit or the closing of the Bankruptcy Case, if shorter).

## **Section 2.6     Assumption and Assignment of Certain Contracts.**

(a) Assumption and Assignment of Executory Contracts. The Asset Sellers shall provide timely and proper written notice of the motion seeking entry of the Sale Order to all parties to any executory Contracts or unexpired leases to which any Asset Seller is a party that are Transferred Contracts and take all other actions necessary to cause such Contracts to be assumed by the Asset Sellers and assigned to Buyer pursuant to section 365 of the Bankruptcy Code to the extent that such Contracts are Transferred Contracts at Closing. At the Closing, the Asset Sellers shall, pursuant to the Sale Order and the Assignment and Assumption Agreement(s), assume and assign to Buyer (the consideration for which is included in the Purchase Price), all Transferred Contracts that may be assigned by any such Seller to Buyer pursuant to sections 363 and 365 of the Bankruptcy Code. At the Closing, Buyer shall (i) pay all Cure Costs by wire transfer of



immediately available funds to the account(s) designated in writing by the counterparties to the applicable Transferred Contracts unless otherwise agreed by such counterparty, (ii) cure any and all other defaults and breaches under the Transferred Contracts and Assumed Leases so that such Contracts may be assumed by the applicable Seller and assigned to Buyer in accordance with the provisions of section 365 of the Bankruptcy Code and this Agreement, and (iii) assume, and thereafter in due course and in accordance with its respective terms pay, fully satisfy, discharge and perform all of the obligations under each Transferred Contract pursuant to section 365 of the Bankruptcy Code.

(b) Excluding or Adding Transferred Contracts Prior to Closing. Buyer shall have the right to notify the Sellers in writing of any Transferred Contract that it does not wish to assume or a Contract to which any Asset Seller is a party that Buyer wishes to add as a Transferred Contract up to one (1) Business Day prior to the Closing Date, and (i) any such previously considered Transferred Contract that Buyer no longer wishes to assume shall be automatically deemed removed from the Schedules related to Transferred Contracts and automatically deemed added to the Schedules related to Excluded Contracts, in each case, without any adjustment to the Purchase Price, and (ii) any such previously considered Excluded Contract that Buyer wishes to assume as a Transferred Contract shall be automatically deemed added to the Schedules related to Transferred Contracts, automatically deemed removed from the Schedules related to Excluded Contracts, and assumed by Sellers to sell and assign to Buyer, in each case, without any adjustment to the Purchase Price.

(c) Non-Assignment. Notwithstanding the foregoing, a Contract shall not be a Transferred Contract hereunder and shall not be assigned to, or assumed by, Buyer to the extent that such Contract (i) is rejected by a Seller or terminated by a Seller as permitted by Section 6.1 or any other party thereto, or terminates or expires by its terms, on or prior to such time as it is to be assumed by Buyer as a Transferred Contract hereunder and is not continued or otherwise extended upon assumption or (ii) requires a Consent or Governmental Authorization (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Buyer of the applicable Seller's rights under such Contract, and such Consent or Governmental Authorization has not been obtained prior to such time as it is to be assumed by Buyer as a Transferred Contract hereunder. In addition, a Business Permit shall not be assigned to, or assumed by, Buyer to the extent that such Business Permit requires a Consent or Governmental Authorization (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Buyer of the applicable Seller's rights under such Permit, and no such Consent or Governmental Authorization has been obtained prior to the Closing. In the event that any Transferred Contract is deemed not to be assigned pursuant to clause (ii) of the first sentence of this Section 2.6(c), the Closing shall nonetheless take place subject to the terms and conditions set forth herein and, thereafter, through the earlier of such time as such Consent or Governmental Authorization is obtained and six (6) months following the Closing (or the remaining term of such Contract or the closing of the Bankruptcy Case, if shorter), Sellers and Buyer shall (A) use commercially reasonable efforts to secure such Consent or Governmental Authorization as promptly as practicable after the Closing and (B) cooperate in good faith in any lawful and commercially reasonable arrangement reasonably proposed by Buyer, including subcontracting, licensing, or sublicensing to Buyer any or all of any Seller's rights and obligations with respect to any such Transferred Contract, under which (1) Buyer shall obtain (without infringing upon the legal rights of such third party or violating any Law) the economic rights and benefits (net of the

amount of any related Tax costs imposed on Sellers or their respective affiliates) under such Transferred Contract with respect to which the Consent and/or Governmental Authorization has not been obtained and (2) Buyer shall assume any related burden (including the amount of any related Tax benefit obtained by Sellers or their respective affiliates) and obligation (including performance) with respect to such Transferred Contract. Upon satisfying any requisite Consent or Governmental Authorization requirement applicable to such Transferred Contract after the Closing, such Transferred Contract shall promptly be transferred and assigned to Buyer in accordance with the terms of this Agreement. For the avoidance of doubt, the efforts contemplated by this Section 2.6(c) shall not include any obligation by any Seller to pay money (advance or otherwise) to any third party or to incur out of pocket expenses unless Buyer funds such amounts.

### **Section 2.7 Consideration.**

(a) The aggregate consideration (the “Purchase Price”) for the sale and transfer of the Transferred Stock and the Transferred Assets from the Sellers to the Buyer shall consist of:

- (i) the Credit Bid Amount;
- (ii) the assumption of the Assumed Liabilities;
- (iii) the Wind-Down Amount, payment of which shall be payable by the Buyer at Closing by wire transfer of immediately available funds to the account(s) designated by the Sellers to the Buyer in writing in the amount of the Wind-Down Amount Payment;
- (iv) the amount of the ABL Payment Amount, payable by the Buyer at Closing by wire transfer of immediately available funds to the account(s) designated by Bank of America, N. A. in a payoff letter delivered to the Buyer at least 2 Business Days prior to Closing; and
- (v) the budgeted amounts (less actual amounts paid) for estate professionals from the Petition Date through the Closing Date as further described in the Financing Order and which are to be paid by the DIP Lenders, payable by the Buyer at Closing by wire transfer of immediately available funds to the account(s) designated by the Sellers to the Buyer in writing.

(b) In accordance with Section 2.7(a), Buyer shall satisfy the Purchase Price at the Closing (i) as to the Credit Bid Amount by discharging Sellers, and Sellers shall be deemed to be discharged, from the DIP Credit Agreement Indebtedness in an aggregate amount equal to the Credit Bid Amount and (ii) as to the amounts set forth in Sections 2.7(a)(iii), 2.7(a)(iv) and 2.7(a)(v), by wire transfer of immediately available funds to the accounts designated to the Buyer pursuant to such Sections. For the avoidance of doubt, any Encumbrance in favor of the holders of the outstanding DIP Credit Agreement Indebtedness on any asset that is not a Transferred Asset shall not be released and will continue to secure the remaining outstanding amount of the Credit Agreement Indebtedness).

**Section 2.8** Closing.

(a) The sale and purchase of the Transferred Stock and the Transferred Assets and the assumption of the Assumed Liabilities contemplated by this Agreement shall take place at a closing (the “Closing”) to be held by telephone conference and electronic exchange of documents (or, if the Parties agree to hold a physical closing, at the offices of White & Case LLP, located at 1221 Avenue of the Americas, New York, New York 10020 at 10:00 a.m. New York Time on the second (2<sup>nd</sup>) Business Day following the satisfaction or, to the extent permitted by applicable Law, valid waiver of all conditions to the obligations of the Parties set forth in Article VII (other than such conditions as may, by their terms, only be satisfied at the Closing or on the Closing Date, but subject to the satisfaction or waiver of such conditions), or at such other place or at such other time or on such other date as the Sellers and the Buyer mutually may agree in writing. The day on which the Closing takes place is referred to as the “Closing Date.”

(b) At or prior to the Closing, the Sellers shall deliver or cause to be delivered to the Buyer:

(i) the assignment and assumption agreement in a form reasonably acceptable to Seller Parent and the Buyer (the “Assignment Agreement”), duly executed by the applicable Sellers;

(ii) the intellectual property assignment agreement in a form reasonably acceptable to Seller Parent and the Buyer (the “IP Assignment Agreement”), duly executed by the applicable Sellers;

(iii) a copy of the Sale Order, as entered by the Bankruptcy Court;

(iv) certificates evidencing the Transferred Stock, duly endorsed in blank (or with customary stock powers, duly executed by the Equity Sellers), or instruments of transfer reasonable and customary for the jurisdiction applicable to such Transferred Stock, in each case free and clear of all Encumbrances (except for Encumbrances under applicable securities Laws);

(v) an IRS Form W-9 from each Seller duly executed by each such Seller;

(vi) a duly executed certificate of a duly authorized officer of Seller Parent certifying the satisfaction of the conditions set forth in Section 8.3(a), Section 8.3(b), and Section 8.3(f);

(vii) termination agreements for the agreements listed on Schedule 2.8(b) hereto; and

(viii) all other material documents, instruments or writings of conveyance reasonably necessary to consummate the transactions contemplated by this Agreement.

(c) At or prior to the Closing, the Buyer shall deliver or cause to be delivered to the Sellers:

- (i) the Assignment Agreement, duly executed by the Buyer;
- (ii) the IP Assignment Agreement, duly executed by the Buyer;
- (iii) a duly executed certificate of an executive officer of the Buyer certifying the satisfaction of the conditions set forth in Section 8.2(a) and Section 8.2(b); and
- (iv) all other material documents, instruments or writings of conveyance reasonably necessary to consummate the transactions contemplated by this Agreement.

**Section 2.9 Tax Allocation.** The portion of the Purchase Price paid to any Seller (plus the applicable Assumed Liabilities and any other amounts, to the extent properly taken into account under the Code), shall be allocated among the applicable Transferred Assets and the applicable Transferred Stock (and, to the extent necessary under applicable Tax Law, to the assets of any applicable Transferred Subsidiary) in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder (any such allocation, an “Allocation”). A draft of each Allocation shall be prepared by the Buyer and delivered to the Sellers as promptly as reasonably practicable following the Closing Date. The Sellers shall promptly review such draft allocation and the Buyer shall consider the Sellers’ comments in good faith in preparing the final Allocation. The Buyer and the Sellers agree to, and to cause their respective Affiliates to, (a) timely file with each relevant Governmental Authority all forms and Tax Returns required to be filed in connection with the applicable Allocation, (b) be bound by the applicable Allocation for the purpose of determining Taxes and (c) prepare and file, and cause their respective Affiliates to prepare and file, all Tax Returns on a basis consistent with the applicable Allocation.

**Section 2.10 Exclusion of Transferred Assets or Transferred Subsidiaries.** At any time on or prior to the third (3<sup>rd</sup>) Business Day after the date of the Auction, the Buyer may, in its discretion by written notice to the Sellers, designate any of the Transferred Assets as additional Excluded Assets, which notice shall set forth in reasonable detail the Transferred Assets so designated; provided that there shall be no reduction in the Purchase Price if the Buyer elects to designate any Transferred Asset as an Excluded Asset. Notwithstanding any other provision hereof, the Liabilities of the Asset Sellers under or related to any Transferred Asset excluded under this paragraph will constitute Excluded Liabilities.

**Section 2.11 Withholding.** Notwithstanding anything in this Agreement to the contrary, the Buyer and any Affiliate or agent of the Buyer shall be entitled to deduct and withhold from any amount (or portion thereof) payable under this Agreement such Taxes required to be deducted and withheld from such amount under the Code or any other applicable provision of U.S. or foreign Tax Law. The Buyer shall use commercially reasonable efforts to provide the Sellers notice of any amounts it intends to withhold at least five (5) days prior to Closing. The Buyer and Sellers shall work together in good faith to minimize any withholding. To the extent that any amounts are so deducted or withheld, such deducted and withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

### **ARTICLE III. REPRESENTATIONS AND WARRANTIES OF THE SELLERS**

Except as set forth in the Disclosure Schedules to be delivered to the Buyer in accordance with Section 6.14 (collectively, the “Disclosure Schedules”), each of the Sellers jointly and severally represents and warrants to the Buyer as follows:

**Section 3.1 Organization.** Each Seller and each Transferred Subsidiary (a) is an entity duly incorporated or organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, as applicable, (b) has all requisite corporate (or equivalent) power and authority to own and operate its properties and to carry on its businesses as now conducted, subject to the provisions of the Bankruptcy Code, and (c) is qualified to do business and is in good standing (or its equivalent) in every jurisdiction in which the Transferred Assets, Assumed Liabilities or the operation of the Business as it is now being conducted requires it to qualify, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect.

**Section 3.2 Authority.** Subject to required Bankruptcy Court approvals, (a) each Seller has the corporate (or equivalent) power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby, (b) the execution, delivery and performance by such Seller of this Agreement and each of the Ancillary Agreements to which it will be a party and the consummation by such Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate (or equivalent) action and (c) this Agreement has been, and upon its execution each of the Ancillary Agreements to which such Seller will be a party will have been, duly executed and delivered by such Seller and, assuming due execution and delivery by each of the other parties hereto and thereto, this Agreement constitutes, and upon its execution each of the Ancillary Agreements to which such Seller will be a party will constitute, the legal, valid and binding obligations of such Seller, enforceable against such Seller in accordance with their respective terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar Laws affecting creditors’ rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law) (the “Enforceability Exceptions”).

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

(a) Except as set forth in Section 3.3(a) of the Disclosure Schedules and assuming that (w) requisite Bankruptcy Court approvals are obtained, (x) the notices, authorizations, approvals, Orders, permits or consents set forth in Section 3.3(b) of the Disclosure Schedules are made, given or obtained (as applicable), (y) the requirements of the HSR Act and any other applicable antitrust, competition or merger control Laws promulgated by any Governmental Authority (“Foreign Competition Laws”) are complied with, and (z) any filings required by any applicable federal or state securities or “blue sky” Laws are made, the execution, delivery and performance by the Sellers of this Agreement and the consummation by the Sellers of the transactions contemplated hereby, do not: (i) violate the certificate of formation, limited liability company agreement or equivalent organizational documents of the Sellers or the

Transferred Subsidiaries; (ii) violate any Law applicable to the Sellers or the Transferred Subsidiaries or by which any Transferred Asset or any property or asset of the Transferred Subsidiaries is bound; or (iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, create in any party thereto the right to terminate or cancel, or require any consent under, or result in the creation or imposition of any Encumbrance (other than a Permitted Encumbrance) on any Transferred Asset or any of the Transferred Subsidiaries under, any Contract listed in Section 3.16 of the Disclosure Schedule; except, in the case of clauses (ii) and (iii), for any such violations, breaches, defaults or other occurrences that are not material to Seller Parent and its Subsidiaries taken as a whole.

(b) Except as set forth in Section 3.3(b) of the Disclosure Schedules, no Seller nor any Transferred Subsidiary is required to file, seek or obtain any notice, authorization, approval, Order, permit, or consent of or with any Governmental Authority in connection with the execution, delivery and performance by the Sellers of this Agreement or the consummation by the Sellers of the transactions contemplated hereby, except (i) requisite Bankruptcy Court approvals, (ii) any filings required to be made under the HSR Act and any applicable Foreign Competition Laws, (iii) such filings as may be required by any applicable federal or state securities or “blue sky” Laws, (iv) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification is not material to Seller Parent and its Subsidiaries taken as a whole, or (v) as may be necessary as a result of any facts or circumstances relating to Buyer or any of its Affiliates.

#### **Section 3.4    Transferred Assets.**

(a) Each Asset Seller, as applicable, has indefeasible title to, and owns and possesses all rights and interests in, including the right to use, each of the material Transferred Assets, or with respect to material leased Transferred Assets, valid leasehold interests in, or with respect to such material licensed Transferred Assets, valid licenses to use.

(b) This Agreement and the instruments and documents to be delivered by the Sellers to the Buyer at the Closing shall be adequate and sufficient, in all material respects, to transfer (i) Asset Sellers’ entire right, title and interest in and to the Transferred Assets and subject to the terms hereof (including Section 2.4(a)) and (ii) to the Buyer, good title to the Transferred Assets, free and clear of all Encumbrances (other than Permitted Encumbrances), subject in each case to entry of the Sale Order.

**Section 3.5    Transferred Subsidiaries.** All of the outstanding shares of capital stock of (or comparable interest in) each Transferred Subsidiary (i) are owned directly or indirectly by Seller Parent, (ii) are as of the date hereof free and clear of any Encumbrance (other than Permitted Encumbrances and other than restrictions on transfer of unregistered securities arising under applicable federal, state or foreign securities Laws) and will be as of the Closing Date free and clear of any Encumbrance (other than Encumbrances those created by Buyer or arising out of ownership of the Transferred Stock by Buyer and other than restrictions on transfer of unregistered securities arising under applicable federal, state or foreign securities Laws) and (iii) have been validly issued and are fully paid and, as applicable, non-assessable. Section 3.5(a) of the Disclosure Schedules lists all of the Transferred Subsidiaries and the outstanding shares of capital stock or voting securities of, or other equity securities therein and, in each case, the owner(s)

thereof. There are no options, warrants, convertible securities or other rights, agreements, arrangements or commitments relating to the Transferred Stock (other than this Agreement and any other agreement entered into in connection with the Bankruptcy Case) obligating any Seller or any Transferred Subsidiary to issue or sell any shares of capital stock of, or any other comparable interest in, a Transferred Subsidiary (other than this Agreement and any other agreement entered into in connection with the Bankruptcy Case). No Transferred Subsidiary owns, directly or indirectly, any capital stock, membership interest, partnership interest, joint venture interest or other equity interest in any other Person (other than a Transferred Subsidiary). There are no voting trusts or other agreements or understandings with respect to the equity interests of the Transferred Subsidiaries. None of the Transferred Subsidiaries have entered into silent partnership agreements granting the silent partner entitlements to its proceeds.

### **Section 3.6     Financial Statements; No Undisclosed Liabilities.**

(a) The audited consolidated balance sheets of Seller Parent as of December 31, 2019 and 2018, together with the related consolidated statements of income, stockholders' equity and cash flows ended December 31, 2019 and 2018, and (ii) the unaudited consolidated balance sheets of Seller Parent as of March 31, 2020 (the "Balance Sheet Date"), together with the related unaudited interim consolidated statements of income, stockholders' equity and cash flows for the three months ended March 31, 2020 (the "Seller Financial Statements") have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of the Seller Parent and its Subsidiaries and the Business at the respective dates thereof and the results of their operations and cash flows for the periods indicated (subject, in each case, to normal year-end adjustments).

(b) No Seller nor any of the Transferred Subsidiaries has any Liabilities in respect of the Business, required by GAAP to be disclosed or reflected on or reserved against a consolidated balance sheet (or the notes thereto) of Seller and the Transferred Subsidiaries, except for Liabilities (i) reflected or reserved against in the Seller Financial Statements, (ii) incurred in the Ordinary Course of Business since the Balance Sheet Date, (iii) that are Excluded Liabilities, (iv) incurred in connection with the transactions contemplated by this Agreement or arising from the commencement of the Bankruptcy Case, (v) that have not had, or would not reasonably be expected to have, a Material Adverse Effect and (vi) arising from performance obligations under any Contract.

**Section 3.7     Absence of Certain Changes or Events.** Since the Balance Sheet Date through the date of this Agreement, there has not been any event, change, condition, occurrence or effect that, individually or in the aggregate, has had, or would be reasonably expected to have, a Material Adverse Effect. Without limiting the generality of the foregoing, except (x) for the solicitation of, discussions and negotiations with, presentations and provision of other diligence to and similar engagement with other potential bidders for the Transferred Assets, the negotiation and execution of this Agreement, (y) for the preparation and commencement of the Bankruptcy Case and Sellers' debtor-in-possession financing in the Bankruptcy Case, or (z) as set forth on Section 3.7 of the Disclosure Schedules or as expressly contemplated by this Agreement, from the Balance Sheet Date until the date hereof, no Seller nor any Transferred Subsidiary has:

(a) amended or modified the certificate of incorporation or bylaws (or other organizational or governance documents) of any Seller or Transferred Subsidiary;

(b) (i) made or granted any material cash compensation increase to any former or current employee receiving (before or after such increase) base compensation in excess of \$300,000 per annum, except in the Ordinary Course of Business or pursuant to agreements listed on Section 3.7 of the Disclosure Schedules or any Transferred Plan, or (ii) increased the benefit required under any material Employee Benefit Plan, adopted any new material Employee Benefit Plan or terminated any existing material Employee Benefit Plan, except for increases in benefits under existing Employee Benefit Plans in the Ordinary Course of Business and except as approved by the Bankruptcy Court with respect to the Sellers generally;

(c) adopted a plan of liquidation, dissolution, merger, consolidation or other reorganization, other than in the Bankruptcy Case;

(d) made any change in its accounting methods, principles or practices that would be material to the Business, taken as a whole, except as may be required by GAAP, the Code or applicable Law or in connection with the Bankruptcy Case;

(e) made any acquisition of all or substantially all of the assets, properties, capital stock or business of any other Person, whether by merger, stock or asset purchase;

(f) solely with respect to the Transferred Subsidiaries, Transferred Assets or the Business, changed, made or revoked any Tax election, changed any method of accounting with respect to Taxes, filed any amended Tax Return, surrendered or compromised any right to claim a Tax refund, settled or compromised any claim, notice, audit, assessment or other proceeding related to Taxes, entered into any agreement affecting any Tax Liability or any refund or filed any request for rulings or special Tax incentives with any Governmental Authority, entered into any Tax allocation, sharing or indemnity agreement (in each case, if the subject matter thereof primarily related to Taxes), or extended or waived the statute of limitations period applicable to any Tax or Tax Return; or

(g) agreed or committed in writing to do any of the foregoing.

### **Section 3.8** Compliance with Law; Permits.

(a) The Business is being conducted in material compliance with, and Sellers and the Transferred Subsidiaries have in all material respects complied with, all applicable Laws relating to the operation of the Business and the Transferred Assets taken as a whole. There are no pending or, to the Knowledge of the Sellers, threatened, claims or investigations from any Governmental Authority relating to any material non-compliance of the Business, the Transferred Subsidiaries or the Transferred Assets, except, for any such claim that would not reasonably be expected to have a Material Adverse Effect.

(b) The Asset Sellers and the Transferred Subsidiaries are in possession of all material permits, licenses, franchises, approvals, certificates, consents, waivers, concessions, exemptions, orders, registrations, notices or other authorizations of any Governmental Authority (the "Permits") necessary for them to own, lease and operate their assets and properties and to



carry on the Business as currently conducted, except as would not reasonably be expected to have a Material Adverse Effect. All material Permits held by the Asset Sellers and the Transferred Subsidiaries: (i) are valid and in full force and effect and no Asset Seller or Transferred Subsidiary is in default under, or in violation of, any such Permit, except for such defaults or violations which would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect and no suspension or cancellation of any such Permit is pending (other than pursuant to its terms) or, to Sellers' Knowledge, threatened and (ii) subject to entry of the Sale Order, each such Permit may be transferred or reissued to the Buyer in accordance with this Agreement and without the approval of any Person (other than the Bankruptcy Court).

**Section 3.9** Litigation. Except for the Bankruptcy Case, and any Order entered in the Bankruptcy Case, there is not, as of the date hereof, any Action by or against any Transferred Subsidiary in connection with the Business pending, or to the Knowledge of the Sellers, threatened other than any Action pursuant to which no injunctive or equitable relief is sought and where the monetary damages are covered by insurance or would not reasonably be expected to have a Material Adverse Effect.

**Section 3.10** Employee Benefit Plans.

(a) With respect to the Employee Benefit Plans, (i) each of the Employee Benefit Plans has been operated and administered in all material respects in accordance with applicable Law and administrative or governmental rules and regulations, including ERISA, the Patient Protection and Affordable Care Act and the Code, and with any applicable collective bargaining agreement and all other agreements or instruments applicable to any Employee Benefit Plan, (ii) there is no material Action pending or, to the Knowledge of the Sellers, threatened in writing by, on behalf of or against any Employee Benefit Plan or any administrator or fiduciary thereof (other than routine claims for benefits), nor, to the Knowledge of the Sellers, is there any basis for such action, suit or claim.

(b) Each Employee Benefit Plan intended to be "qualified" within the meaning of Section 401(a) of the Code has received a favorable determination or opinion letter as to such qualification from the IRS and, to the Knowledge of the Sellers, has, in operation, been qualified under the Code from the effective date of such Employee Benefit Plan. To the Knowledge of the Sellers, no event has occurred, either by reason of any action or failure to act, which would reasonably be expected to cause the loss of any such qualification.

(c) To the Knowledge of the Sellers, none of the Sellers or any of their ERISA Affiliates has ever maintained, sponsored, contributed to, or had an obligation to maintain, sponsor or contribute to, or has any Liability with respect to (i) a "defined benefit plan," as defined in Section 3(35) of ERISA, (ii) a plan subject Title IV of ERISA or Sections 412 or 430 of the Code or to the minimum funding standards of Section 302 of ERISA, or (iii) a "multiemployer plan," as defined in Section 3(37) of ERISA.

(d) To the Knowledge of the Sellers, no Seller, not any ERISA Affiliate of any Seller, provides, nor have they ever provided, coverage under any welfare plan, as defined in Section 3(1) of ERISA, with respect to, life insurance, disability, medical, dental, prescription drugs or accidental death or dismemberment to any of their former employees, other than any

continuation coverage which any such former employee may have purchased at his or her own expense.

(e) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement will not, alone or in combination with any other event, (i) entitle any Business Employee to any material payment (including severance pay, unemployment compensation or any other compensation), (ii) accelerate the time of payment or vesting, or materially increase the amount of compensation due to any Business Employee, (iii) cause any individual to accrue or receive additional material benefits, service or accelerated rights to payment of benefits under any Employee Benefit Plan or employment agreement, (iv) directly or indirectly cause the Sellers or any ERISA Affiliate of the Sellers to transfer or set aside any assets to fund or otherwise provide for benefits for any individual, or (v) result in any payment or benefit that would constitute an “excess parachute payment” (as such term is defined in Section 280G(b)(1) of the Code) or subject any Person to Liability for Tax under Section 4999 of the Code or cause the loss of deduction to any Transferred Subsidiary or Asset Seller under Section 280G of the Code.

(f) Each Employee Benefit Plan that is a “nonqualified deferred compensation plan” within the meaning of Section 409A(d)(1) of the Code and any award thereunder, in each case that is subject to Section 409A of the Code, (i) has at all times been operated in material compliance in all respects with Section 409A of the Code and all applicable IRS guidance promulgated thereunder, and (ii) either (A) has at all times been in a form which materially complies with the requirements of Section 409A of the Code or (B) has been timely amended under guidance issued pursuant to Section 409A of the Code so that its terms and provisions materially comply with the requirements of Section 409A of the Code.

(g) There have been no written statements or communications made, or materials provided to any Business Employee, in each case, by Sellers, or, to the Knowledge of the Sellers, any of Sellers’ officers, that provide for or could be construed as a contract or promise regarding employment or terms and conditions of employment with the Buyer or its Affiliates following the Closing.

(h) With respect to each Transferred Plan and each other Employee Benefit Plan established or maintained by any Transferred Subsidiary outside of the United States of America primarily for benefit of current or former employees, officers, directors or service providers of Sellers, the Transferred Subsidiaries or any of their respective Subsidiaries residing outside the United States of America (a “Foreign Benefit Plan”): (i) all employer and employee contributions to each Foreign Benefit Plan required by law or by the terms of such Foreign Benefit Plan have been made in all material respects, or, if applicable, accrued, in accordance with normal accounting practices; and (ii) each Foreign Benefit Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

(i) All contributions and premiums required by Law or by the terms of any Employee Benefit Plan or any “multiemployer plan” (as defined in Section 3(37) of ERISA) have been timely made by the Sellers or any of their ERISA Affiliates to any funds or trusts established thereunder or in connection therewith, in each case, in all material respects.

### Section 3.11 Labor and Employment Matters.

(a) Except as disclosed in Section 3.11(a) of the Disclosure Schedules, (i) the Sellers are neither party to, nor bound by, any organized labor agreement, collective bargaining agreement, or any similar labor-related agreements or arrangements with any labor union, labor organization, or works council applicable to the Business Employees; there are no labor agreements, collective bargaining agreements, or any similar labor-related agreements or arrangements that pertain to any Business Employees and (ii) no Business Employees are represented by any labor union, labor organization or works council with respect to their employment with the Sellers or the Transferred Subsidiaries.

(b) There are no material unfair labor practice charges, work stoppages, slowdowns, strikes, lockouts, grievances, picketings, or other similar material activities relating to labor matters pending, or to the Knowledge of the Sellers, threatened in writing against any Seller or Transferred Subsidiary that pertain to the Business Employees.

(c) No labor union, labor organization, works council or group of Business Employees has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or, to the Knowledge of the Sellers, threatened in writing to be brought or filed with the National Labor Relations Board or any other labor relations tribunal or authority pertaining to the Business Employees. To the Knowledge of the Sellers, there are no labor union organizing activities with respect to any Business Employees.

(d) Each Asset Seller and Transferred Subsidiary is in compliance in all material respects with all applicable Laws respecting labor, labor relations, employment and employment practices pertaining to the Business Employees, including but not limited to all Laws respecting collective bargaining, the terms and conditions of employment, wages, hours, equal employment opportunity, employment discrimination, worker classification (including the proper classification of workers as independent contractors and consultants, and employees as exempt or non-exempt for overtime pay), immigration, work authorization, occupational health and safety, workers' compensation, paid sick leave, vacation pay, the payment of social security and other employment Taxes, disability rights or benefits, plant closures and layoffs, affirmative action, labor relations, employee leave issues and unemployment insurance. Prior to the Closing Date, the Asset Sellers and Transferred Subsidiaries have not incurred Liabilities or other charges under WARN.

(e) Each of the Asset Sellers and the Transferred Subsidiaries is not and has not been: (i) a "contractor" or "subcontractor" (as defined by Executive Order 11246), (ii) required to comply with Executive Order 11246 or (iii) required to maintain an affirmative action plan.

(f) To the Knowledge of the Sellers, except as would not have a Material Adverse Effect, no employee of any of the Sellers is in any material respect in violation of any term of any employment agreement, nondisclosure agreement, common law nondisclosure obligation, fiduciary duty, non-competition agreement, restrictive covenant or other obligation: (i) to any of the Sellers or (ii) to a former employer of any such employee relating (A) to the right of

any such employee to be employed by any such Seller or (B) to the knowledge or use of trade secrets or proprietary information.

(g) Within the past three years, there have not been any (i) unfair labor practice charges or complaints pending or, to the Knowledge of the Sellers, threatened in writing before the National Labor Relations Board or any other Governmental Authority against them, (ii) complaints, grievances, or arbitrations arising out of any collective bargaining agreement or any other complaints, grievances, or arbitration procedures against them, (iii) charges or complaints with respect to or relating to them pending before the Equal Employment Opportunity Commission or any other Governmental Authority responsible for the prevention of unlawful employment practices, (iv) written notice of the intent of any Governmental Authority responsible for the enforcement of labor, employment, wages and hours of work, child labor, immigration, or occupational safety and health laws to conduct an investigation with respect to or relating to them or notices that such investigation is in progress, or (v) Actions pending or threatened in any forum by or on behalf of any present or former employee of such entities, any applicant for employment, or classes of the foregoing alleging breach of any express or implied contract of employment, any applicable law governing employment or the termination thereof, or other discriminatory, wrongful, or tortious conduct in connection with the employment relationship, that in each case of clauses (i) through (v) would reasonably be expected to result, individually or in the aggregate, in material Liability to the Asset Sellers or the Transferred Subsidiaries.

(h) The execution of this Agreement and the consummation of the transactions contemplated by this Agreement will not result in any material breach or other violation of any collective bargaining agreement, employment agreement, consulting agreement or any other labor-related any other labor-related agreement to which the Asset Sellers or the Transferred Subsidiaries are a party that is applicable to the Business Employees.

(i) Section 3.11(g)(i) of the Disclosure Schedules includes a list of employees of the Asset Sellers and Transferred Subsidiaries whose employment has been involuntarily terminated (not including employees who remain active but on furlough) within the ninety (90) day period preceding the date hereof and includes such employees' position and title (if any) and the then-current rate of compensation as of his or her termination date. Except as disclosed on Section 3.11(k)(iii) of the Disclosure Schedules, the Asset Sellers and Transferred Subsidiaries have no unsatisfied Liability (that is material to the Business taken as a whole) to any such previously terminated employee, officer, director, consultant, or independent contractor.

### **Section 3.12 Real Property.**

(a) Section 3.12(a)(i) of the Disclosure Schedules lists the street address of each parcel of Owned Real Property owned by the Sellers and used for the Business (the "Seller Owned Real Property"). Section 3.12(a)(ii) of the Disclosure Schedules lists the street address of each parcel of Owned Real Property owned by a Transferred Subsidiary (the "Transferred Subsidiary Owned Real Property"). The applicable Asset Seller or Transferred Subsidiary has good and valid fee simple title (or equivalent title) to the Owned Real Property and, subject to the entry of the Sale Order, free and clear of all Encumbrances, other than Permitted Encumbrances.

(b) Section 3.12(b)(i) and Section 3.12(b)(ii) of the Disclosure Schedules, respectively, set forth for each Seller Leased Real Property and Transferred Subsidiary Lease Property and the street address of each parcel of Leased Real Property. The Asset Seller or Transferred Subsidiary party thereto has a valid leasehold estate in all Leased Real Property, and, subject to the entry to the Sale Order, free and clear of all Encumbrances, other than Permitted Encumbrances. Section 3.12(b)(iii) of the Disclosure Schedule sets forth a true and complete list of all leases pursuant to which the Sellers or any Transferred Subsidiary is leasing any Leased Real Property as tenant, and any and all material ancillary documents pertaining to the Seller Leases and the Transferred Subsidiary Leases (including all material amendments, modifications, supplements, exhibits, schedules, addenda and restatements in such party's possession).

(c) The Asset Sellers and Transferred Subsidiaries have not granted to any Person (other than pursuant to this Agreement) any right to occupy or possess or otherwise encumber any portion of the Real Property. No Seller or Transferred Subsidiary has vacated or abandoned any portion of the Real Property or given notice to any Person of their intent to do the same. Either the Sellers or a Transferred Subsidiary, as the case may be, is in peaceful possession of each parcel of Real Property, and, except as would not be reasonably likely to have a Material Adverse Effect, there are no contractual or legal restrictions that preclude or restrict the ability to use the Real Property for the purposes for which it is currently being used.

(d) No Asset Seller or Transferred Subsidiary is a party to or obligated under any option, right of first refusal or other contractual right to sell, dispose of or lease any of the Real Property or any portion thereof or interest therein to any Person other than the Buyer.

(e) Except as would not have a Material Adverse Effect, the interests of the Sellers and the Transferred Subsidiaries in the Owned Real Property and the Leased Real Property to be transferred pursuant to this Agreement are sufficient for the occupation of, and operations and the Business conducted on, the Real Property after the Closing in substantially the same manner of the such occupation of, and operations and the Business conducted on the Real Property prior to the Closing.

(f) There are no condemnation proceedings or eminent domain proceedings of any kind pending or, to the Knowledge of the Sellers, threatened against the Real Property..

### **Section 3.13 Intellectual Property.**

(a) The Asset Sellers or the Transferred Subsidiaries, as applicable, are the sole and exclusive beneficial and record owners of all of the Intellectual Property set forth in Section 3.13(a)(i) and Section 3.13(a)(ii) of the Disclosure Schedules, and all such Intellectual Property are subsisting, enforceable and, to the Knowledge of the Sellers, valid (and there is no Action pending, or, to the Knowledge of the Sellers, threatened challenging the scope, validity or enforceability of any such Intellectual Property).

(b) To the Knowledge of the Sellers, the conduct of the Business (including the products and services of the Sellers and Transferred Subsidiaries) does not infringe, misappropriate or otherwise violate in any material respect, any Person's Intellectual Property rights and there is no Action pending or, to the Knowledge of Sellers, threatened against any Seller or Transferred

Subsidiary alleging any of the foregoing, except for such infringement, misappropriation, violation or Action that would not reasonably be expected to have a Material Adverse Effect.

(c) To the Knowledge of the Sellers, no Person is infringing, misappropriating or otherwise violating in any material respect, any Intellectual Property owned by or exclusively licensed to Asset Sellers or Transferred Subsidiaries in the conduct of the Business, and no such Action is pending or threatened against any Person by any Asset Seller or Transferred Subsidiary, except for such infringement, misappropriation, violation or Action that would not reasonably be expected to have a Material Adverse Effect.

(d) Each Asset Seller and Transferred Subsidiary is in compliance with its own rules, policies, and procedures, relating to privacy, data protection, and the collection and use of personal information collected, used, or held for use by the Asset Sellers or Transferred Subsidiaries, except where such non-compliance would not reasonably be expected to have a Material Adverse Effect.

(e) In the past three (3) years, (i) the Asset Sellers and Transferred Subsidiaries have not experienced any material defects in the Software used in the Business that have not been remediated in all material respects as of the date hereof, (ii) to the Knowledge of the Sellers, there have been no material security breaches in the Asset Sellers' or the Transferred Subsidiaries' information technology systems, and (iii) there have been no disruptions in any of the Asset Sellers' or Transferred Subsidiaries' information technology systems, except, in the case of clauses (i), (ii) and (iii), for such defects, breaches or disruptions that would not reasonably be expected to have a Material Adverse Effect.

**Section 3.14 Taxes.** Except as set forth in Section 3.14 of the Disclosure Schedules:

(a) All income and other material Tax Returns required to be filed by or with respect to the Transferred Subsidiaries, or with respect to the Transferred Assets, the Assumed Liabilities or the Business have been timely filed, and all such Tax Returns are true, correct and complete in all material respects. All material Taxes due and payable by or with respect to the Transferred Subsidiaries, or with respect to the Transferred Assets, the Assumed Liabilities or the Business, in each case whether or not shown as due on any Tax Return, have been timely paid in full to the proper Governmental Authority. Adequate accruals have been made on the Seller Financial Statements for all Taxes not yet due and payable by or with respect to the Transferred Subsidiaries for periods covered by such Seller Financial Statements. No Tax Liability has been incurred outside the Ordinary Course of Business by or with respect to the Transferred Subsidiaries since the date of the Seller Financial Statements.

(b) All material Taxes relating to or arising in connection with the Transferred Assets, the Assumed Liabilities or the Business, or of or with respect to the Transferred Subsidiaries, in each case that are required to be withheld and paid under applicable Law (including in connection with any amounts owing to any employee, independent contractor, creditor, stockholder or other third party), have been timely withheld and remitted to the appropriate Governmental Authority, and all IRS Forms W-2 and 1099 and other applicable forms required with respect thereto have been properly completed and timely filed in all material respects. Each

of the Transferred Subsidiaries has timely collected all material sales, use and value added Taxes required to be collected by them, and has timely remitted all such Taxes to the appropriate Governmental Authority.

(c) There is no action, suit, claim, assessment, or audit pending, or proposed in writing (tentatively or definitively), or to the Knowledge of the Sellers, asserted or threatened, by any Governmental Authority with respect to Taxes or Tax Returns of or with respect to the Transferred Subsidiaries or with respect to the Transferred Assets, the Assumed Liabilities or the Business.

(d) There are no Encumbrances for Taxes upon the Transferred Assets or any of the assets of the Transferred Subsidiaries, in each case other than for Taxes not yet due.

(e) Neither the Business nor any of the Transferred Assets, Assumed Liabilities or Transferred Subsidiaries is subject to any Tax allocation, indemnity or sharing agreement or similar agreement, arrangement or understanding, other than any such agreement entered into in the Ordinary Course of Business the principal purpose of which is not to address Taxes. There is no “gain recognition agreement” under Section 367 of the Code, or the Treasury Regulations promulgated thereunder, currently in effect with respect to any asset of, or equity interest in, any Transferred Subsidiary (or any agreement or arrangement under any state, local or foreign Tax Law) for which a Transferred Subsidiary could be liable.

(f) No closing agreements (as described in Section 7121 of the Code or any corresponding, analogous or similar provision of state, local or foreign Law), private letter rulings, technical advice memoranda or similar agreements or rulings have been entered into or requested by or with respect to the Transferred Subsidiaries or with respect to the Business or with respect to any Transferred Assets or Assumed Liabilities.

(g) No agreement, waiver, extension or consent regarding the application of the statute of limitations with respect to any Taxes or Tax Returns of or with respect to the Transferred Subsidiaries, or with respect to the Transferred Assets, the Assumed Liabilities or the Business is outstanding, nor is there pending any request for such an agreement, waiver, extension or consent. No power of attorney has been granted with respect to any matter relating to Taxes payable by or with respect to the Transferred Subsidiaries, or with respect to any of the Transferred Assets, Assumed Liabilities or the Business, in each case that is currently in force.

(h) None of the Transferred Subsidiaries (nor any beneficial owner of any interest in a Transferred Subsidiary) will be required to include any item of income in, or exclude any item of deduction from, taxable income with respect to the Transferred Subsidiaries for any taxable period (or portion thereof) beginning after the Closing Date as a result of (i) any installment sale or open transaction disposition made on or prior to the Closing Date; (ii) any prepaid amount received on or prior to the Closing Date; (iii) any change in a method of accounting or use of an improper method of accounting for a taxable period ending on or prior to the Closing Date or (iv) any election under Section 108(i) of the Code.

(i) None of the Transferred Subsidiaries has distributed stock of another entity, or had its stock distributed by another entity, in a transaction that was purported or intended to be

governed in whole or in part by Section 355 or Section 361 of the Code (i) in the two years immediately preceding the date of this Agreement or (ii) in a distribution which could otherwise constitute part of a “plan” or “series of related transactions” (within the meaning of Section 355(e) of the Code) in connection with the transactions contemplated by this Agreement.

(j) No claim has been made by any Governmental Authority in a jurisdiction in which a Transferred Subsidiary does not file Tax Returns or pay Taxes to the effect that such Transferred Subsidiary is or may be subject to taxation by, or required to file any Tax Return in, such jurisdiction.

(k) None of the Transferred Subsidiaries has entered into, participated in or engaged in any “listed transaction” (as defined in Treasury Regulations Section 1.6011-4(b) or any similar provision under any state, local or foreign Tax Law).

(l) None of the Transferred Subsidiaries (i) is or has been a member of a group filing an affiliated, consolidated, combined or unitary Tax Return, or (ii) has any liability for Taxes of another Person under Treasury Regulations Section 1.1502-6 (or any analogous, comparable or similar provision of state, local or non-U.S. Law).

### **Section 3.15 Environmental Matters.**

(a) The Asset Sellers, the Transferred Subsidiaries and the Transferred Assets (to the extent relating to the Asset Sellers’ or the Transferred Subsidiaries’ operations) are in compliance with all applicable Environmental Laws, which compliance includes the possession of, and compliance with the terms of, all Environmental Permits required under applicable Environmental Laws in connection with the conduct or operation of the Business taken as a whole as currently conducted, except for such non-compliance that would not reasonably be expected to have a Material Adverse Effect. There is no written claim or action currently pending or, to the Knowledge of the Sellers, threatened, that is or would reasonably be expected to result in the cancellation, revocation, non-renewal or other adverse or limiting modification or amendment of any such Environmental Permit, except for such claim or Action that would not reasonably be expected to have a Material Adverse Effect.

(b) Neither the Asset Sellers, the Transferred Subsidiaries, the Transferred Assets (to the extent relating to the Asset Sellers’ or the Transferred Subsidiaries’ operations) nor the Business is or has been involved in any written claim, action or proceeding relating to an Environmental Claim, whether as claimant, defendant or otherwise, nor is any such written claim, action or proceeding, or any investigation by any Governmental Authority relating to an Environmental Claim pending or, to the Knowledge of the Sellers, threatened against the Asset Sellers, the Transferred Subsidiaries, the Transferred Assets (to the extent relating to the Asset Sellers’ or the Transferred Subsidiaries’ operations) or the Business, except for such written claim, action, proceeding or investigation that would not reasonably be expected to have a Material Adverse Effect.

(c) To the Knowledge of the Sellers, there are no circumstances or environmental conditions relating to noncompliances with Environmental Law and the Transferred Assets (to the extent relating to the Asset Sellers’ or the Transferred Subsidiaries’ operations),



including the presence of any Hazardous Material at the Real Property, except as would not reasonably be expected to have a Material Adverse Effect.

(d) The representations and warranties set forth in this Section 3.15 are the sole and exclusive representations of the Sellers concerning environmental matters.

**Section 3.16 Material Contracts.**

(a) Except as set forth on Section 3.16(a) of the Disclosure Schedules, neither Seller Parent nor any of its Subsidiaries is a party to any of the following Contracts as of the date hereof (each, a “Material Contract”):

- (i) collective bargaining agreement with any labor union;
- (ii) agreement for the employment of any officer, individual employee or other person on a full-time or consulting basis providing for base compensation in excess of \$250,000 per annum that is not terminable by the Seller Parent or such Subsidiary upon notice of sixty (60) days or less for a cost of \$250,000 or less;
- (iii) material license of any material Intellectual Property that involves payments (by or to Seller Parent or any of its Subsidiaries) in excess of \$200,000 per annum and is not terminable by the Seller Parent or such Subsidiary upon notice of sixty (60) days or less for a cost of \$200,000 or less (other than licenses of commercially available, off-the-shelf software and other than licenses entered into in the Ordinary Course of Business);
- (iv) agreement or group of related agreements with the same party for the purchase of products or services, in either case, under which the aggregate undelivered balance of such products and services has a selling price in excess of \$1,000,000 and which is not terminable by Seller Parent or such Subsidiary upon notice of sixty (60) days or less for a cost of \$1,000,000 or less (other than purchase orders entered into in the Ordinary Course of Business);
- (v) agreement that materially prohibits the Seller Parent or any of the Transferred Subsidiaries from freely engaging in business anywhere in the world;
- (vi) agreement relating to any acquisition or disposition by the Seller Parent of any business (whether by asset or stock purchase or otherwise) or any merger, consolidation or similar business combination transaction, in each case, pursuant to which Seller Parent has an outstanding obligation to pay any material purchase price thereunder;
- (vii) agreement that involves any take-or-pay or requirements arrangement;
- (viii) agreement relating to any material joint venture or partnership;
- (ix) agreement that is a material Employee Benefit Plan;
- (x) agreement under which the Transferred Subsidiaries or any Asset Seller is expected to receive or pay in excess of \$500,000 in any twelve (12) month period; or

(xi) agreement in writing to enter into any of the foregoing.

(b) Subject to requisite Bankruptcy Court approvals, and assumption by the applicable Seller of the applicable Contract in accordance with applicable Law (including satisfaction of any applicable Cure Costs by Buyer in accordance with the terms of this Agreement) and except as a result of the commencement of the Bankruptcy Case, each of the agreements listed on Section 3.16(a) of the Disclosure Schedules and each of the Leases is in full force and effect and is a valid, binding and enforceable obligation of the Sellers and the Transferred Subsidiaries and, to the Knowledge of the Sellers, each of the other parties thereto, except as may be limited by the Enforceability Exceptions. Except as set forth on Section 3.16(a) of the Disclosure Schedules, as a result of the commencement of the Bankruptcy Case or as would not reasonably be expected to have a Material Adverse Effect, neither the Seller Parent nor any of its Subsidiaries, as applicable, is in material default, or is alleged in writing by the counterparty thereto to have materially breached or to be in material default, under any Lease or agreement listed on Section 3.16(a) of the Disclosure Schedules, and, to the Knowledge of the Sellers, the other party to each Lease or each of the agreements listed on Section 3.16(a) of the Disclosure Schedules is not in material default thereunder. The Seller Parent has made available to Buyer complete and correct copies of all agreements required to be listed on Section 3.16(a) of the Disclosure Schedules and all Leases, each as amended to the date hereof. None of the agreements listed on Section 3.16(a) of the Disclosure Schedules or any of the Leases has been canceled or otherwise terminated, and neither the Seller Parent, nor its Subsidiaries, has received any written notice from any Person regarding any such cancellation or termination.

**Section 3.17 Anti-Corruption & International Risk.** Each Transferred Subsidiary, and, to the Knowledge of the Sellers, all directors, officers, employees and Affiliates of such Transferred Subsidiary, are in compliance in all material respects with Anti-Corruption Laws and Global Trade Laws. No Transferred Subsidiary, nor, to the Knowledge of the Sellers, any of such Transferred Subsidiaries' directors, officers, employees agents or Affiliates, is the subject of any investigations, reviews, audits, or inquiries by a Governmental Authority related to Anti-Corruption Laws or Global Trade Laws, and, to the Knowledge of the Sellers, no investigation, review, audit, or inquiry by any Governmental Authority with respect to Anti-Corruption Laws or Global Trade Laws is pending or threatened, in each case, except for such investigations, reviews, audits or inquiries that would not reasonably be expected to have a Material Adverse Effect.

(a) Except as would not reasonably be expected to have a Material Adverse Effect, each Transferred Subsidiary, and, to the Knowledge of the Sellers, all of such Transferred Subsidiary's directors, officers, employees, agents and Affiliates, are not engaged in, and have not been engaged in, directly or knowingly indirectly, any business or dealings with, or used any corporate funds in violation of Law to contribute to or finance the activities of, any Person in any Restricted Country.

**Section 3.18 Affiliate Transactions.** To the Knowledge of the Sellers, no Affiliate of the Business (other than the Sellers or the Transferred Subsidiaries), or any officer or director of the Sellers or the Transferred Subsidiaries (a) is a party to any agreement or transaction with the Sellers or the Transferred Subsidiaries having a potential or actual value or a contingent or actual liability exceeding \$250,000, other than (i) loans and other extensions of credit to directors and officers of the Business and the Transferred Subsidiaries for travel, business or relocation

expenses or other employment-related purposes in the Ordinary Course of Business, (ii) employment arrangements in the Ordinary Course of Business and (iii) the Transferred Plans, (b) has any material interest in any material property used by the Sellers and the Transferred Subsidiaries or (c) owns any material interest in, or is an officer, director, employee or consultant of, any Person which is, or is engaged in business as a Material Supplier or Material Customer.

**Section 3.19 Insurance.** Section 3.19 of the Disclosure Schedules lists, as of the date hereof, each material insurance policy maintained by Seller Parent and its Subsidiaries on their properties, assets, products, business or personnel. With respect to each such insurance policy and except as a result of the commencement of the Bankruptcy Case or except as would not reasonably be expected to have a Material Adverse Effect, the policy is legal, valid, binding, enforceable on Seller Parent or its Subsidiaries, as applicable, and in full force and effect, and all premiums with respect thereto covering all periods up to and including the date hereof have been paid, and to the Knowledge of the Sellers, no notice of cancellation, termination or denial of coverage for any material claim has been received with respect to any such insurance policy.

**Section 3.20 Brokers.** Except as set forth on Section 3.20 of the Disclosure Schedules, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of the Sellers or the Transferred Subsidiaries.

**Section 3.21 Customers and Suppliers.**

(a) Section 3.21(a) of the Disclosure Schedules sets forth a complete and accurate list of the five (5) largest customers (measured by revenue) of the Transferred Subsidiaries and Asset Sellers (collectively, the "Material Customers") for the twelve (12) month period ended December 31, 2019. Except as disclosed on Section 3.21(a) of the Disclosure Schedules, or as would not reasonably be expected to have a Material Adverse Effect, (i) no customer that was billed more than \$500,000 during the preceding 12-month period has materially reduced, or indicated in writing its present intention to materially reduce, its business with any Transferred Subsidiary from the current levels or amounts of such business, and (ii) no Transferred Subsidiary or Asset Seller has received any written notice or communication to the effect that (A) any such customer has cancelled or terminated, or presently intends to cancel or terminate, its relationship with any Transferred Subsidiary or Asset Seller, or (B) any such customer intends to amend any material terms of any Material Contract with any Transferred Subsidiary or Asset Seller, or cease to purchase from or use the services of, or substantially reduce purchases from or the use of services of any Transferred Subsidiary or Asset Seller.

(b) Section 3.21(b) of the Disclosure Schedules sets forth a complete and accurate list of the five (5) largest vendors and suppliers (measured by fees paid or payable) of the Transferred Subsidiaries and Asset Sellers (collectively, the "Material Suppliers") for the twelve (12) month period ended December 31, 2019. Except as disclosed on Section 3.21(b) of the Disclosure Schedules, or as would not reasonably be expected to have a Material Adverse Effect, (i) no vendor or supplier for which any Transferred Subsidiary or Asset Seller was invoiced more than \$500,000 during the preceding 12-month period has materially reduced, or, indicated in writing its intention to materially reduce, its business with any Transferred Subsidiary or Asset Seller, or (ii) no Transferred Subsidiary has received any written notice or written communication

to the effect that (A) any such vendor or supplier has cancelled or terminated, or presently intends to cancel or terminate, its relationship with any Transferred Subsidiary or Asset Seller, (B) any such vendor or supplier intends to amend any material terms of any Material Contract with any Transferred Subsidiary or Asset Seller, cease to sell to, or substantially reduce sales to, any Transferred Subsidiary or Asset Seller, or (C) except in the ordinary course of business consistent with past practice, any such vendor or supplier has increased or will increase the prices it charges any Transferred Subsidiary or Asset Seller or has reduced, will reduce or has threatened to reduce the discounts it offers to any Transferred Subsidiary or Asset Seller.

### **Section 3.22 Product Warranty; Product Liability.**

(a) Each product designed, manufactured or sold by or on behalf of the Transferred Subsidiaries (collectively, the “Products”) is, and since January 1, 2015 has been, designed, manufactured and sold in conformity in all material respects with the specifications and standards required by or contained in any contracts, agreements or purchase orders for such Products.

(b) No Transferred Subsidiary has any material Liability (and, to the Knowledge of the Seller, there is no basis for any present action giving rise to any such Liability) arising out of any injury to any individual or property as a result of any Products provided by any Transferred Subsidiary, and no Person has asserted a written claim alleging that any Transferred Subsidiary is responsible for any material Liability arising out of any injury to individuals or property caused by any Product.

(c) There have been no material voluntary or involuntary product recalls, field fix or retrofit campaigns involving any Product designed or manufactured by or on behalf of any Transferred Subsidiary since January 1, 2018.

(d) Since January 1, 2018, no Transferred Subsidiary (i) has been subject to a Governmental Authority shutdown or import or export prohibition or (ii) has received from any Governmental Authority any written notice of inspectional observations, “warning letters,” “untitled letters” or requests or requirements to make changes to Product processes or procedures, in each case as would not reasonably be expected to have a Material Adverse Effect.

**Section 3.23 Exclusivity of Representations and Warranties.** None of the Sellers, the Transferred Subsidiaries or any of their Affiliates or Representatives is making, and none of the Buyer or any of its Affiliates or Representatives is relying on, any representation or warranty of any kind or nature whatsoever, oral or written, express or implied (including any relating to financial condition or results of operations of the Business or maintenance, repair, condition, design, performance, value, merchantability or fitness for any particular purpose of the Transferred Assets), except as expressly set forth in this Article III (as modified by the Disclosure Schedules), and the Sellers hereby disclaim all Liability and responsibility whatsoever for any such other representations or warranties, including any representation, warranty, projection, forecast, statement or information made, communicated or furnished (orally or in writing) to Buyer or its Affiliates or Representatives (including any opinion, information, projection or advice that may have been or may be provided to Buyer by any director, officer, employee, agent, consultant or Representative of Sellers or any of their Affiliates). Except as expressly set forth herein, the

condition of the Transferred Assets shall be “as is”, “where is” and “with all faults” and the Sellers make no warranty of merchantability, suitability, adequacy, fitness for a particular purpose or quality with respect to the Business and any of the Transferred Assets or as to the condition or workmanship thereof or the absence of any defects therein, whether latent or patent. The Sellers are not, directly or indirectly, and no other Person on behalf of the Sellers is, making any representations or warranties regarding any *pro-forma* financial information, financial projections or other forward-looking prospects, risks or statements (financial or otherwise) of the Business, the Transferred Assets or the Transferred Subsidiaries made, communicated or furnished (orally or in writing) to Buyer or its Affiliates or their respective Representatives (including any opinion, information, projection or advice in any management presentation or the confidential information memorandum provided to Buyer and its Affiliates and their respective Representatives), and the Sellers hereby disclaim all Liability and responsibility for any such information and statements. It is understood that any due diligence materials made available to Buyer or its Affiliates or their respective Representatives do not, directly or indirectly, and shall not be deemed to, directly or indirectly, contain representations or warranties of the Sellers or its Affiliates or their respective Representatives. Nothing contained herein shall limit Buyer’s ability to make a claim against the Sellers for Fraud.

#### **ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF THE BUYER**

The Buyer represents and warrants to the Sellers as follows:

**Section 4.1 Organization.** The Buyer is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization and has all necessary corporate (or equivalent) power and authority to perform its obligations hereunder and under any Ancillary Agreement.

**Section 4.2 Authority.** The Buyer has the corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Buyer of this Agreement and each of the Ancillary Agreements to which it will be a party and the consummation by the Buyer of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action and this Agreement has been, and upon its execution each of the Ancillary Agreements to which the Buyer will be a party will have been, duly executed and delivered by the Buyer and assuming due execution and delivery by each of the other parties hereto and thereto, this Agreement constitutes, and upon its execution each of the Ancillary Agreements to which the Buyer will be a party will constitute, the legal, valid and binding obligations of the Buyer, enforceable against the Buyer in accordance with its respective terms, except as enforcement may be limited by the Enforceability Exceptions.

**Section 4.3 No Conflict; Required Filings and Consents.**

(a) The execution, delivery and performance by the Buyer of this Agreement and each of the Ancillary Agreements to which the Buyer will be a party, and the consummation

of the transactions contemplated hereby and thereby, or compliance by the Buyer with any of the provisions hereof, do not and will not:

(i) conflict with or violate the certificate of incorporation or bylaws or other similar organizational documents of such Buyer;

(ii) conflict with or violate any Law applicable to such Buyer or by which any property or asset of such Buyer is bound or affected;

(iii) conflict with or violate any Order of any Governmental Authority;  
or

(iv) conflict with, result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, or give rise to a right of termination, modification, notice or cancellation or require any consent of any Person pursuant to, any Contract to which the Buyer is a party;

except, in the case of clause (ii), (iii) or (iv), for any such conflicts, violations, breaches, defaults or other occurrences that would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect.

(b) The Buyer is not required to file, seek or obtain any notice, authorization, approval, order, permit or consent of or with any Governmental Authority in connection with the execution, delivery and performance by the Buyer of this Agreement and each of the Ancillary Agreements to which it will be a party or the consummation of the transactions contemplated hereby or thereby, except (i) for any filings required to be made under the HSR Act or Foreign Competition Laws or (ii) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect.

**Section 4.4 Investment Intent.** The Buyer acknowledges that neither the offer nor the sale of the Transferred Stock has been registered under the Securities Act of 1933 (together with the rules and regulations promulgated thereunder, the “Securities Act”) or under any state or foreign securities Laws. The Buyer is acquiring the Transferred Stock for its own account for investment, without a view to, or for a resale in connection with, the distribution thereof in violation of the Securities Act or any applicable state or foreign securities Laws and with no intention of distributing or reselling any part thereof. Buyer acknowledges that the Transferred Stock may not be transferred, sold, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act and any other provision of applicable state securities Laws or pursuant to an applicable exemption therefrom. Buyer acknowledges that there is no public market for the Transferred Stock and that there can be no assurance that a public market will develop. Buyer understands that the acquisition of the Transferred Assets and the Transferred Stock to be acquired by it pursuant to the terms of this Agreement involves substantial risk. Buyer and its Affiliates have experience as an investor in securities and equity interests of companies such as the ones being transferred pursuant to this Agreement, and Buyer can bear the economic risk of its investment (which may be for an indefinite period) and has such knowledge and experience in financial or business matters that Buyer is capable of evaluating the merits and

risks of its investment in the Transferred Assets and the Transferred Stock to be acquired by it pursuant to the transactions contemplated hereby.

**Section 4.5 Brokers.** No broker, finder or investment banker is entitled to any fee, commission or expense from the Buyer that would be payable by the Sellers in connection with the transactions contemplated hereby.

**Section 4.6 No Litigation.** There are no Actions pending or, to the Buyer's knowledge, threatened against or affecting the Buyer that challenge or seek to prevent, enjoin or otherwise delay the consummation of the transactions contemplated by this Agreement.

**Section 4.7 Credit Bid Direction.** Certain of the lenders to the DIP Credit Agreement, as holders of a majority of the outstanding DIP Credit Agreement Indebtedness, delivered to the Buyer, on or prior to the date hereof, a direction letter to fully authorize the Buyer to, among other things, enter into and perform and comply with this Agreement and consummate the transactions contemplated hereby, including the Credit Bid.

**Section 4.8 Financing.** The Buyer will have at the Closing sufficient unrestricted funds in an aggregate amount necessary to pay the Purchase Price, to perform the Assumed Liabilities as they become due in accordance with their terms and to consummate all of the other transactions contemplated by this Agreement. The obligations of Buyer under this Agreement are not contingent upon the availability of financing.

**Section 4.9 Buyer's Investigation and Non-Reliance.** The Buyer is a sophisticated purchaser and has made its own independent investigation, review and analysis regarding the Business, the Transferred Subsidiaries, the Transferred Assets, the Assumed Liabilities and the transactions contemplated hereby, which investigation, review and analysis was conducted by the Buyer together with expert advisors, including legal counsel, that it has engaged for such purpose. The Buyer and its Representatives have been provided with reasonable access to the Representatives, properties, offices, plants and other facilities, books and records of the Sellers and the Transferred Subsidiaries relating to the Business and other information that they have requested in connection with their investigation of the Business, the Transferred Subsidiaries, the Transferred Assets, the Assumed Liabilities and the transactions contemplated hereby. None of the Sellers, the Transferred Subsidiaries or any of their Affiliates or Representatives has made, and none of the Buyer or any of its Affiliates or Representatives is relying on, any representation or warranty, express or implied, as to the accuracy or completeness of any information concerning the Business, the Transferred Subsidiaries, the Transferred Assets or the Assumed Liabilities contained herein or made available in connection with the Buyer's investigation of the foregoing, except as expressly set forth in Article III (as modified by the Disclosure Schedules). The Buyer acknowledges that, should the Closing occur, the Buyer shall acquire the Business, the Transferred Subsidiaries and the Transferred Assets without any surviving representations or warranties, on an "as is", "where is" and "with all faults" basis. In entering into this Agreement, Buyer acknowledges that it has relied solely upon the aforementioned investigation, review and analysis and not on any factual representation, warranty, inducement, promise, understanding, omission, condition or opinion of the Sellers or any of its Affiliates or their respective Representatives (except the specific representations and warranties of the Sellers set forth in Article III, in each case, as qualified by the Disclosure Schedules). Buyer acknowledges and agrees, to the fullest extent permitted by Law,

that none of the Sellers, Seller Parent or any of their respective directors, officers, employees, equityholders, members, Affiliates, controlling Persons, agents, advisors, Representatives or any other Person shall have any Liability or responsibility whatsoever to Buyer or its directors, officers, employees, Affiliates, controlling Persons, agents or Representatives on any basis (including in contract, tort or equity, under federal or state securities Laws or otherwise) based upon any information provided or made available, or statements made (including set forth in management summaries relating to the Business provided to Buyer, in materials furnished in the Sellers' data site (virtual or otherwise), in presentations by the Sellers' management or otherwise), to Buyer or its directors, officers, employees, Affiliates, controlling Persons, advisors, agents or Representatives (or any omissions therefrom). Nothing contained herein shall limit Buyer's ability to make a claim against the Sellers for Fraud.

## **ARTICLE V. BANKRUPTCY COURT MATTERS**

### **Section 5.1    Bankruptcy Actions.**

(a)    Competing Transaction. This Agreement is subject to approval of the procedures set forth in the Sale Procedures Order, including with respect to payment of the Expense Reimbursement Amount, and the consideration by Sellers of higher or better Competing Bids in respect of all or any part of the Transferred Assets and/or the Transferred Subsidiaries in accordance with the Sale Procedures Order. From the date hereof (and any prior time) and until the Closing, Sellers are permitted to and to cause their Representatives and Affiliates to, initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Buyer and its Affiliates and Representatives) in connection with a Competing Bid, including, to (and to cause their Representatives and Affiliates to) respond to any inquiries or offers to purchase all or any part of the Transferred Assets, (including supplying information relating to the Business and the assets of Sellers to prospective purchasers).

### **(b)    Bankruptcy Court Filings.**

(i)    As soon as reasonably practicable following the execution of this Agreement and the commencement of the Bankruptcy Cases, the applicable Sellers shall file with the Bankruptcy Court a motion seeking entry of the Sale Procedures Order (which shall, among other things, establish procedures for the conduct of the Auction, and to determine Cure Costs for the Transferred Contracts), and shall diligently prosecute such motion. Buyer agrees that it will promptly take such actions as are reasonably requested by the applicable Sellers to assist in obtaining entry of the Sale Procedures Order. In the event the entry of the Sale Procedures Order shall be appealed, the applicable Sellers and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

(ii)    Provided Buyer is selected as the winning bidder in respect of the Transferred Assets and the Transferred Subsidiaries at the Auction, if any, undertaken in accordance with the Sale Procedures Order, or if no Competing Bid is submitted with respect to the Transferred Assets and the Transferred Subsidiaries, Sellers shall diligently seek entry of the Sale Order and any other necessary orders to close the sale of the Transferred Assets and the Transferred Subsidiaries (the "Related Orders") by the Bankruptcy Court in accordance with the



terms and conditions of the Sale Procedures Order. Buyer and Sellers understand and agree that the consummation of the transactions contemplated by this Agreement is subject to approval by the Bankruptcy Court. Buyer agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Sale Order and any Related Orders including a finding of adequate assurance of future performance by Buyer, including by furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a “good faith” purchaser under section 363(m) of the Bankruptcy Code. Buyer shall not, without the prior written consent of Seller Parent, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Transferred Assets and the Transferred Subsidiaries hereunder. In the event the entry of the Sale Order shall be appealed, Sellers and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

(iii) The applicable Sellers shall file such motions or pleadings, in form and substance reasonably acceptable to Buyer, as may be appropriate or necessary to assume and assign the Transferred Contracts and to determine the amount of the Cure Costs; provided, that nothing herein shall preclude Sellers from filing such motions, including upon commencement of the Bankruptcy Cases, to reject any Contracts that are not Transferred Contracts.

(c) Back-up Bidder. Sellers and Buyer agree that, in the event that Buyer is not the winning bidder at the Auction, if and only if (i) Buyer submits the second highest or second best bid at the Auction for the Transferred Assets and the Transferred Subsidiaries which is memorialized by an acceptable agreement incorporating terms established at the Auction, or the terms of this Agreement constitute the second highest or best bid for the Transferred Assets and the Transferred Subsidiaries, and (ii) Sellers give written notice to Buyer on or before the date that is twenty-eight (28) days from the entry of an Order of the Bankruptcy Court approving the winning bidder’s definitive agreement, stating that Sellers (A) failed to consummate the sale of the Transferred Assets and/or the Transferred Subsidiaries with the winning bidder, and (B) terminated the purchase agreement with the winning bidder, so long as Buyer has not previously terminated this Agreement in accordance with its terms, Buyer shall promptly consummate the transactions contemplated hereby upon the terms and conditions as set forth herein, or as set forth on the record of the Auction, including the Purchase Price, as the same may be increased by Buyer at the Auction.

## ARTICLE VI. COVENANTS

**Section 6.1** Conduct of Business Prior to the Closing. From the date of this Agreement until the Closing Date or earlier termination of this Agreement, except (1) as otherwise expressly contemplated by this Agreement, (2) as required by Law or any Order or any Contract to which Sellers or any of the Transferred Subsidiaries are bound, (3) as required or prohibited pursuant to a Bankruptcy Court Order or the Bankruptcy Code or the DIP Credit Agreement, (4) with the prior written consent of the Buyer (which consent shall not be unreasonably withheld, conditioned or delayed) or (5) as set forth on Section 6.1 of the Disclosure Schedules; provided, that the consent of the Buyer shall be deemed to have been given if the Buyer does not object

within seven (7) Business Days from the date on which request for such consent is provided in writing to Buyer) or the approval of the Bankruptcy Court,

(a) the Sellers shall, and shall cause the Transferred Subsidiaries to use commercially reasonable efforts to (x) conduct the Business in the Ordinary Course of Business, (y) preserve the material business relationships with customers, suppliers, distributors and others with whom the Sellers or the Transferred Subsidiaries deal in the Ordinary Course of Business; and (z) Sellers shall maintain the Transferred Assets in reasonably good operating condition (normal wear and tear excepted);

(b) the Sellers shall not, and shall cause the Transferred Subsidiaries not to, undertake any of the following:

(i) sell, transfer, lease, sublease, encumber or otherwise dispose of (1) any material Transferred Assets or (2) any material assets of a Transferred Subsidiary, in each case other than immaterial dispositions thereof and Inventory sold or disposed of in the Ordinary Course of Business;

(ii) issue, sell, grant, pledge, dispose or transfer any equity interests in any Seller or Transferred Subsidiary;

(iii) acquire any corporation, partnership, limited liability company, other business organization or division thereof;

(iv) merge or consolidate with or into any legal entity, dissolve, liquidate or otherwise terminate its existence;

(v) split, combine, consolidate, subdivide or reclassify any of the Transferred Subsidiaries' capital stock, other equity interests or voting securities, or securities convertible into or exchangeable or exercisable for capital stock or other equity interests or voting securities, or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for its capital stock, other equity interests or voting securities or enter into silent partnership agreements granting the silent partner entitlements to its proceeds;

(vi) declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect of any securities of any Transferred Subsidiary or Seller, or repurchase, redeem or otherwise acquire, or offer to repurchase, redeem or otherwise acquire, any capital stock or voting securities of, or equity interests in, any Transferred Subsidiary or Seller or any securities of any Transferred Subsidiary or Seller convertible into or exchangeable or exercisable for capital stock or voting securities of, or equity interests in, any Transferred Subsidiary or Seller, or any warrants, calls, options or other rights to acquire any such capital stock, securities or interests, other than any transfers among Transferred Subsidiaries, among Sellers, or between any Transferred Subsidiary and any Seller;

(vii) amend the certificate of incorporation, bylaws or comparable organizational documents of any Seller or Transferred Subsidiary in a manner that would reasonably be expected to materially delay or impede the Sellers' ability to consummate the transactions contemplated hereby;

(viii) enter into any joint venture agreement that involves a sharing of profits, cash flows, expenses or losses with other Persons related to or affecting the Business, the Transferred Assets or the Transferred Subsidiaries;

(ix) amend or modify (other than by automatic extension or renewal) or terminate (other than by expiration in accordance with its terms) any Material Contract or enter into a Contract which, had it been entered into prior to the date hereof, would have been a Material Contract;

(x) take any action (other than any actions required by the Bankruptcy Court or applicable Law) in breach of the Sale Procedures or the Sale Order;

(xi) (1) reject or terminate (other than by expiration in accordance with its terms) any Material Contract or seek Bankruptcy Court approval to do so, or (2) fail to use commercially reasonable efforts to oppose any action by a third party to so terminate (including any action by a third party to obtain Bankruptcy Court approval to terminate) any Material Contract, except in each case, to the extent the Buyer has indicated in writing that it wishes the Sellers to reject such Contract;

(xii) with respect to any Transferred Asset (1) agree to allow any form of relief from the automatic stay in the Bankruptcy Cases; or (2) fail to use commercially reasonable efforts to oppose any action by a third party to obtain relief from the automatic stay in the Bankruptcy Cases;

(xiii) solely with respect to the Transferred Subsidiaries, Transferred Assets or the Business, change, make or revoke any Tax election, change any method of accounting with respect to Taxes, file any amended Tax Return, surrender or compromise any right to claim a Tax refund, settle or compromise any claim, notice, audit, assessment or other proceeding related to Taxes, enter into any agreement affecting any Tax Liability or any refund or file any request for rulings or special Tax incentives with any Governmental Authority, enter into any Tax allocation, sharing or indemnity agreement (in each case, if the subject matter thereof primarily relates to Taxes), or extend or waive the statute of limitations period applicable to any Tax or Tax Return;

(xiv) make any change in any method of accounting or accounting practice or policy, except as required by applicable Law or GAAP;

(xv) fail to maintain in full force and effect existing insurance policies;

(xvi) make any loans, advances or capital contributions to, or investments in, any other Person (other than to a Seller or Transferred Subsidiary);

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

(xviii) subject any of the Transferred Assets to any Encumbrance, other than Permitted Encumbrances;

(xix) incur any indebtedness for borrowed money, enter into any capital lease or guarantee any such indebtedness, in each case that would constitute an Assumed Liability;

(xx) enter into any commitment for capital expenditures, except to the extent permitted under the terms of the Sellers' debtor-in-possession financing;

(xxi) except as required under the terms of any Employee Benefit Plan, with respect to Business Employees, (1) make or grant any general or special wage or salary increase (other than merit increases consistent with past practice within the past three years), (2) make any material increase in the payment of benefits under any Employee Benefit Plan, (3) take any action with respect to the grant of any material severance or termination pay (other than pursuant to policies, agreements or arrangements in effect on the date of this Agreement) which will become due, (4) adopt, amend or terminate any Employee Benefit Plan, other than in the Ordinary Course of Business and consistent with past practice, and (5) enter into any material employment, consulting or similar agreement or materially amend any existing employment agreement, or

(xxii) agree or commit to any of the foregoing.

#### **Section 6.2 Covenants Regarding Information.**

(a) From the date hereof until the Closing Date or earlier termination of this Agreement, upon reasonable request, the Sellers shall afford the Buyer and its Representatives, at Buyer's sole expense, reasonable access to make investigation of the properties, offices, plants and other facilities, books and records (including Tax books and records) of the Sellers and the Transferred Subsidiaries, and shall furnish the Buyer with such financial, operating and other data and information, and reasonable access to all the officers, employees, accountants and other Representatives of the Sellers and the Transferred Subsidiaries to the extent Buyer may reasonably request and to make extracts and copies of such books and records; provided, that any such investigation shall be conducted during normal business hours upon prior notice and advanced written consent of Seller Parent (such consent not to be unreasonably withheld, conditioned or delayed) under the supervision of the Sellers' personnel and in such a manner as not to unreasonably interfere with the normal operations of the Transferred Subsidiaries. Notwithstanding anything to the contrary in this Agreement, the Sellers shall not be required to disclose any information to the Buyer or its Representatives if such disclosure (i) would violate applicable Law, including Antitrust Laws and data protection Laws, rules or regulations or the terms of any Contract to which the Sellers or any Transferred Subsidiaries are party (including confidentiality obligations) or (ii) would adversely affect any attorney-client or other legal privilege or contravene any applicable Laws (the "Disclosure Limitations"); provided that the Parties shall reasonably cooperate in seeking to find a way to allow disclosure of such information to the extent doing so would not (in the good faith belief of the Sellers after consultation with outside counsel) reasonably be likely to cause such violation to occur or such privilege to be undermined with respect to such information. The information provided pursuant to this **Error! Reference source not found.** will be used solely for the purposes of effecting the transactions contemplated hereby. No Seller makes any representation or warranty as to the accuracy of any information provided pursuant to this **Error! Reference source not found.** Except as otherwise contained in this Agreement, the Sellers shall not be required to provide to Buyer any information

relating to bids received from other Persons in connection with the Auction and information and analysis (including financial analysis) relating to such bids. Prior to the Closing, without the prior written consent of Seller Parent, which may be withheld for any reason, Buyer shall have no right to perform invasive or subsurface investigations of the Real Property.

(b) From the date hereof until the Closing Date or earlier termination of this Agreement, the Sellers shall use, and shall cause the Transferred Subsidiaries to use, commercially reasonable efforts to cause their respective directors and officers to, on a reasonably timely basis, cooperate as reasonably requested by the Buyer and/or any potential lender to assist the Buyer in connection with any debt financing entered into in connection with the transactions contemplated by this Agreement, including (i) requesting its certified independent auditors to provide auditors' reports and customary comfort letters with respect to financial information relating to the Sellers or the Transferred Subsidiaries in customary form, (ii) directing appropriate personnel of the Sellers or the Transferred Subsidiaries to participate at reasonable times in a reasonable number of sessions with prospective lenders, (iii) furnishing the Buyer and such potential lenders, as promptly as reasonably practicable, with such customary financial and other pertinent information regarding the Sellers or the Transferred Subsidiaries as may be reasonably requested by the Buyer in connection with such financing, (iv) assisting in the preparation of definitive financing documents, including guarantee and collateral documents and customary closing certificates as may be reasonably required by such financing and (v) providing customary documentation and other information about the Sellers or the Transferred Subsidiaries reasonably requested by the Buyer or such potential lenders in connection with such financing and required under applicable "know your customer," sanctions and anti-money-laundering rules and regulations); provided, that the Sellers shall not be required to provide, or cause the Transferred Subsidiaries to provide, cooperation under this Section 6.2(b) that: (1) unreasonably interferes with the normal operations of the Transferred Subsidiaries; (2) causes any representation, warranty covenant or agreement in this Agreement to be breached; or (3) causes any closing condition set forth in Article VIII to fail to be satisfied or otherwise causes the breach of this Agreement or any Contract to which any Transferred Subsidiary is a party or the breach prior to Closing of any Material Contract; and, provided, further, the effect of any such breach shall be excluded when determining if the conditions set forth in Sections 8.3(a) and 8.3(b) are satisfied. None of the Sellers or any Transferred Subsidiary shall be required to execute prior to the Closing any definitive financing documents, including any credit or other agreements, pledge or security documents, or other certificates, legal opinions or documents in connection with such financing, except to the extent any such documents shall be subject to the consummation of the transactions contemplated hereby at the Closing and such documents will not take effect until the Closing occurs and will not encumber the assets of any Transferred Subsidiary prior to the Closing. In no event shall the Sellers be in breach of this Agreement because of the failure to deliver any financial or other information that is not currently readily available to the Sellers on the date hereof or is not otherwise prepared in the Ordinary Course of Business at the time requested by Buyer or for the failure to obtain any comfort with respect to, or review of, any financial or other information by its accountants. Any and all reasonable and documented out-of-pocket costs and expenses incurred at the request of the Buyer in connection with any cooperation, investigation or other matter related to this Section 6.2(b) shall be borne by the Buyer.

(c) From and after the Closing, for a period of six (6) years following the Closing Date (or, if later, the closing of the Bankruptcy Case), the Buyer will provide the Sellers

and their Representatives, at Sellers' sole expense, with reasonable access, during normal business hours, and upon reasonable advance notice, subject to reasonable denials of access or delays to the extent any such access would unreasonably interfere with the operations of the Buyer or the Business, to the books and records, including work papers, schedules, memoranda, and other documents (for the purpose of examining and copying) relating to the Transferred Assets, the Excluded Assets, the Assumed Liabilities or the Excluded Liabilities with respect to periods or occurrences prior to the Closing Date, for the purposes of (i) complying with the requirements of any Governmental Authority, including the Bankruptcy Court, (ii) the closing of the Bankruptcy Cases and the wind down of the Sellers' estates (including reconciliation of claims), (iii) making insurance claims, (iv) complying with applicable Laws and (v) any Action to which any Seller is a party; provided that the Buyer shall not be obligated to provide any such access that would conflict with the Disclosure Limitations; provided, further, that the Parties shall reasonably cooperate in seeking to find a way to allow disclosure of such information to the extent doing so would not (in the good faith belief of the Buyer after consultation with outside counsel) reasonably be likely to cause such violation to occur or such privilege to be undermined with respect to such information. Unless otherwise consented to in writing by Seller Parent, the Buyer will not, for a period of six (6) years following the Closing Date (or, if later, the closing of the Bankruptcy Cases), destroy, alter or otherwise dispose of any of such books and records without first offering to surrender to Seller Parent such books and records or any portion thereof that the Buyer may intend to destroy, alter or dispose of, provided that the Buyer may dispose of books and records in accordance with its document retention policies which are offered to, but not accepted by, Seller Parent. From and after the Closing, the Buyer will, at Sellers' sole expense, provide Sellers with reasonable assistance, support and cooperation with Sellers' wind-down of the Sellers' operations and related activities (*e.g.*, helping to locate documents or information related to prosecution or processing of insurance/benefit claims). This Section 6.2(c) shall not apply with respect to Taxes.

**Section 6.3** Notification of Certain Matters. Each Party shall promptly notify the other Parties in writing of any fact, change, condition, circumstance or occurrence or nonoccurrence of any event of which it is aware that will or is reasonably likely to result in (a) any of the conditions set forth in Section 8.2(a)(i), Section 8.2(a)(ii), Section 8.2(b), Section 8.3(a), Section 8.3(a)(i) or Section 8.3(a)(ii) becoming incapable of being satisfied or (b) a Material Adverse Effect; provided, that failure to deliver any such notice by any Party shall not constitute a failure of the conditions to Closing set forth in Section 8.2 or Section 8.3 to be satisfied.

**Section 6.4** Employee Matters.

(a) Where applicable Law provides for the automatic transfer of employment of any Business Employee, including the Transferred Subsidiaries Employees, upon the consummation of the transactions contemplated hereby, the parties (i) shall take or cause to be taken such actions as are required under applicable Law to accomplish such transfer of employment of such Business Employee to Buyer or a Subsidiary of Buyer by operation of Law as of the Closing and (ii) shall not take and shall not cause to be taken any such actions that would reasonably be expected to result in the employment of such Business Employee not transferring to Buyer or a Subsidiary of Buyer by operation of Law as of the Closing.

(b) The Sellers shall retain all Liabilities relating to unpaid wages, salaries, commissions and other amounts, earned or accrued by or in respect of employees of the Asset Sellers.

(c) Nothing express or implied in this Section 6.4 or this Agreement shall (i) confer upon any Business Employee, or legal representative or beneficiary thereof, any rights or remedies, including any right to employment or benefits for any specified period, of any nature or kind whatsoever, under or by reason of this Agreement, (ii) be treated as an amendment to, or prevent the termination of any Employee Benefit Plan, or any other employee benefit plan, program, arrangement or agreement sponsored or maintained by the Buyer, the Sellers or their respective Affiliates, as applicable, or (iii) obligate the Buyer, the Sellers or any of their respective Affiliates to maintain any particular employee benefit plan, program or arrangement.

### Section 6.5 Consents and Filings; Further Assurances.

(a) Each of the Parties shall, and shall cause their Affiliates to, use reasonable best efforts to take, or cause to be taken, all appropriate action to do, or cause to be done, all things necessary, proper or advisable under applicable Law or otherwise to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements, including to use commercially reasonable efforts to obtain all necessary waivers, consents and approvals and effecting all necessary registrations and filings, including all necessary waivers, consents and approvals from customers and other parties. Without limiting the generality of the previous sentence, the Parties shall, and shall cause their Affiliates to, (i) use reasonable best efforts to obtain from Governmental Authorities all consents, approvals, authorizations, qualifications and orders as are necessary for the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements, as promptly as practicable, and in any event prior to the Outside Date; (ii) promptly, and in no event later than the fifth (5<sup>th</sup>) Business Day following the date hereof, make all necessary filings, and thereafter make any other required submissions, with respect to this Agreement required under the HSR Act or any other applicable Law, including any other Antitrust Law; (iii) use reasonable best efforts to comply at the earliest practicable date with any request under the HSR Act, or other Antitrust Law, for additional information, documents or other materials received by each of them or any of their respective Subsidiaries from the Federal Trade Commission, the Antitrust Division of the United States Department of Justice or any other Governmental Authority in respect of such filings (collectively, an “Antitrust Authority”); (iv) cooperate with each other in connection with any such filing or request (including, to the extent permitted by applicable Law, providing copies of all such documents to the non-filing parties prior to filing and considering all reasonable additions, deletions or changes suggested in connection therewith) and in connection with resolving any investigation or other inquiry of any of the Antitrust Authorities under the HSR Act or Foreign Competition Law with respect to any such filing; (v) not extend any waiting period under the HSR Act or enter into any agreement with an Antitrust Authority not to consummate the transactions contemplated hereby; (vi) defend and resolve any investigation or other inquiry of any Governmental Authority under all applicable Laws, including by defending against and contesting administratively and in court any litigation or adverse determination initiated or made by a Governmental Authority under applicable Law. This Section 6.5(a) does not apply with respect to Taxes.

(b) Each of the Parties shall promptly notify the other Parties of any material communication it or any of its Affiliates receives from any Governmental Authority relating to the matters that are the subject of this Agreement and, subject to applicable Law, if practicable, permit the other Parties to review in advance any proposed communication by such Party to any Governmental Authority and consider in good faith and incorporate the other Parties' reasonable comments. No Party shall agree to participate in any substantive meeting or discussion with any Governmental Authority in respect of any filings, investigation or other inquiry unless it consults with the other Parties in advance and, to the extent permitted by such Governmental Authority, gives the other Parties the opportunity to attend and participate at such meeting. The Parties will coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other Parties may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods, including under the HSR Act. Subject to applicable Law, the Parties will provide each other with copies of all correspondence, filings or communications between them or any of their Representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to this Agreement and the transactions contemplated hereby. This Section 6.5(b) does not apply with respect to Taxes.

(c) In furtherance, and without limiting any, of the covenants and agreements under Section 6.5(a) and Section 6.5(b), each Party shall, and shall cause its Affiliates to, take all actions necessary, proper or advisable to (i) avoid or eliminate each and every impediment that may be asserted by a Governmental Authority related to any filings or consents contemplated by this Section 6.5, as soon as practicable and (ii) to enable the Closing to occur as soon as practicable and in any event prior to the Outside Date, in each case, which actions shall include (1) proposing, negotiating, committing to and effecting, by consent decree, hold separate order, settlement or otherwise, the sale, divestiture, licensing or disposition of any assets or businesses of the Buyer or its Affiliates (including, after the Closing, the Transferred Subsidiaries), (2) terminating existing relationships, contractual rights or obligations of the Buyer or its Affiliates (including, after the Closing, the Transferred Subsidiaries), (3) agreeing to any limitation on the conduct of the Buyer or its Affiliates (including, after the Closing, the Transferred Subsidiaries), (4) taking any other action as may be required by a Governmental Authority in order to obtain any consent thereof that is necessary, appropriate or advisable to consummate the Closing or avoiding the entry of, or having vacated, lifted, dissolved, reversed or overturned Legal Restraint, in each case, as soon as possible (each of the actions described in the foregoing clauses (1)–(4), a “Regulatory Concession”). Notwithstanding the foregoing, nothing in this Agreement shall require, or be construed to require, the Buyer or its Affiliates (including, after the Closing, the Transferred Subsidiaries), to make or agree to any Regulatory Concession, to the extent that it, individually or in the aggregate, would reasonably be expected to have a material adverse effect on the Buyer or its Affiliates, the Transferred Subsidiaries or the Business.

(d) From time to time, whether at or following the Closing, the Sellers and the Buyer shall execute, acknowledge and deliver all such further conveyances, notices, assumptions and releases and such other instruments, and shall take such further actions, as may be necessary or appropriate to vest in the Buyer all the right, title, and interest in, to or under the Transferred Assets, to provide the Buyer and the Sellers all rights and obligations to which they are entitled and subject pursuant to this Agreement and the Ancillary Agreements, and to otherwise make effective as promptly as practicable the transactions contemplated by this Agreement and the



Ancillary Agreements. Each of the Parties will use its commercially reasonable efforts to cause all of the obligations imposed upon it in this Agreement to be duly complied with and to cause all conditions precedent to such obligations to be satisfied.

(e) The Sellers and the Buyer shall cooperate with each other and, as promptly as practicable after the date of this Agreement use reasonable best efforts to obtain the transfer or reissuance to the Buyer of all Environmental Permits necessary to lawfully own and operate the Business and Transferred Assets. The Parties shall use reasonable best efforts to respond promptly to any requests for additional information made by such agencies, use their respective commercially reasonable efforts to participate in any hearings, settlement proceedings or other proceedings ordered with respect to applications to transfer or reissue such Environmental Permits, and use respective reasonable best efforts to cause regulatory approval to be obtained as soon as practicable after the date of filing. Each Party will bear its costs of the preparation and review of any such filing. The Sellers and the Buyer shall have the right to review in advance all characterizations of the information relating to the transactions contemplated by this Agreement which appear in any filings to transfer the Environmental Permits and the filing Party shall consider in good faith any revisions reasonably requested by the non-filing Party.

#### **Section 6.6    Refunds and Remittances.**

(a) After the Closing: (i) if the Sellers or any of their Affiliates receive any refund or other amount that is a Transferred Asset or is otherwise properly due and owing to the Buyer in accordance with the terms of this Agreement, the Sellers promptly shall remit, or shall cause to be remitted, such amount to the Buyer and (ii) if the Buyer or any of its Affiliates receive any refund or other amount that is an Excluded Asset or is otherwise properly due and owing to the Sellers or any of their Affiliates in accordance with the terms of this Agreement, the Buyer promptly shall remit, or shall cause to be remitted, such amount to the Sellers.

(b) In the event that, from and after the Closing, (i) Sellers or any of their Affiliates have retained ownership of a Transferred Asset as contemplated by this Agreement, then, for no additional consideration to the Sellers or any of their Affiliates, the Sellers shall, and shall cause their controlled Affiliates to, convey, assign or transfer promptly such Transferred Asset to the Buyer or its designees, and the Parties shall execute all other documents and instruments, and take all other lawful actions reasonably requested, in order to assign and transfer such Transferred Asset to the Buyer or its designees or (ii) any Excluded Asset has been conveyed to or is received by the Buyer, then, without any consideration payable to the Buyer or any of its Affiliates, the Buyer shall convey, assign or transfer promptly such Excluded Asset to the Sellers, and the Parties shall execute all other documents and instruments, and take all other lawful actions reasonably requested, in order to assign and transfer such Excluded Asset to Sellers or their designees. To the extent that Buyer receives any mail or packages addressed to Sellers not relating to the Transferred Assets or the Assumed Liabilities, Buyer shall promptly deliver such mail or packages to Sellers. To the extent Sellers receive any mail or packages addressed to Sellers but relating to the Transferred Assets or the Assumed Liabilities, Sellers shall promptly deliver such mail or packages to Buyer.

**Section 6.7    Public Announcements.** From and after the date hereof, the Parties shall consult with each other before making any press release or otherwise making any public

statements with respect to this Agreement or the transactions contemplated hereby, and neither the Buyer nor the Sellers shall make any press release or any public statement prior to obtaining Seller Parent's (in the case of the Buyer) or the Buyer's (in the case of the Sellers) written approval, which approval shall not be unreasonably withheld, conditioned or delayed, except that no such approval shall be necessary to the extent disclosure is made in any filing made to any court or may be required by applicable Law or by the Bankruptcy Court in connection with this Agreement; provided, that the Party intending to make such release shall use commercially reasonable efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Party with respect to the text thereof; provided, further, that nothing in this Agreement shall restrict or prohibit Sellers or the Transferred Subsidiaries from (i) making any announcement to their respective employees to the extent Sellers determine in good faith that such announcement is necessary or advisable or (ii) communicating with customers and other business relations in the Ordinary Course of Business.

**Section 6.8 Name Change.** The Sellers shall, as promptly as practicable (but in no event later than forty-five (45) days) after the Closing, cease using and displaying any Trademarks set forth in Section 6.8 of the Disclosure Schedules, and in accordance with such requirement, the Sellers shall use commercially reasonable efforts to, no later than thirty (30) days after the Closing, legally change their corporate and business names (to the extent such names include such Trademarks or a confusingly similar Trademarks) to names that are not confusingly similar to such Trademarks, and file notices of such name changes with the Bankruptcy Court. Under no circumstance shall the Sellers, after the Closing, use or otherwise exploit the Trademarks included in the Transferred Assets or any other indicia confusingly similar to the Trademarks included in the Transferred Assets, Copyrights included in the Transferred Assets, or any work substantially similar to the Copyrights included in the Transferred Assets, as a source identifier in connection with any Seller product, service or corporate, business or domain name. Notwithstanding the foregoing, the Sellers are not prohibited from using the Trademarks for non-trademark uses, including to factually describe their prior ownership of the Business, for internal business purposes, records and other historical or archived documents containing or referencing such Trademarks or in a manner that constitutes fair use under applicable Law. Any inadvertent non-permitted use of any Trademarks included in the Transferred Assets by Sellers after Closing shall not be a breach of this Section 6.8, provided that within thirty (30) days of Buyer discovering or becoming aware of such use, Sellers, or its Affiliate or sublicensee, as applicable, ceases such use or removes such Trademarks from such materials or destroys the applicable materials.

**Section 6.9 Assumed Liabilities; Adequate Assurance of Future Performance.** The Buyer will use commercially reasonable actions to provide the evidence required to establish that the Buyer can provide adequate assurance of future performance of the Transferred Contracts, including such affidavits, non-confidential financial information and other documents or information as may be necessary or desirable for filing with the Bankruptcy Court and making the Buyer's Representatives available to testify before the Bankruptcy Court.

**Section 6.10 Sale Free and Clear.** The Sellers acknowledge and agree, and the Sale Order shall be drafted to provide, without limitation, that, (a) on the Closing Date and concurrently with the Closing, all then existing Encumbrances against or created by the Sellers, any of their Affiliates, or the bankruptcy estate, to the fullest extent permitted by Section 363 of the Bankruptcy Code, shall be fully released from and with respect to the Transferred Assets and

(b) the Buyer is not a successor to any Seller or the bankruptcy estate by reason of any theory of law or equity, and the Buyer shall not assume or in any way be responsible for any Liability of the Sellers, any of their Affiliates and/or the bankruptcy estate, except as expressly provided in this Agreement. On the Closing Date, the Transferred Assets and Transferred Stock shall be transferred to the Buyer free and clear of all Encumbrances (other than Permitted Encumbrances) to the fullest extent permitted by Section 363 of the Bankruptcy Code.

**Section 6.11 Intellectual Property Registrations.** Upon the reasonable and specific request of Buyer, which shall be made no later than five (5) Business Days prior to the Closing Date, the Sellers shall use commercially reasonable efforts to effect the necessary change of ownership and records, effective as of the Closing Date, with all patent, trademark, and copyright offices and domain name registrars and other similar authorities (i) where Intellectual Property included in the Transferred Assets is still recorded in the name of legal predecessors of any Seller or any Person other than a Seller or (ii) where, to the Knowledge of the Sellers, the relevant records of the patent, copyright, and trademark offices, and domain name registrars, and other similar authorities, with respect to any Seller's Intellectual Property, are materially incorrect for any other reason.

**Section 6.12 Contact with Customers and Suppliers.** From the date hereof until the earlier to occur of the Closing and the date that this Agreement is validly terminated, Buyer shall not, and shall cause its Affiliates and Representatives not to, contact or communicate with the employees (other than the employees identified on Section 6.12 of the Disclosure Schedules), customers, potential customers or suppliers of the Business or any other Person having a business relationship with the Business concerning the Business or the transactions contemplated hereby without the prior written consent of Seller Parent, which will not be unreasonably withheld, delayed or conditioned.

**Section 6.13 Resignation of Directors and Officers.** The Sellers shall use commercially reasonable efforts to cause the officers and directors of the Transferred Subsidiaries identified by Buyer to Sellers prior to signing to deliver customary resignation letters effective as of the Closing.

**Section 6.14 Disclosure Schedules and Ancillary Agreements.** The Sellers and the Buyer shall work expeditiously and in good faith to finalize the Disclosure Schedules, the Assignment Agreement and the IP Assignment Agreement, each in a form that is reasonably acceptable to each of Seller Parent and the Buyer as soon as reasonably practicable and in any event prior to 11:59 p.m. New York Time on May 22, 2020.

## **ARTICLE VII. TAX MATTERS**

**Section 7.1 Transfer Taxes.** Any and all sales, harmonized sales, use, property transfer or gains, real estate or land transfer or gains, documentary, stamp, registration, recording, filing, goods and services or other similar Taxes payable solely as a result of the sale or transfer of the Transferred Stock or the Transferred Assets and the assumption of the Assumed Liabilities pursuant to this Agreement ("Transfer Taxes") shall (to the extent not subject to an exemption under the Bankruptcy Code) be borne 50% by the Sellers and 50% by the Buyer. The Sellers and

the Buyer shall use commercially reasonable efforts and cooperate in good faith to mitigate, reduce, or eliminate any such Transfer Taxes, and shall each sign and file (or cause its respective Affiliates to sign and file) all documentation with the relevant Governmental Authority relating to such Transfer Taxes as it may be required to sign or file under applicable Law. The Sellers shall prepare and file all necessary Tax Returns or other documents with respect thereto and shall promptly provide a copy of any such Tax Returns or other documents to the Buyer.

**Section 7.2 Tax Cooperation.** The Buyer and the Sellers agree to furnish or cause to be furnished to each other, upon reasonable request, as promptly as practicable, such information (including access to books and records relating to Taxes) and assistance relating to the Business, the Transferred Subsidiaries, the Transferred Assets and the Assumed Liabilities as is reasonably necessary for determining any Liability for Taxes, the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Governmental Authority and the prosecution or defense of any claim, suit or proceeding relating to any Tax; provided, however, that the Buyer shall not be required to disclose the contents of its Tax Returns to any Person. Any reasonable expenses incurred in furnishing such information or assistance pursuant to this Section 7.2 shall be borne by the Party requesting it.

**Section 7.3 Tax Returns / Tax Elections.** After the Closing, with respect to Tax Returns of the Transferred Subsidiaries for tax periods (i) ending on or prior to the Closing Date or (ii) that are Straddle Periods (in each case, (i) and (ii), “Seller Returns”), Buyer shall prepare such Seller Returns in accordance with applicable Law. The Buyer shall provide the Sellers with draft Seller Returns with respect to income Taxes for review and comment on or before twenty (20) days prior to the due date for such Seller Returns and Buyer shall consider the Sellers’ comments in good faith. No election under Section 338 or 336 of the Code shall be filed with respect to the purchase of the Transferred Subsidiaries.

**Section 7.4 Allocations.** With respect to a Straddle Period, Taxes and Tax liabilities with respect to the income, property or operations of the Business, Transferred Assets or Transferred Subsidiaries shall be apportioned between the period ending on and including the Closing Date and the period beginning after the Closing Date as follows: (i) in the case of Taxes other than income, sales and use and withholding Taxes, on a per-diem basis, and (ii) in the case of income, sales and use and withholding Taxes, as determined based on a closing of the books of the relevant entity on the Closing Date.

**Section 7.5 Bulk Sales.** Notwithstanding any other provisions in this Agreement, the Buyer and the Sellers hereby waive compliance with all “bulk sales,” “bulk transfer” and similar Laws that may be applicable with respect to the sale and transfer of any or all of the Transferred Assets to the Buyer.

## **ARTICLE VIII. CONDITIONS TO CLOSING**

**Section 8.1 General Conditions.** The respective obligations of the Buyer and the Sellers to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions, any of which may, to the extent permitted by applicable Law, be waived in writing by each of the Buyer and Seller

Parent in its sole discretion (provided that such waiver shall only be effective as to the obligations of such Party):

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law or Order (whether temporary, preliminary or permanent) that enjoins, restrains, makes illegal or otherwise prohibits the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements (any such Law or Order, a “Legal Restraint”).

(b) Any waiting period (and any extension thereof) under the HSR Act or any other Antitrust Law applicable to the transactions contemplated by this Agreement and the Ancillary Agreements shall have expired or shall have been terminated or the necessary clearance thereunder shall have been received and shall remain in full force and effect.

**Section 8.2** Conditions to Obligations of the Sellers. The obligations of the Sellers to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions, any of which may be waived in writing by Seller Parent in its sole discretion:

(a) Representations and Warranties.

(i) The representations and warranties of the Buyer set forth in Section 4.1, Section 4.2, Section 4.3(a)(i) and Section 4.5 (the “Buyer Fundamental Representations”) shall be true and correct in all respects as of date when made and as of the Closing Date (other than in the case of Buyer Fundamental Representations that are made as of a specified date, which representations and warranties shall be true and correct in all respects as of such specified date);

(ii) The representations and warranties of the Buyer contained in this Agreement (other than the Buyer Fundamental Representations) shall be true and correct as of the date when made and as of the Closing Date (other than in the case of representations and warranties that are made as of a specified date, which representations and warranties shall be true and correct in all material respects as of such specified date), without giving effect to any limitation or qualification by a materiality standard (including “in all material respects,” “material” or “Buyer Material Adverse Effect”) set forth therein, except for such failures to be true and correct that do not have or would not reasonably be expected to have, individually or in the aggregate, a Buyer Material Adverse Effect.

(b) The Buyer shall have, in all material respects, performed all obligations and agreements and complied with all covenants and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing.

(c) The Sellers shall have received the deliverables listed in Section 2.8(c).

(d) The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall be a Final Order.

(e) The Bankruptcy Court shall have approved and authorized the Buyer’s ability, pursuant to Section 363(k) of the Bankruptcy Code, to credit bid the Credit Bid Amount in satisfaction of the Purchase Price set forth in Section 2.7.

**Section 8.3** Conditions to Obligations of the Buyer. The obligations of the Buyer to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions, any of which may be waived in writing by the Buyer in its sole discretion:

(a) Representations and Warranties.

(i) Each Fundamental Representation shall be true and correct in all respects as of the date when made and as of the Closing Date (other than in the case of Fundamental Representations that are made as of a specified date, which Fundamental Representations shall be true and correct in all respects as of such specified date).

(ii) The representations and warranties of the Sellers contained in this Agreement (other than the Fundamental Representations) shall be true and correct as of the date when made and as of the Closing Date (other than in the case of representations and warranties that are made as of a specified date, which representations and warranties shall be true and correct as of such specified date), without giving effect to any limitation or qualification by a materiality standard (including “in all material respects,” “material” or “Material Adverse Effect”) set forth therein, except for such failures to be true and correct that do not have a Material Adverse Effect.

(b) The Sellers shall have, in all material respects, performed all obligations and agreements and complied with all covenants and conditions required by this Agreement to be performed or complied with by them prior to or at the Closing.

(c) The Buyer shall have received the deliverables listed in Section 2.8(b).

(d) A “Termination Date” (as defined in the DIP Credit Agreement) shall not have occurred and the indebtedness outstanding under the DIP Credit Agreement shall not have otherwise been paid off.

(e) The Bankruptcy Court shall have approved and authorized the Buyer’s ability, pursuant to Section 363(k) of the Bankruptcy Code, to credit bid the Credit Bid Amount in satisfaction of a portion of the Purchase Price as set forth in Section 2.7.

(f) The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall be a non-appealable Final Order.

(g) Sellers shall have delivered to Buyer the consents listed on Schedule 8.3(g) hereof.

**ARTICLE IX.  
TERMINATION**

**Section 9.1** Termination. This Agreement may be terminated at any time prior to the Closing:

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

(b) either Seller Parent or the Buyer, if:

(i) a Legal Restraint is in effect that has become final and nonappealable; provided that no Party may terminate this Agreement pursuant to this Section 9.1(b)(i) unless it has complied in all material respects with Section 6.5;

(ii) any Seller enters into a definitive agreement with respect to an Alternative Transaction because the Buyer is not the Successful Bidder at the Auction; provided, however, that if the Buyer is the Back-Up Bidder, then the Buyer may not terminate this Agreement pursuant to this Section 9.1(b)(ii) for a period of twenty-eight (28) days from the entry of an Order of the Bankruptcy Court approving such definitive agreement and the transactions contemplated thereby (for the avoidance of doubt, nothing in this Section 9.1(b)(ii) shall restrict the ability of the Buyer to terminate this Agreement in accordance with any other provision of this Agreement);

(iii) if (i) any Seller enters into one or more Alternative Transactions with one or more Persons other than Buyer or (ii) the Bankruptcy Court approves an Alternative Transaction other than with the Buyer;

(iv) the Closing shall not have occurred on or before the date that is ninety (90) days from the date hereof (the "Outside Date"); provided that the right to terminate this Agreement under this Section 9.1(b)(iv) shall not be available to any Party if such Party is then in material breach of this Agreement that is the cause of the failure of the Closing to occur prior to such date; provided, further, that the right to terminate this Agreement pursuant to this Section 9.1(b)(iv) shall not be available to any Party in the event that the other Party or Parties have initiated proceedings prior to the Outside Date to specifically enforce this Agreement which such proceedings are still pending;

(v) all of the Disclosure Schedules, the Assignment Agreement and the IP Assignment Agreement are not finalized in a form that is reasonably acceptable to each of Seller Parent and the Buyer by 11:59 p.m. New York Time on May 22, 2020.

(c) by the Buyer, if:

(i) the Buyer is not in material breach of this Agreement such that the conditions in Section 8.2(a) or Section 8.2(b) would not be satisfied, and the Sellers breach or fail to perform in any respect any of their representations, warranties or covenants contained in this Agreement and such breach or failure to perform (1) would give rise to the failure of a condition set forth in Section 8.3(a) or Section 8.3(b) and (2) cannot be or has not been cured before the earlier to occur of (A) thirty (30) days following delivery of written notice of such breach or failure to perform and (B) one (1) day prior to the Outside Date;

(ii) if the Bankruptcy Case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code, and neither such dismissal nor conversion expressly contemplate the transactions provided for in this Agreement;

(iii) there shall have occurred any event, change, condition, occurrence or effect that has, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and such Material Adverse Effect shall not have been cured within three

(3) Business Days (A) of written notice from the Buyer to Sellers of such Material Adverse Effect or (B) of written notice to the Buyer pursuant to Section 6.3;

(iv) the Sellers publicly announce any plan of reorganization or plan of liquidation or support any such plan filed by any third party, other than any such transaction related to the wind down of the Sellers and that would not prevent or materially delay the Closing from occurring in accordance with the terms of this Agreement;

(v) for any reason (including an Order of the Bankruptcy Court), the Buyer is legally prohibited, pursuant to Section 363(k) of the Bankruptcy Code or otherwise, to (a) credit bid up to the full Credit Bid Amount in satisfaction of a portion of the Purchase Price as set forth in Section 2.7, or (b) to increase the Credit Bid Amount up to the full amount of the indebtedness under the Prepetition Notes in connection with the Auction;

(vi) a “Termination Date” (as defined in the DIP Credit Agreement) occurs and has not been waived or the indebtedness outstanding under the DIP Credit Agreement is otherwise paid off;

(vii) the Interim Financing Order (as defined in the DIP Credit Agreement), in form and substance satisfactory to the Requisite Lenders in their sole discretion, has not been entered within three (3) days of the Petition Date;

(viii) the Final Financing Order (as defined in the DIP Credit Agreement), in form and substance satisfactory to the Requisite Lenders in their sole discretion, has not been entered on or before June 5, 2020;

(ix) the Bidding Procedures Motion (as defined in the DIP Credit Agreement), in form and substance satisfactory to the Requisite Lenders in their sole discretion, has not been filed on the Petition Date;

(x) the Bidding Procedure Order (as defined in the DIP Credit Agreement), in form and substance satisfactory to the Requisite Lenders in their sole discretion, has not been entered on or before May 21, 2020 (such date, the “Bidding Procedures Order Date”);

(xi) the bid deadline set forth in the Bidding Procedures Order (as defined in the DIP Credit Agreement) has not occurred on or before June 1, 2020, unless extended by the Sellers in accordance with the Bidding Procedures Order;

(xii) if qualifying bids are received in accordance with the Bidding Procedures Order (as defined in the DIP Credit Agreement), an auction has not been conducted on or before June 2, 2020;

(xiii) the Sale Hearing is not held on or before June 5, 2020, or if the Sale Hearing is delayed due to the Bankruptcy Court’s unavailability, the next Business Day on which the Bankruptcy Court is available;



(xiv) the entry of an order authorizing the sale to a successful bidder in accordance with the Bidding Procedures Order (as defined in the DIP Credit Agreement) has not been entered on or before June 5, 2020;

(xv) the closing of an Acceptable Sale (as defined in the DIP Credit Agreement) has not occurred within forty-four (44) days of the Petition Date; or

(xvi) the Sellers withdraw or seek authority to withdraw the Sale Motion;

; provided, that if any of the milestone dates set forth in Sections 9.1(c)(vii) through (xv) occurs on a day that is not a Business Day, then such date shall be deemed to be the following Business Day; provided, further, that Buyer shall not have the right to terminate this Agreement pursuant to any of Sections 9.1(c)(vii) through (xv) unless Buyer delivers written notice to Sellers that it intends to terminate this Agreement within five (5) Business Days following the applicable date set forth in such subclause; provided, further, that Buyer shall not have the right to terminate this Agreement pursuant to any of Sections 9.1(c)(vii) through (xv) if the action or inaction of Buyer or any of its Affiliates is the primary cause of the failure of the applicable milestones to occur on or prior to the applicable dates.

(d) by Seller Parent, if:

(i) the Sellers are not in material breach of this Agreement such that the conditions in Section 8.3(a) or Section 8.3(b) would not be satisfied, and the Buyer breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement and such breach or failure to perform (1) would give rise to the failure of a condition set forth in Section 8.2(a) or Section 8.2(b) and (2) cannot be or has not been cured before the earlier to occur of (A) thirty (30) days following delivery of written notice of such breach or failure to perform and (B) one (1) day prior to the Outside Date;

(ii) (1) the Buyer's conditions to Closing set forth in Section 8.1 and Section 8.3 have been satisfied (or waived by the Buyer), other than those conditions that by their nature can only be satisfied at the Closing, (2) the Buyer shall have failed to consummate the Closing on or prior to the date that is three (3) Business Days following the day the Closing was required to occur under Section 2.8(a) and (3) on or after such date, the Sellers have confirmed in a written notice to the Buyer that they are ready, willing and able to consummate the transactions contemplated by this Agreement and that Sellers' conditions to Closing set forth in Section 8.1 and Section 8.2 have been satisfied (or waived by the Sellers), other than those conditions that by their nature can only be satisfied at the Closing; or

(iii) any Seller or the board of directors, board of managers or similar governing body of any Seller determines that proceeding with the transactions contemplated by this Agreement or failing to terminate this Agreement would be inconsistent with its or such Person's or body's fiduciary duties.

The Party seeking to terminate this Agreement pursuant to this Section 9.1 (other than Section 9.1(a)) shall, if such Party is Seller Parent, give prompt written notice of such termination

to the Buyer, and if such Party is the Buyer, give prompt written notice of such termination to the Sellers.

**Section 9.2** Effect of Termination. In the event of termination of this Agreement as provided in Section 9.1, this Agreement shall forthwith become void and there shall be no liability on the part of any Party except (i) for the provisions of Article V (Bankruptcy Court Matters), Section 6.7 (Public Announcements), Section 10.4 (Fees and Expenses), Section 10.8 (Notices), Section 10.11 (Parties in Interest), Section 10.12 (Governing Law), Section 10.13 (Submission to Jurisdiction) and this Article IX and (ii) that no such termination shall relieve any Party from liability for any willful and material breach of this Agreement.

## **ARTICLE X. GENERAL PROVISIONS**

**Section 10.1** Nonsurvival of Representations, Warranties and Covenants. The respective representations, warranties and covenants of the Sellers and the Buyer contained in this Agreement, any other document contemplated hereby or in any certificate delivered pursuant hereto or thereto shall terminate at, and not survive, the Closing; provided that this Section 10.1 shall not limit (i) any covenant or agreement of the Parties to the extent that its terms require performance after the Closing or (ii) any rights or remedies of any Person for breach of any such surviving covenant or agreement.

### **Section 10.2** Control of Attorney-Client and All Other Privileges.

(a) Buyer and all of its Affiliates agree that all privileged communications between or among Sellers or any of their Affiliates and any legal counsel or restructuring advisor to Sellers or any of their Affiliates (including, White & Case LLP, Fox Rothschild LLP and any other lawyer representing Sellers or any of their Affiliates) shall not be acquired by Buyer and shall remain privileged and fully owned by Sellers and their Affiliates from and after the Closing except as otherwise provided in this Agreement. For the period immediately prior to the Closing, the attorney-client and all other privileges available to Sellers and their Affiliates shall remain privileged and the expectation of client confidence belongs to, and shall remain controlled by, Sellers and will not pass to or be claimed by Buyer or its Affiliates. Any disclosure of privileged materials or communications shall be agreed as between Buyer and Sellers to be inadvertent and in good faith mistake, and Buyer agrees to promptly transfer and deliver all privileged documents and communications relating to Sellers or their Affiliates to Sellers in the event any such privileged documents are discovered after the Closing.

(b) Sellers agree that Sellers shall protect and shall not waive any attorney-client and other legal privileges available to Sellers and their Affiliates, and Sellers agree that Sellers will make efforts that are satisfactory to Buyer in its reasonable discretion to ensure that any such attorney-client and other legal privileges are protected and not waived notwithstanding the dissolution of any of the Sellers after Closing. This Section 10.2(b) is subject to compliance with the covenant set forth in Section 10.2(a).

(c) Notwithstanding any other provision of this Agreement, the covenants set forth in Section 10.2(b) shall survive the Closing in accordance with the full performance of their terms.

### **Section 10.3 Disclaimers.**

(a) To the extent required by applicable Laws to be operative, the disclaimers of certain warranties contained in this **Error! Reference source not found.**Section 10.3 are “conspicuous disclaimers” for purposes of any applicable Laws.

(b) **EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLERS EXPRESSLY SET FORTH IN ARTICLE III (AS MODIFIED OR QUALIFIED BY THE DISCLOSURE SCHEDULES HERETO OR OTHERWISE AS PROVIDED HEREIN), (I) NONE OF THE SELLERS, ANY SUBSIDIARY OF SELLERS NOR ANY OTHER PERSON MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, STATUTORY OR IMPLIED OR OTHERWISE, WITH RESPECT TO, OR IN RELATION TO, ANY OF THE ASSETS OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, AND BUYER EXPRESSLY WAIVES AND ACKNOWLEDGES THAT NONE OF THE SELLERS, ANY SUBSIDIARY OF SELLERS NOR ANY OTHER PERSON MAKE ANY SUCH WARRANTY OR REPRESENTATION, AND BUYER IS NOT RELYING ON ANY SUCH WARRANTY OR REPRESENTATION, (II) EACH SELLER, ON BEHALF OF ITSELF AND ITS SUBSIDIARIES, EXPRESSLY DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, STATEMENT OR INFORMATION MADE OR COMMUNICATED (ORALLY, IN WRITING OR OTHERWISE) TO BUYER OR ANY OF ITS AFFILIATES, EMPLOYEES, AGENTS, CONSULTANTS OR REPRESENTATIVES (INCLUDING ANY STATEMENT, OPINION, INFORMATION, PROJECTION OR ADVICE THAT MAY HAVE BEEN PROVIDED TO BUYER BY ANY OFFICER, DIRECTOR, EMPLOYEE, AGENT, CONSULTANT, REPRESENTATIVE OR ADVISOR OF EACH SELLER OR ANY OF ITS RESPECTIVE AFFILIATES) AND (III) ALL PROPERTIES INCLUDED IN THE TRANSFERRED ASSETS WILL BE CONVEYED BY SELLERS OR THE APPLICABLE ASSET SELLER AND ACCEPTED BY BUYER PRECISELY AND ONLY AS IS, WHERE IS, AND WITH ALL DEFECTS AND FAULTS WITHOUT RECOURSE AND WITHOUT WARRANTY (INCLUDING WITHOUT ANY WARRANTY OF TITLE). NOTHING CONTAINED HEREIN SHALL LIMIT BUYER’S ABILITY TO MAKE A CLAIM AGAINST THE SELLERS FOR FRAUD.**

(c) **EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLERS EXPRESSLY SET FORTH IN Error! Reference source not found.OF THIS AGREEMENT (AS MODIFIED OR QUALIFIED BY THE DISCLOSURE SCHEDULES HERETO OR OTHERWISE AS PROVIDED HEREIN), BUYER ACKNOWLEDGES AND AGREES THAT THE ASSET SELLERS ARE CONVEYING THE TRANSFERRED ASSETS WITHOUT REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED AT COMMON LAW, BY STATUTE, OR OTHERWISE (ALL OF WHICH SELLERS HEREBY DISCLAIM), RELATING TO (I) TITLE, (II) THE MERCHANTABILITY, DESIGN, OR QUALITY OF THE TRANSFERRED ASSETS, (III) THE FITNESS OF THE TRANSFERRED ASSETS FOR ANY PARTICULAR PURPOSE,**

(IV) THE ABSENCE OF PATENT, LATENT OR REDHIBITORY VICES OR DEFECTS, (V) THE ENVIRONMENTAL OR PHYSICAL CONDITION OF THE TRANSFERRED ASSETS (SURFACE AND SUBSURFACE) , ANY RELEASES OF HAZARDOUS MATERIALS OR ANY ENVIRONMENTAL OR HEALTH OR SAFETY MATTER, (VI) COMPLIANCE WITH APPLICABLE LAWS, INCLUDING ENVIRONMENTAL LAWS, (VII) THE CONTENTS, CHARACTER OR NATURE OF ANY INFORMATION MEMORANDUM OR MANAGEMENT PRESENTATION, (VIII) ANY ESTIMATES OF THE VALUE OF THE TRANSFERRED ASSETS OR FUTURE REVENUES GENERATED BY THE TRANSFERRED ASSETS, (IX) CONTRACTUAL, ECONOMIC, FINANCIAL INFORMATION AND/OR OTHER DATA AND ANY RELATED ESTIMATIONS OR PROJECTIONS MADE IN SALE PRESENTATIONS OR MARKETING MATERIALS, (X) CONTINUED FINANCIAL VIABILITY, INCLUDING PRESENT OR FUTURE VALUE OR ANTICIPATED INCOME OR PROFITS, (XI) THE CONTENT, CHARACTER OR NATURE OF ANY INFORMATION MEMORANDUM, REPORTS, BROCHURES, CHARTS OR STATEMENTS PREPARED BY THIRD PARTIES, (XII) ANY OTHER MATERIALS OR INFORMATION THAT MAY HAVE BEEN MADE AVAILABLE OR COMMUNICATED TO BUYER OR ITS AFFILIATES, OR ITS OR THEIR EMPLOYEES, AGENTS, CONSULTANTS, REPRESENTATIVES OR ADVISORS IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY DISCUSSION OR PRESENTATION RELATING THERETO, (XIII) ANY IMPLIED OR EXPRESS WARRANTY OF FREEDOM FROM INTELLECTUAL PROPERTY INFRINGEMENT, MISAPPROPRIATION OR OTHER VIOLATION OR (XIV) ANY OTHER MATTER WHATSOEVER (INCLUDING THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO BUYER), IT BEING EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES THAT BUYER WILL BE DEEMED TO BE OBTAINING THE TRANSFERRED ASSETS IN THEIR PRESENT STATUS, CONDITION AND STATE OF REPAIR, “AS IS” AND “WHERE IS” WITH ALL FAULTS, INCLUDING WITH REGARD TO THEIR ENVIRONMENTAL CONDITION, AND THAT BUYER HAS MADE OR CAUSED TO BE MADE SUCH INSPECTIONS AS BUYER DEEMS APPROPRIATE AND BUYER IRREVOCABLY WAIVES ANY AND ALL CLAIMS IT MAY HAVE AGAINST SELLERS OR ANY AFFILIATE OF SELLERS ASSOCIATED WITH SAME, INCLUDING ANY CLAIMS FOR CONTRIBUTION OR OTHERWISE UNDER CERCLA OR ANY OTHER ENVIRONMENTAL LAW. NOTHING CONTAINED HEREIN SHALL LIMIT BUYER’S ABILITY TO MAKE A CLAIM AGAINST THE SELLERS FOR FRAUD.

(d) NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, THE PARTIES HERETO HEREBY AGREE THAT FOR PURPOSES OF DETERMINING WHETHER A PARTY HAS A CLAIM FOR FRAUD, SUCH CLAIM SHALL BE DETERMINED WITHOUT REGARD TO ANY OF THE MATERIAL ADVERSE EFFECT QUALIFIERS SET FORTH IN THIS AGREEMENT.

Section 10.4 Fees and Expenses. Except as otherwise provided herein (including Section 6.5 and Section 7.1), all fees and expenses incurred in connection with or related to this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby

shall be paid by the Party incurring such fees or expenses, whether or not such transactions are consummated.

**Section 10.5 Amendment and Modification.** This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing signed by Buyer and Seller Parent.

**Section 10.6 Waiver.** No failure or delay of any Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. Any agreement on the part of any Party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such Party.

**Section 10.7 Notices.** All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, (b) on the first Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier, (c) on the day of transmission if sent via email transmission to the email address(es) given below and the sender does not receive a notice of such transmission being undeliverable to such email address (with copies by recognized next-day courier or registered or certified) or (d) on the earlier of confirmed receipt or the fifth (5th) Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

- (i) if to the Sellers, to:

Techniplas, LLC  
c/o FTI Consulting, Inc.  
227 West Monroe Street  
Suite 900  
Chicago, IL, 60606  
United States  
Attention: Pete Smidt  
Email: pete.smidt@fticonsulting.com

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

White & Case LLP  
1221 Avenue of the Americas  
New York, NY 10020  
Attention: David Turetsky  
Andrew Zatz  
Adam Cieply  
Email: david.turetsky@whitecase.com  
azatz@whitecase.com

adam.cieply@whitecase.com

and

Fox Rothschild LLP  
919 N. Market St., Suite 300  
P.O. Box 2323  
Wilmington DE 19899-2323  
Attention: Jeffrey M. Schlerf  
Email: jschlerf@foxrothschild.com

(ii) if to the Buyer, to:

Techniplas Acquisition Co, LLC  
c/o Arnold & Porter Kaye Scholer LLP  
250 West 55th Street  
New York, NY 10019  
Attention: Jonathan Levine  
Lowell Dashefsky  
Email: jonathan.levine@arnoldporter.com  
lowell.dashefsky@arnoldporter.com

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

H.I.G. Capital Management, LLC  
1450 Brickell Avenue, 31st Floor  
Miami, FL 33131  
Email: tax@higcapital.com

and

Arnold & Porter Kaye Scholer LLP  
250 West 55th Street  
New York, NY 10019  
Attention: Jonathan Levine  
Lowell Dashefsky  
Email: jonathan.levine@arnoldporter.com  
lowell.dashefsky@arnoldporter.com

**Section 10.8 Interpretation.** When a reference is made in this Agreement to a Section, Article, Exhibit or Schedule such reference shall be to a Section, Article, Exhibit or Schedule of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement or in any Exhibit or Schedule are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Any capitalized terms used in any Exhibit or Schedule but not otherwise

defined therein shall have the meaning as defined in this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth herein. The word “including” and words of similar import when used in this Agreement will mean “including, without limitation,” unless otherwise specified. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to the Agreement as a whole and not to any particular provision in this Agreement. The term “or” is disjunctive and not exclusive. The word “will” shall be construed to have the same meaning and effect as the word “shall.” References to days mean calendar days unless otherwise specified. The phrases “delivered” or “made available”, when used in this Agreement, shall mean that the information referred to has been physically or electronically delivered to the relevant parties (including, in the case of “made available” to Buyer, material that has been posted, retained and thereby made available to Buyer through the on-line “data room” (virtual or otherwise) established by the Sellers and/or its Representatives). References to “the date hereof” shall mean “as of May 6, 2020”.

**Section 10.9 Entire Agreement.** This Agreement (including the Exhibits and Schedules hereto) and the Ancillary Agreements constitute the entire agreement, and supersede all prior written agreements, arrangements, communications and understandings and all prior and contemporaneous oral agreements, arrangements, communications and understandings between the Parties with respect to the subject matter hereof and thereof. Neither this Agreement nor any Ancillary Agreement shall be deemed to contain or imply any restriction, covenant, representation, warranty, agreement or undertaking of any Party with respect to the transactions contemplated hereby or thereby other than those expressly set forth herein or therein or in any document required to be delivered hereunder or thereunder, and none shall be deemed to exist or be inferred with respect to the subject matter hereof.

**Section 10.10 Parties in Interest.** This Agreement shall be binding upon and inure solely to the benefit of each Party, and nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (including employees of the Sellers) other than the Parties and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 10.11 Governing Law.** Except to the extent of the mandatory provisions of the Bankruptcy Code, this Agreement and all disputes or controversies arising out of or relating to this Agreement or the transactions contemplated hereby (in contract or tort) shall be governed by, and construed in accordance with the internal Laws of the State of Delaware, without regard to the Laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of Delaware

**Section 10.12 Submission to Jurisdiction.** Without limitation of any Party’s right to appeal any Order of the Bankruptcy Court, (x) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby and (y) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Action or proceeding; provided, however, that,

if the Bankruptcy Case is closed or declines jurisdiction, each of the Parties irrevocably agrees that any Action or proceeding arising out of or relating to this Agreement brought by another Party or its successors or assigns shall be heard and determined in the Delaware Chancery Court and any Delaware state court to which an appeal from the Delaware Chancery Court may be validly taken (or, if the Delaware Chancery Court declines jurisdiction over a particular matter, any state or federal court sitting in Delaware), and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the Parties further agrees that notice as provided in Section 10.8 shall constitute sufficient service of process and the Parties further waive any argument that such service is insufficient, without limiting any other manner of service permitted by Law. Nothing in this Agreement will affect the right of any Party to this Agreement to serve process in any other matter permitted by Law. Each of the Parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (a) any claim that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) that (i) the suit, action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

**Section 10.13 Disclosure Generally.** Notwithstanding anything to the contrary contained in the Disclosure Schedules or in this Agreement, the information and disclosures contained in any Disclosure Schedule corresponding to a Section in Article III of this Agreement shall be deemed to be disclosed and incorporated by reference in any other Disclosure Schedule corresponding to a Section in Article III of this Agreement as though fully set forth in such Disclosure Schedule to the extent the applicability of such information and disclosure is reasonably apparent on its face. The fact that any item of information is disclosed in any Disclosure Schedule shall not be construed to be an admission by any Party to any third party of any liability or obligation with respect thereto or to mean that such information is material or immaterial or would have a Material Adverse Effect, within or outside of the Ordinary Course of Business, or required to be disclosed by this Agreement. Such information and the dollar thresholds set forth herein shall not be used as a basis for interpreting the terms “material” or “Material Adverse Effect” or other similar terms in this Agreement. In addition, matters reflected in the Disclosure Schedules are not necessarily limited to matters required by this Agreement to be reflected in the Disclosure Schedules. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. No information set forth in the Disclosure Schedules will be deemed to broaden in any way the scope of the Parties’ representations and warranties. Any description of any agreement, document, instrument, plan, arrangement or other item set forth on any Disclosure Schedule is a summary only and is qualified in its entirety by the terms of such agreement, document, instrument, plan, arrangement or item, which terms will be deemed disclosed for all purposes of this Agreement. The information contained in this Agreement, in the Disclosure Schedules and Exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein will be deemed to be an admission by



any Party to any third party of any matter whatsoever, including any violation of Law or breach of contract.

**Section 10.14 Personal Liability.** This Agreement may only be enforced against, and any Action based upon, arising out of or related to this Agreement may only be brought against, the Persons that are expressly named as parties to this Agreement. Except to the extent named as a party to this Agreement, and then only to the extent of the specific obligations of such parties set forth in this Agreement, no past, present or future direct or indirect stockholder, officer, director, employee, Affiliate, Representative or investor of the Sellers or the Buyer will have any liability (whether in contract, tort, equity or otherwise) for any of the representations, warranties, covenants, agreements or other obligations or liabilities of any of the parties to this Agreement or for any Action based upon, arising out of or related to this Agreement.

**Section 10.15 Assignment; Successors.** Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise, by any Seller without the prior written consent of the Buyer, and by the Buyer without the prior written consent of Seller Parent, and any such assignment without such prior written consent shall be null and void; provided, however, that Buyer may assign this Agreement to an Affiliate so long as (i) such Affiliate is designated in writing by the Buyer to Seller Parent prior to Closing, (ii) Buyer continues to remain obligated in full hereunder, and (iii) any such assignment would not reasonably be expected to impede or delay the Closing; provided, further, that the Sellers may assign some or all of their rights or delegate some or all of their obligations hereunder to successor entities pursuant to a plan of reorganization confirmed by the Bankruptcy Court without the prior approval of Buyer. Any attempted or purported assignment in violation of this Section 10.15 will be deemed void *ab initio*. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

**Section 10.16 Enforcement.** The Parties agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, including if any of the Parties fails to take any action required of it hereunder to consummate the transactions contemplated by this Agreement. Accordingly, (x) each of the Parties shall be entitled to specific performance of the terms hereof or other equitable relief, including an injunction or injunctions, to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, without proof of damages or otherwise (this being in addition to any other remedy to which any such Party may be entitled under this Agreement) and (y) the right of specific performance and other equitable relief is an integral part of the transactions contemplated by this Agreement and without that right, neither the Sellers nor Buyer would have entered into this Agreement. The Parties acknowledge and agree that any Party pursuing an injunction or injunctions or other Order to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 10.16 will not be required to provide any bond or other security in connection with such Order. The remedies available to the Parties pursuant to this Section 10.16 will be in addition to any other remedy to which they were entitled at law or in equity, and the election to pursue an injunction or specific performance will not restrict, impair or otherwise limit any Party from seeking to collect or collecting damages or terminating this Agreement in accordance with the terms of this Article

IX. Each of the Parties hereby further waives (a) any defense in any Action for specific performance that a remedy at law would be adequate and (b) any requirement under any Law to post security as a prerequisite to obtaining equitable relief. In no event will this Section 10.16 be used, alone or together with any other provision of this Agreement, to require any Seller to remedy any breach of any representation or warranty of any Seller made herein.

Section 10.17 Currency. All references to “dollars” or “\$” in this Agreement or any Ancillary Agreement refer to United States dollars, which is the currency used for all purposes in this Agreement and any Ancillary Agreement.

Section 10.18 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and the Parties will 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 in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 10.19 Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 10.20 Approval of the Bankruptcy Court. Notwithstanding anything herein to the contrary, any and all rights, interests or obligations under this Agreement are subject to approval of the Bankruptcy Court.

Section 10.21 Counterparts. Notwithstanding anything else herein to the contrary, this Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties.

Section 10.22 Facsimile or .pdf Signature. This Agreement may be executed by facsimile or .pdf signature and a facsimile or .pdf signature shall constitute an original for all purposes.

Section 10.23 No Presumption Against Drafting Party. Each of the Buyer and the Sellers acknowledges that each Party to this Agreement has been represented by legal counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting Party has no application and is expressly waived.

[The remainder of this page is intentionally left blank.]



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

**SELLERS:**

**TECHNIPLAS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**DMP MONTERREY HOLDINGS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**DMP INTERNATIONAL HOLDINGS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**NYLONCRAFT, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**NYLONCRAFT OF MICHIGAN, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**WEIDPLAS NORTH AMERICA, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**BUYER:**

**TECHNIPLAS ACQUISITION CO, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**Exhibit B**

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**AMENDED AND RESTATED STOCK AND ASSET PURCHASE AGREEMENT**

by and among

**TECHNIPLAS, LLC,**

**DMP MONTERREY HOLDINGS, LLC,**

**DMP INTERNATIONAL HOLDINGS, LLC**

**NYLONCRAFT, INC.**

**NYLONCRAFT OF MICHIGAN, LLC**

**AND**

**WEIDPLAS NORTH AMERICA, LLC,**

as the Sellers

and

**TECHNIPLAS ACQUISITION CO, LLC,**

as the Buyer

Dated as of May ~~6~~21, 2020

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## INDEX OF EXHIBITS

### EXHIBIT A FORM OF SALE ORDER

## AMENDED AND RESTATED STOCK AND ASSET PURCHASE AGREEMENT

AMENDED AND RESTATED STOCK AND ASSET PURCHASE AGREEMENT, dated as of May 6~~21~~, 2020 (this “Agreement”), by and among (i) Techniplas, LLC, a Delaware limited liability company (“Seller Parent”), DMP Monterrey Holdings, LLC, a Delaware limited liability company (“DMPM”), DMP International Holdings, LLC, a Delaware limited liability company (“DMPI”), Nyloncraft, Inc., an Indiana corporation (“NI”), Nyloncraft of Michigan, LLC, a Michigan limited liability company (“NM”), WEIDPLAS North America, LLC, a Delaware limited liability company (“WNA,” together with Seller Parent, DMPM, DMPI, NI and NM, each a “Seller” and collectively, the “Sellers”), and (ii) Techniplas Acquisition Co, LLC, a Delaware limited liability company (the “Buyer”).

### RECITALS

A. The Sellers directly and indirectly through their Subsidiaries, including the Transferred Subsidiaries (as defined below), are engaged in the business of (a) designing, engineering, manufacturing, marketing, selling and distributing (i) engineered custom injection molded plastic component parts, (ii) custom injection molded thermoplastic, thermoset and metal insert parts, (iii) custom injection molded thermoplastic and thermoset molding solutions, (iv) custom injection molded separation components of air and water in heating ventilation and cooling units, and (v) custom injection molded interior and exterior decorative parts, brake reservoirs and surge tanks and (b) using or implementing processes and technology for mold decorating and painting, microcellular injection molding, injection/compression and vacuum boost technology for purposes of designing, engineering and manufacturing the foregoing, in each case for automotive and industrial end markets (to the extent carried on by the Transferred Subsidiaries (as defined below) or carried on at the Facilities, the “Business”).

B. Seller Parent owns all of the issued and outstanding equity interests of Techniplas Holdings 1, S.a.r.l. (“Techniplas Holdings”) and DMPM and DMPI collectively own all of the issued and outstanding equity interests of Dickten Servicios, S. de R.L. de C.V (“Dickten Servicios”) and DMP Monterrey, S. de R.L de C.V (“DMP Monterrey” and the equity interests of DMP Monterrey, Techniplas Holdings and Dickten Servicios being collectively referred to herein as the “Transferred Stock”)

C. Seller Parent and the other Sellers filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) and are being jointly administered for procedural purposes as *In re* ~~Techniplas, LLC, et. al., case number~~ Case No. 20-11049 (LSS) (collectively, the “Bankruptcy Case”).

D. The Sellers are parties to that certain Senior Secured Superpriority Priming Debtor-in-Possession Credit Facility (the “DIP Credit Agreement”), dated as of ~~May 8~~, 2020, among Seller Parent, the other borrowers and guarantors party thereto, the lenders party thereto, and Wilmington Savings Fund Society, as agent (the “DIP Agent”).

E. The DIP Agent holds valid, binding and perfected first-priority senior secured priming liens (the “DIP Liens”) securing all of the DIP Credit Agreement Indebtedness on substantially all of the assets of Sellers (collectively, the “Encumbered Assets”).

F. Buyer, on behalf of the DIP Term Lenders and the Prepetition Noteholders, desires to credit bid, for the benefit of and on behalf of the holders of the outstanding DIP Credit Agreement Indebtedness, an aggregate amount equal to one hundred five million (\$105,000,000) (the “Credit Bid Amount”), comprised of (i) in the first instance, all outstanding DIP Credit Agreement Indebtedness as of the Closing Date, plus (ii) outstanding indebtedness under the Prepetition Notes in an amount such that the total amount in (i) and (ii) equals the Credit Bid Amount, pursuant to section 363(k) of the Bankruptcy Code, the Sale Procedures Order, and the Sale Order with respect to the assets that are Encumbered Assets (the “Credit Bid”).

G. The Sellers desire to sell to the Buyer all of the Transferred Stock and Transferred Assets and transfer to the Buyer the Assumed Liabilities and the Buyer desires to purchase from the Sellers the Transferred Stock and Transferred Assets and assume the Assumed Liabilities in a sale authorized by the Bankruptcy Court pursuant to, *inter alia*, sections 105, 363 and 365 of the Bankruptcy Code, in accordance with the other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the local rules for the Bankruptcy Court, all on the terms and subject to the conditions set forth in this Agreement and the Sale Order.

H. The execution and delivery of this Agreement and the Sellers’ ability to consummate the transactions set forth in this Agreement are subject to, among other things, the entry of the Sale Order under, *inter alia*, sections 105, 363 and 365 of the Bankruptcy Code, as further set forth herein. The Parties desire to consummate the proposed transaction as promptly as practicable after the Bankruptcy Court enters the Sale Order.

## **AGREEMENT**

In consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the Parties agree as follows:

### **ARTICLE I. DEFINITIONS**

Section 1.1 Certain Defined Terms. For purposes of this Agreement:

“ABL Payment Amount” means an amount, payable in cash or by other form of consideration acceptable to Bank of America, N.A. in its sole discretion sufficient to satisfy in full all obligations owed under the Prepetition ABL Credit Agreement and under the DIP ABL Credit Agreement.

“Accounts Receivable” means all trade accounts and notes receivable and other miscellaneous receivables of the Asset Sellers for the sale or other disposition of goods or services by the Business or otherwise arising out of the Business, other than any intercompany receivables.

“Action” means any claim, action, suit, arbitration or proceeding by or before any Governmental Authority, other than an Avoidance Action.

“Affiliate” means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person, where “control,” “controlled by” and “under common control with,” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, as trustee or executor, as general partner or managing member, by contract or otherwise. In the case of the Buyer, Affiliates shall include all the DIP Term Lenders and the Prepetition Noteholders.

“Alternative Transaction” means the sale, transfer or other disposition, directly or indirectly, including through an asset sale, share sale, merger, amalgamation, liquidation or other similar transaction, including a plan of reorganization approved by the Bankruptcy Court, or resulting from the Auction, of a material portion of the Transferred Stock, the Transferred Subsidiaries or the Transferred Assets, in one transaction or a series of transactions with one or more Persons other than the Buyer or its Affiliates.

“Ancillary Agreements” means, collectively, the agreements, instruments or certificates to be executed in connection with the transactions contemplated by this Agreement, including the Assignment Agreement, ~~the Assignment of Leases~~ and the IP Assignment Agreement.

“Anti-Corruption Laws” means all Laws related to anti-bribery or anti-corruption (governmental or commercial) including, without limitation, the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and all applicable Laws enacted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.

“Antitrust Law” means the HSR Act, Foreign Competition Laws and any other competition, merger control or antitrust Law of any other applicable Law designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolizing or restraining trade or lessening competition of any other country or jurisdiction, in each case, to the extent applicable to the transactions contemplated by this Agreement.

“Asset Sellers” means NI, NM, WNA and, to the extent they own Transferred Assets, DMPM, DMPI and Seller Parent.

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

“Avoidance Actions” means any and all claims for avoidance, recovery, subordination or other relief of the Sellers or their estates under chapter 5 of the Bankruptcy Code or applicable state fraudulent conveyance, fraudulent transfer, or similar Laws.

“Back-Up Bidder” has the meaning set forth in the Sale Procedures Order.

“Business Day” means any day that is not a Saturday, a Sunday or other day on which banks are required by Law to be closed in the city of New York.

“Business Employees” means all (i) Transferred Subsidiary Employees and (ii) individuals employed by Equity Sellers or any of their Subsidiaries immediately prior to the Closing Date who are not Transferred Subsidiary Employees and whose duties relate primarily to the Business or the Transferred Assets as reasonably determined by Buyer, in each case, regardless of the company payroll on which such individuals are listed.

“Buyer Material Adverse Effect” means any event, change, occurrence or effect that has or would reasonably be expected to materially and adversely affect the ability of the Buyer to perform its obligations under this Agreement or the Ancillary Agreements or to consummate the transactions contemplated hereby or thereby.

“Cash and Cash Equivalents” means all of Seller Parent’s and Asset Sellers’ cash (including petty cash and checks received on the Closing Date), checking account balances, marketable securities, short-term instruments, certificates of deposits, time deposits, bankers’ acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held.

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

“Competing Bid” means any bid contemplating an Alternative Transaction.

“Contract” means any contract, agreement, lease, license, sublicense, sales order, purchase order, instrument, or other commitment, in each case, that is binding on any Person or any part of its assets or properties under applicable Law.

“DIP ABL Credit Agreement” means that certain Superpriority Secured Debtor-In-Possession Loan and Security Agreement to be entered into in connection with the Bankruptcy Case, by and among Seller Parent, Techniplas Finance Corp., NI, DMP Exports, Inc., DMPM, NM, WNA and DMPI, as borrowers, the lenders from time to time party thereto, and Bank of America N.A., as administrative agent.

“DIP Credit Agreement Indebtedness” has the meaning set forth in the Financing Order.

“DIP Term Lenders” means the lenders under the DIP Credit Agreement.

“Employee Benefit Plans” means, other than any “multiemployer plan” (as defined in Section 3(37) of ERISA), each (i) “employee benefit plan” within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA, (ii) other benefit and compensation plan, contract, policy, program, practice, arrangement or agreement, including pension, profit-sharing, savings, termination, executive compensation, phantom stock, change-in-control, retention, salary continuation, vacation, sick leave, disability, death benefit, insurance, hospitalization, medical, dental, life (including all individual life insurance policies as to which any Asset Seller or Transferred Subsidiary is an owner, a beneficiary or both), employee loan,



educational assistance, fringe benefit, deferred compensation, retirement or post-retirement, severance, equity or equity-based compensation, incentive and bonus plan, contract, policy, program, practice, arrangement or agreement and (iii) other employment, consulting or other individual agreement, plan, practice, policy, contract, program, and arrangement, in each case, (a) that is sponsored or maintained or contributed to by any Transferred Subsidiary or any of their ERISA Affiliates in respect of any current or former employees, directors, independent contractors, consultants or leased employees of any Asset Seller engaged in the Business or Transferred Subsidiary or (b) with respect to which any Transferred Subsidiary has any Liability (including any such plan or arrangement formerly maintained by any Asset Seller or Transferred Subsidiary, including on account of any current or former ERISA Affiliates thereof).

“Encumbrance” means any charge, claim, mortgage, lien, encumbrance, option, pledge or security interest.

“Environmental Claim” means any action, cause of action, claim, suit, proceeding, Order, demand or notice by any Person alleging Liability (including Liability for investigatory costs, governmental response costs, remediation or clean-up or the costs thereof, natural resources damages, property damages, personal injuries, attorneys’ fees, fines or penalties) arising out of, based on, resulting from or relating to the presence, Release or threatened Release of, or exposure to any Hazardous Material.

“Environmental Law” means any Law relating to pollution, the protection of, restoration or remediation of the environment or natural resources, or the protection of human health and safety (regarding exposure to Hazardous Material), including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* (“CERCLA”), Clean Water Act, 33 U.S.C. § 1251 *et seq.*; Clean Air Act, 42 U.S.C. § 7401 *et seq.*, Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; and the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*, and similar laws in U.S. states and other countries, and including Laws relating to: (a) the exposure to, or Releases or threatened Releases of, Hazardous Material; (b) the presence, generation, manufacture, processing, labeling, distribution, use, transport, treatment, containment, storage, disposal, or handling of Hazardous Material; or (c) recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Material or any other matter for which Liability is imposed under Environmental Law.

“Environmental Permit” means any Permit required under or issued pursuant to any Environmental Law.

“Equity Sellers” means Seller Parent, DMPM and DMPI.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any corporation or other entity that is included in a controlled group of corporations within which the Sellers are also included, as provided in Section 414(b) of the Code; or which is a trade or business under common control with the Sellers, as provided in Section 414(c) of the Code; or which constitutes a member of an affiliated

service group within which the Sellers are also included, as provided in Section 414(m) of the Code.

“Excluded Environmental Liabilities” means any Liability occurring or existing on or prior to the Closing Date (including any investigatory, corrective or remedial obligation) of any Asset Seller or any predecessor or Affiliate of any Asset Seller arising under Environmental Laws and relating to (a) the operation of the Business prior to the Closing, (b) any Excluded Asset, (c) any property, facility, or location other than the Facilities, or (d) any operations, events, conditions, or circumstances occurring or existing on or prior to the Closing Date at any location including, without limitation, at the Facilities, including any Release, threatened Release, treatment, storage, disposal, or arrangement for disposal of or any exposure of any Person to Hazardous Materials occurring or existing on or prior to the Closing Date.

“Facilities” means the plants of the Asset Sellers located at (a) 616 W. McKinley Avenue, Mishawaka, St. Joseph County, Indiana 46545, (b) 1640 E. Chicago Road, Jonesville, Michigan, 49250, (c) N44 W33341 Watertown Plank Road, Nashotah, Waukesha County, Wisconsin 53058, (d) DMP Monterrey, S. de R.L de C.V. – Blvd. TLC #200, Parque Industrial Stiva Aeropuerto, Apodaca, N.L., México, 66600 and (e) Rogelio Gonzalez Caballero #415, Parque Industrial Stiva Aeropuerto, Apodaca, N.L., México, 66600.

“Final Order” means an Order 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 the Bankruptcy Case or the docket of such other court, which is and remains in full force and effect, has not been modified, amended, reversed, vacated or stayed and (a) as to which the time to appeal, petition for certiorari or move for a new trial, reargument or rehearing shall have expired and as to which no appeal, petition for certiorari or motion for new trial, reargument or rehearing shall then be pending or (b) if a timely appeal, writ of certiorari, new trial, reargument or rehearing thereof shall have been filed or sought, either (i) no stay of the Order shall be in effect, (ii) no motion or application for a stay of the Order shall be filed and pending or such motion or application shall have been denied, or (iii) if such a stay shall have been granted, then (A) the stay shall have been dissolved or (B) a final order of the district court or circuit court having jurisdiction to hear such appeal shall have affirmed the Order and the time allowed to appeal from such affirmance or to seek review or rehearing (other than a motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure) thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible, and if a timely appeal of such district court or circuit court Order or timely motion to seek review or rehearing of such Order shall have been made, any appellate court having jurisdiction to hear such appeal or motion (or any subsequent appeal or motion to seek review or rehearing) shall have affirmed the district court’s (or lower appellate court’s) order upholding the Order of the Bankruptcy Court and the time allowed to appeal from such affirmance or to seek review or rehearing thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible; provided, however, that the Buyer in its sole discretion may treat any Order for which a motion or application for a stay is filed or pending as a Final Order by affirmatively agreeing to such treatment in a writing signed by the Buyer.

“Financing Order” means the Interim Financing Order (as defined in the DIP Credit Agreement) as it may be modified by the Final Financing Order (as defined in the DIP Credit Agreement).

“Fraud” means an act in the making of a specific representation or warranty expressly set forth in Article III, committed by the party making such express representation or warranty, with intent to deceive another party, and to induce him, her or it to enter into this Agreement and requires: (a) an intentional false representation of material fact expressly set forth in the representations and warranties set forth in Article III; (b) actual knowledge that such representation is false (as opposed to any fraud claim based on constructive knowledge, negligent or reckless misrepresentation or a similar theory); (c) a specific intention to induce the party to whom such representation was made to act or refrain from acting in reliance upon it; (d) causing that party, in justifiable reliance upon such false representation and with ignorance to the falsity of such representation, to take or refrain from taking action; and (e) causing such party to suffer damage by reason of such reliance. A claim for Fraud may only be made against the party committing such Fraud.

“Fundamental Representations” means the representations and warranties set forth in Section 3.1, Section 3.2, Section 3.3(a), Section 3.4, Section 3.5 and Section 3.20.

“GAAP” means United States generally accepted accounting principles as in effect on the date hereof.

“Global Trade Laws” means the U.S. Export Administration Regulations; the U.S. International Traffic in Arms Regulations; the economic sanctions rules and regulations administered by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”); European Union (“E.U.”) Council Regulations on export controls; and other E.U. Council sanctions regulations, as implemented in E.U. Member States; and all Laws made under any of the foregoing, including other Laws related to economic sanctions or export and import control.

“Governmental Authority” means any United States or non-United States national, federal, state or local governmental, regulatory or administrative authority, agency, court or commission or any other judicial or arbitral body, including the Bankruptcy Court.

“Hazardous Material” means any petroleum, petroleum products and byproducts, or any material, substance, chemical, or waste (or combination thereof) that is listed, defined, designated, regulated or classified as hazardous, toxic, radioactive, a pollutant or a contaminant, or words of similar meaning or effect under any Environmental Law relating to pollution, hazardous or toxic waste, or protection of the environment, including without limitation asbestos, radon, urea-formaldehyde, explosives, polychlorinated biphenyls (“PCBs”) or substances containing PCBs, radioactive materials and Stachybotrys mold.

“Intellectual Property” means all intellectual property and intellectual property rights, including all U.S. and foreign (a) trade names, trademarks and service marks, business names, corporate names, internet addresses, domain names, websites, URLs, social media accounts and web pages, trade dress, logos, slogans, design rights, and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing (“Trademarks”); (b) patents, patent applications, invention disclosures, and all related

continuations, continuations-in-part, divisionals, reissues, re-examinations, substitutions, and extensions thereof (“Patents”); (c) copyrights and copyrightable subject matter (whether registered or unregistered) (“Copyrights”); (d) rights in computer programs (whether in source code, object code, or other form) and software systems, algorithms, databases, compilations and data, technology supporting the foregoing, and all documentation, including user manuals and training materials, related to any of the foregoing (“Software”); (e) trade secrets and know-how, and all other inventions, proprietary processes, formulae, models, and methodologies; (f) all rights in the foregoing and in other similar intangible assets; (g) all applications and registrations for any of the foregoing and (g) all rights and remedies (including the right to sue for and recover damages) against past, present, and future infringement, misappropriation, or other violation relating to any of the foregoing.

“IRS” means the Internal Revenue Service of the United States.

“Knowledge” with respect to the Sellers means the actual (but not constructive or imputed) knowledge of the persons listed in Section 1.1(c) of the Disclosure Schedules after reasonable inquiry but without any requirement to consult with any other Person.

“Latest Balance Sheet” means the unaudited consolidated balance sheet of the Company Group, dated as of the Balance Sheet Date.

“Law” means any statute, law, ordinance, regulation, rule, code, injunction, judgment, decree or order of any Governmental Authority.

“Lease” means the Seller Leases and the Transferred Subsidiary Leases.

“Leased Real Property” means the Seller Leased Real Property and the Transferred Subsidiary Leased Real Property.

“Liability” means any debt, loss, claim, damage, demand, fine, judgment, penalty, liability or obligation (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due).

“Material Adverse Effect” means any event, change, condition, occurrence or effect that individually or in the aggregate has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, assets, financial condition or results of operations of the Business, including the Transferred Subsidiaries, Transferred Assets and Assumed Liabilities, taken as a whole; provided, that, any event, change, condition, occurrence or effect to the extent arising out of, attributable to or resulting from, alone or in combination, the following shall be deemed not to constitute a “Material Adverse Effect” and shall not be considered in determining whether a “Material Adverse Effect” has occurred: (i) general changes or developments in operating, business, regulatory or other conditions affecting the industries in which the Business operates, (ii) changes in general domestic or foreign economic, social, political, financial markets (including changes in interest or exchange rates) or geopolitical conditions (including the existence, occurrence, escalation, outbreak or worsening of any hostilities, war, sabotage, police action, acts of terrorism, cyberterrorism or military conflicts, whether or not pursuant to the declaration of an emergency or war), (iii) natural disasters (including any effects of climate change), calamities, epidemics, pandemics or disease

outbreaks (including the COVID-19 virus to the extent they occurred before the date of this Agreement), (iv) changes in any applicable Laws, Orders or GAAP or interpretations thereof, (v) the execution, existence, performance, announcement, pendency or consummation of this Agreement or the transactions contemplated hereby or any communication by the Buyer or any of its Affiliates of its plans or intentions (including in respect of employees) with respect to the Business, (vi) the filing or pendency of the Bankruptcy Case, any Orders of, or action or omission approved by, the Bankruptcy Court (or any other Governmental Authority of competent jurisdiction in connection therewith) or any objections in the Bankruptcy Court to (1) this Agreement or any of the Ancillary Agreements or any of the transactions contemplated hereby or thereby, (2) the reorganization of the Sellers and any related plan of reorganization or disclosure statement, (3) the Sale Motion or (4) the assumption of any Transferred Contract or any actions approved by the Bankruptcy Court, (vii) any action taken by the Sellers or the Transferred Subsidiaries at the written request of Buyer or that is required or permitted by this Agreement, (viii) the identity of Buyer or any of its Affiliates or any facts or circumstances relating to Buyer or any of its Affiliates, unless such identity, facts or circumstances are disclosed in writing by Sellers, (ix) any failure in and of itself, to achieve any budgets, projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics (but, for the avoidance of doubt, not the underlying causes of any such failure to the extent such underlying cause is not otherwise excluded from the definition of Material Adverse Effect), (x) any action required to be taken under any Law or Order or any existing Contract by which any of the Transferred Subsidiaries (or any of their respective properties) is bound and (xi) any matter disclosed on the Disclosure Schedules or in any filings by the Sellers or their Affiliates with the Bankruptcy Court prior to the date of this Agreement; provided, however, that (a) changes or developments set forth in clauses (i), (ii), (iii) or (iv) may be taken into account in determining whether there has been or is Material Adverse Effect to the extent such changes or developments have a disproportionate impact on the Business, taken as a whole, relative to the other participants in the industries in which the Business operates (b) the escalation or worsening of epidemics, pandemics or disease outbreaks (including the COVID-19 virus) occurring after the date of this Agreement may be taken into account in determining whether there has been or is Material Adverse Effect and (c) insolvency, bankruptcy or similar proceedings with respect to any of the Transferred Subsidiaries may be taken into account in determining whether there has been or is a Material Adverse Effect (but, for the avoidance of doubt, not the underlying causes of any such insolvency, bankruptcy or similar proceedings to the extent such underlying cause is not otherwise excluded from the definition of Material Adverse Effect).

“Order” means any award, writ, injunction, judgment, order or decree entered, issued, made, or rendered by any Governmental Authority.

“Ordinary Course of Business” means the operation of the Business in the ordinary course consistent with past practice of the Sellers and Transferred Subsidiaries, as such practice and custom is, or may have been, modified as a result of the Bankruptcy Case, in each case subject to (a) the filing of the Bankruptcy Case, (b) any Orders of the Bankruptcy Court, and (c) the conduct of the Auction process as contemplated by the bidding procedures set forth in the Sale Procedures Order.

“Owned Real Property” means the Seller Owned Real Property and the Transferred Subsidiary Owned Real Property, including all improvements and structures thereon and appurtenances belonging thereto.

“Party” or “Parties” means, individually or collectively, the Buyer and the Sellers.

“Permitted Encumbrance” means (a) statutory liens for current Taxes not yet due and payable or the validity or amount of which is being contested in good faith by appropriate proceedings, in each case for which adequate reserves have been established, (b) mechanics’, carriers’, workers’, repairers’ and other similar liens arising or incurred in the Ordinary Course of Business relating to obligations which are not yet due and payable by the Sellers or the Transferred Subsidiaries and which are not material liens on the Real Property, (c) with respect to the Real Property, minor survey exceptions, easement agreements and other customary title defects or irregularities, including all matters of record, that (i) do not, individually or in the aggregate, materially impair the value or the current use of such Real Property, (ii) were not incurred in connection with any indebtedness and (iii) do not render title to the Real Property encumbered thereby unmarketable, (d) as to any Lease, any Encumbrance affecting the interest of the landlord thereunder and not the interest of the tenant thereunder that do not, individually or in the aggregate, materially impair the value or current use of the leasehold interest under the Leases, (e) zoning, building codes and other land use Laws regulating the use or occupancy of the Owned Real Property or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over the Owned Real Property which are not violated by the current use or occupancy of such Owned Real Property in any material respect, (f) any Encumbrances that will be removed or released by operation of the Sale Order, (g) any Encumbrances created by licenses granted in the Ordinary Course of Business in any Intellectual Property, (h) all DIP Liens and (i) any other Encumbrances not described in clauses (a) through (h) above created by the actions of Buyer or any of its Affiliates.

“Person” means an individual, corporation, partnership, limited liability company, limited liability partnership, syndicate, person, trust, association, organization or other entity, including any Governmental Authority, and including any successor, by merger or otherwise, of any of the foregoing.

“Prepetition ABL Credit Agreement” means that certain Loan and Security Agreement, dated as of April 29, 2015, by and among Seller Parent, Techniplas Finance Corp., NI, DMP Exports, Inc., DMPM, NM, WNA and DMPI, as borrowers, the lenders from time to time party thereto, and Bank of America N.A., as administrative agent.

“Prepetition Notes” means the 10.000% senior secured notes due in 2020 issued under the Prepetition Notes Indenture.

“Prepetition Noteholders” means the holders of the Prepetition Notes.

“Prepetition Notes Indenture” means that certain Indenture, dated as of April 15, 2015, entered into by and among Seller Parent and Techniplas Finance Group, as issuers, each of

the Guarantors (as defined therein) and U.S. Bank National Association, a national banking association, as trustee, collateral agent, paying agent, transfer agent and registrar.

“Real Property” means the Leased Real Property and the Owned Real Property.

“Release” means any release, spill, emission, discharge, leaking, pouring, dumping, emptying, pumping, injection, deposit, disposal, dispersal, leaching or migration into the indoor or outdoor environment (including soil, ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property, including the migration of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

“Representatives” means, with respect to any Person, the officers, managers, directors, principals, employees, agents, auditors, advisors, bankers and other representatives of such Person.

“Restricted Country” means any country or geographic region subject to comprehensive economic sanctions administered by OFAC or the E.U., which currently includes: Cuba, Iran, North Korea, Sudan, Syria, the Crimea region of Ukraine and Venezuela.

“Sale Hearing” means the hearing conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement.

“Sale Procedures Order” means an order of the Bankruptcy Court, in form and substance reasonably acceptable to Buyer and Seller Parent that, among other things, approves (a) bidding procedures, (b) bid protections granted to the Buyer ~~including the Termination Payment~~(if any), (c) the form and manner of notice of Auction(s), sale transaction(s), and Sale Hearing(s), and the conduct of the Auction, (d) the procedures for assumption and assignment of Contracts and Leases, (e) the date for Auction(s), if necessary, and Sale Hearing(s), and (f) affords Buyer the status of a party in interest in the Bankruptcy Cases.

“Sale Order” means an Order of the Bankruptcy Court approving this Agreement and the transactions contemplated hereby, the form of which Order is attached hereto as Exhibit A, with such changes as may be required by the Bankruptcy Court that are in form and substance reasonably acceptable to the Buyer and the Seller Parent.

“Seller Lease” means a lease, sublease, license, or other use or occupancy agreement with respect to the real property part of the Facilities to which an Asset Seller is a party as lessee, sublessee, tenant, subtenant or in a similar capacity.

“Seller Leased Real Property” means the leasehold interests held by an Asset Seller under a Seller Lease (other than any Leases withdrawn pursuant to Section 2.6).

“Straddle Period” means the portion of any taxable year that begins on or before and ends after the Closing Date.

“Subsidiary” of any Person means any entity (a) of which 50% or more of the outstanding share capital, voting securities or other voting equity interests are owned, directly or indirectly, by such Person, (b) of which such Person is entitled to elect, directly or indirectly, at

least 50% of the board of directors or similar governing body of such entity or (c) if such entity is a limited partnership or limited liability company, of which such Person or one of its Subsidiaries is a general partner or managing member or has the power to direct the policies, management or affairs.

“Successful Bidder” shall have the meaning set forth in the Sale Procedures Order.

“Tax Return” means any return, document, declaration, report, claim for refund, statement, information statement or other information or filing relating to Taxes, including any schedule or attachment thereto or amendment thereof, that is filed with or supplied to, or required to be filed with or supplied to, any Governmental Authority.

“Taxes” means (a) any and all U.S. federal, state and local, foreign, and other taxes, charges, fees, duties, levies, tariffs, imposts, tolls, customs or other assessments, including all net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, branch profits, profit share, license, lease, service, service use, value added, unclaimed property, escheat, withholding, payroll, employment, fringe, fringe benefits, excise, estimated, severance, stamp, occupation, premium, property, windfall profits, wealth, net wealth, net worth, export and import fees and charges, registration fees, tonnage, vessel, deposits, or other taxes, fees, assessments, customs, duties, levies, tariffs, imposts, tolls, or charges of any kind whatsoever imposed by any Governmental Authority, together with any interest, penalties, inflationary adjustments, additions to tax, fines or other additional amounts imposed thereon, with respect thereto, or related thereto, wherever and whenever imposed, (b) any and all liability for the payment of any items described in clause (a) above arising from, through, attributable to, or with respect to a place of business, permanent establishment, or a branch or as a result of being (or ceasing to be) a member of a fiscal unity, affiliated, consolidated, combined, unitary, or other similar group (or being included) in any Tax Return related to such group, (c) any and all liability for the payment of any amounts as a result of any successor or transferee liability, in respect of any items described in clause (a) or (b) above, and (d) any and all liability for the payment of any items described in clause (a) or (b) above as a result of, or with respect to, any express or implied obligation to indemnify any other Person pursuant to any tax sharing, tax indemnity or tax allocation agreement or similar agreement or arrangement with respect to taxes (in each case, other than any such agreement entered into in the Ordinary Course of Business the principal purpose of which is not to address taxes).

“Transferred Contracts” means all Contracts and Seller Leases of each Asset Seller that are listed in Section 1.1(d) of the Disclosure Schedules (as modified pursuant to Section 2.6).

“Transferred Subsidiaries” means DMP Monterrey, Techniplas Holdings and Dickten Servicios and each of their respective Subsidiaries listed on Section 1.1(a) of the Disclosure Schedules.

“Transferred Subsidiary Benefit Plan” means each Employee Benefit Plan that is solely sponsored or maintained by a Transferred Subsidiary.



“Transferred Subsidiary Employees” means all individuals employed by the Transferred Subsidiaries.

“Transferred Subsidiary Lease” means a lease, sublease, license, or other use or occupancy agreement with respect to the real property to which a Transferred Subsidiary is a party as lessee, sublessee, tenant, subtenant or in a similar capacity.

“Transferred Subsidiary Leased Real Property” means the leasehold interests held by a Transferred Subsidiary under a Transferred Subsidiary Lease.

“Treasury Regulations” means the regulations promulgated by the U.S. Department of the Treasury pursuant to the Code.

“Wind-Down Amount” means an aggregate amount to be used for wind-down purposes not to exceed \$250,000, plus the amounts set forth in the Carve-Out (as defined in the Financing Order).

“Wind-Down Amount Payment” means (i) if the Cash and Cash Equivalents as of the Closing are greater than the Wind-Down Amount, an amount equal to zero and (ii) otherwise, an aggregate amount equal to the Wind-Down Amount minus the amount of Cash and Cash Equivalents as of the Closing.

Section 1.2 Table of Definitions. The following terms have the meanings set forth in the Sections referenced below:

<u>Definition</u>	<u>Location</u>
Agreement	Preamble
Allocation	Section 2.9
Antitrust Authority	Section 6.5(a)
Assignment Agreement	Section 2.8(b)(i)
<del>Assignment of Leases</del>	<del>Section 2.8(b)(i)</del>
Assumed Employee Liabilities	Section 2.3(a)(iii)
Assumed Liabilities	Section 2.3(a)
Balance Sheet Date	Section 3.6(a)
Bankruptcy Court	Recitals
Bidding Procedures Order Date	Section 9.1(c)(x)
Business	Recitals
Business Permits	Section 2.1(e)
Buyer	Preamble
Buyer Fundamental Representations	Section 8.2(a)(i)
Closing	Section 2.8(a)
Closing Date	Section 2.8(a)
Continuing Employees	Section 6.4(a)
Copyrights	Section 1.1
Credit Bid	Recitals
Credit Bid Amount	Recitals

Cure Costs	Section 2.3(a)(ii)
Customer Contracts	Section 8.1(e)
DIP Agent	Recitals
DIP Credit Agreement	Recitals
DIP Lien	Recitals
Disclosure Limitations	Section 6.2(a)
Disclosure Schedules	ARTICLE III
DMPI	Preamble
DMPM	Preamble
Encumbered Assets	Recitals
Enforceability Exceptions	Section 3.2
Excluded Assets	Section 2.2
Excluded Liabilities	Section 2.4
Excluded Plans	Section 2.2(h)
Expense Reimbursement Amount	Section 5.1(a)
Foreign Benefit Plan	Section 3.10(h)
HSR Act	Section 3.3(a)
Inventory	Section 2.1(d)
IP Assignment Agreement	Section 2.8(b)(iii)
Lease Consents to Assignment	Section 3.12(c)
Legal Restraint	Section 7.1(a)
Material Contract	Section 3.16
Material Customers	Section 3.21(a)
Material Suppliers	Section 3.21(b)
Outside Date	Section 9.1(b)(iv)
Patents	Section 1.1
Permits	Section 3.8(b)
Petition Date	Section 2.3(a)
Products	Section 3.22(a)
Purchase Price	Section 2.7(a)
Regulatory Concession	Section 6.5(c)
Securities Act	Section 4.4
Seller	Preamble
Seller Customer Contracts	Section 8.3(e)
Seller Financial Statements	Section 3.6(a)
Seller Owned Real Property	Section 3.12(a)
Seller Parent	Preamble
Seller Return	Section 7.3
Sellers	Preamble
Software	Section 1.1
Trademarks	Section 1.1
Transfer Taxes	Section 7.1
Transferred Assets	Section 2.1
Transferred Plans	Section 2.1(k)
Transferred Stock	Recitals
Transferred Subsidiary Owned Real Property	Section 3.12(a)

WARN ..... Section 2.4(v)

## ARTICLE II. PURCHASE AND SALE

Section 2.1 Purchase and Sale. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, upon the terms and subject to the conditions set forth in this Agreement and in the Sale Order, at the Closing, (i) the Asset Sellers shall sell, assign, transfer, convey and deliver to the Buyer all of the Asset Sellers' right, title and interest as of the Closing Date in and to the Transferred Assets and assign to Buyer the Assumed Liabilities and (ii) the Equity Sellers shall sell, assign, transfer, convey and deliver to the Buyer all of the Equity Sellers' right, title and interest as of the Closing Date in and to the Transferred Stock, and the Buyer shall purchase, acquire and accept the Transferred Stock from the Equity Sellers and the Transferred Assets from the Asset Sellers and assume the Assumed Liabilities. "Transferred Assets" shall mean all right, title and interest of the Asset Sellers to or under the properties and assets of the Asset Sellers of every kind and description, wherever located, whether real, personal or mixed, tangible or intangible, relating to the Business, including all right, title and interest of the Asset Sellers in, to or under (but excluding in each case, any Excluded Assets):

- (a) all Transferred Contracts;
- (b) all Seller Owned Real Property and Seller Leased Real Property (subject to Section 2.6), together in each case with the Asset Sellers' right, title and interest in and to all structures, facilities or improvements located thereon and all easements, licenses, rights and appurtenances relating to such Real Property;
- (c) all machinery, equipment, furniture, furnishings, parts, spare parts, vehicles and other tangible personal property owned or leased (to the extent the underlying lease is a Transferred Contract) by the Asset Sellers related to the Business, including all such items located at the Facilities;
- (d) all raw materials, works-in-progress, finished goods, supplies, packaging materials and other inventories owned by the Asset Sellers related to the Business (the "Inventory");
- (e) all Permits held by the Asset Sellers related to the Business (the "Business Permits"), but only to the extent such Permits may be transferred under applicable Law;
- (f) Cash and Cash Equivalents (other than Cash and Cash Equivalents in the amount of the Wind-Down Amount Payment), all bank accounts, all deposits (including maintenance deposits, customer deposits, and security deposits for rent, electricity, telephone or otherwise) or prepaid or deferred charges and expenses, including all lease and rental payments and insurance policies, that have been prepaid by any Asset Seller, and all Accounts Receivable, in each case, to the extent related to the Business;
- (g) any interest in or right to any refund, rebate or credit of Taxes that relate to the Transferred Assets, including (for the avoidance doubt) any such refund rebate or credit of

a Tax that becomes payable or available to any Asset Seller in the future in respect of a Tax paid or incurred by the Buyer;

(h) all Tax assets (including refunds, rebates or credits of Taxes, or other Tax benefits) relating to the Transferred Assets or the Asset Sellers;

(i) all goodwill associated with the Transferred Assets, Transferred Subsidiaries or the Business;

(j) all books and records related to the Business or to the extent related to the Transferred Assets, including copies of all materials described in Section 2.2(b)(ii);

(k) all rights and obligations under or arising out of all insurance policies relating to the Business or any of the Transferred Assets or Assumed Liabilities (including returns and refunds of any premiums paid, or other amounts due back to any Asset Seller, with respect to any cancelled insurance policies);

(l) all rights, claims and causes of action relating to any Transferred Asset or any Assumed Liability;

(m) all of the rights and claims of the Asset Sellers available under the U.S. Bankruptcy Code, of whatever kind or nature, as set forth in sections 544 through 551, inclusive, 553, 558 and any other applicable provisions of the Bankruptcy Code, including with respect to trade obligations paid prior to the Petition Date, and any related claims and actions arising under such sections by operation of Law or otherwise, including any and all proceeds of the foregoing (such rights and claims not to be prosecuted by the Buyer or any other Person);

(n) all Avoidance Actions of the Asset Sellers, including any and all proceeds of the foregoing;

(o) all plants, offices and manufacturing, processing, distribution, storage, warehousing and other facilities of Asset Sellers or any of their Subsidiaries used (or held for use) in connection with the ownership or operation of the Business at Sellers' or any of their Subsidiaries' following facilities: Ankeny, Iowa and Auburn, Alabama, together with all equipment, machinery, vehicles, fixtures, supplies, furniture, leasehold improvements, and other personal, movable and mixed property of Sellers or any of their Subsidiaries exclusively related to such facilities, in each case to the extent set forth in Schedule 2.1(o) of the Disclosure Schedules; and

(p) all assets under each Transferred Subsidiary Benefit Plan and each Employee Benefit Plan that is not an Excluded Plan (collectively, the "Transferred Plans"), together with all funding arrangements thereto (including all assets, trusts, insurance policies and administrative service Contracts), to the extent any such assets are attributable to the Business Employees.

Section 2.2 Excluded Assets. Notwithstanding anything contained in Section 2.1 to the contrary, the Asset Sellers are not selling, transferring, assigning, conveying or

delivering and the Buyer is not purchasing, any of the assets of the Asset Sellers set forth below, all of which shall be retained by the Asset Sellers (collectively, the “Excluded Assets”):

(a) all assets expressly excluded or excepted from the definition of Transferred Assets pursuant to Section 2.1;

(b) the Asset Sellers’ documents, written files, papers, books, reports and records (i) prepared in connection with this Agreement or the transactions contemplated hereby or relating to the Bankruptcy Case or (ii) that any Asset Seller is required by Law to retain; provided that, to the extent not prohibited by applicable Law or any of any Seller’s applicable privacy policies or contractual restrictions and to the extent materially relevant to the Transferred Assets, Assumed Liabilities, or the Business, Buyer shall be entitled to copies of all or any portions of such documents;

(c) all accounting records and internal reports to the extent relating to the business activities of the Asset Sellers unrelated to the Business;

(d) all rights, claims and causes of action relating to any Excluded Asset or any Excluded Liability;

(e) shares of capital stock or other equity interests in any Subsidiary of Seller Parent or securities convertible into or exchangeable or exercisable for shares of capital stock or other equity interests in any Subsidiary of Seller Parent;

(f) all assets under each Employee Benefit Plan set forth on Section 2.2(f) of the Disclosure Schedules (collectively, the “Excluded Plans”), together with all funding arrangements related thereto (including all assets, trusts, insurance policies and administrative service Contracts);

(g) the rejected Contracts;

(h) all retainers or similar prepaid amounts paid to the accountants, attorneys, consultants, advisors, investment bankers or other professional service providers of the Sellers;

(i) the assets of the Asset Sellers listed in Section 2.2(i) of the Disclosure Schedules;

(j) except as set forth on Schedule 2.1(o) of the Disclosure Schedules, all plants, offices and manufacturing, processing, distribution, storage, warehousing and other facilities of Sellers or any of their Subsidiaries used (or held for use) in connection with the ownership or operation of the Business at Sellers’ or any of their Subsidiaries’ following facilities: Ankeny, Iowa and Auburn, Alabama, together with all equipment, machinery, vehicles, fixtures, supplies, furniture, leasehold improvements, and other personal, movable and mixed property of Sellers or any of their Subsidiaries exclusively related to such facilities;

(k) the Cash and Cash Equivalents that are included in the Wind-Down Payment Amount, if any;

(l) all Tax Returns of, with respect to, or related to the Transferred Assets or the Asset Seller (and all Tax books and records, including note papers and work papers, related thereto); provided that the Asset Sellers shall provide to the Buyer copies of any portions of such documents relating to the Transferred Assets or Assumed Liabilities; and

(m) all rights of the Asset Sellers under this Agreement and the Ancillary Agreements.

Section 2.3 Assumed Liabilities.

(a) On the terms and subject to the conditions set forth herein and in the Confirmation Order and subject to the consummation of the Plan, effective as of the Closing, Buyer shall assume from the Asset Sellers (and from and after the Closing pay, perform, discharge, or otherwise satisfy in accordance with their respective terms), and the Asset Sellers shall irrevocably convey, transfer, and assign to Buyer, only the following Liabilities, in each case to the extent arising on or after the initial filing of the Bankruptcy Case (the "Petition Date"), without duplication (or such other time as set forth below) (the "Assumed Liabilities"):

(i) all Liabilities of the Asset Sellers under the Transferred Contracts and the transferred Business Permits that become due or are to be performed on or after, or in respect of periods following, the Closing Date;

(ii) all cure costs required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Transferred Contracts (the "Cure Costs");

(iii) all Liabilities (1) arising out of, resulting from, or relating to the Transferred Plans, including sponsorship thereof, and (2) assumed by the Buyer pursuant to Section 6.4 (collectively, the "Assumed Employee Liabilities");

(iv) all Liabilities relating to amounts required to be paid, or actions required to be taken or not to be taken, by the Buyer under this Agreement;

(v) any and all Liabilities for accounts payable incurred in the Ordinary Course of Business arising from or related to the ownership or operation of the Business or the Transferred Assets from and after the Petition Date; and

(vi) all Liabilities incurred in the Ordinary Course of Business, solely to the extent associated with the Transferred Assets for the period beginning on the Petition Date (to the extent such Liabilities are outstanding as of the Closing).

(b) Section 2.3(a) shall not limit any claims or defenses Buyer may have against any party other than the Asset Sellers. The transactions contemplated by this Agreement shall in no way expand the rights or remedies of any third party against the Buyer or the Asset Sellers as compared to the rights and remedies that such third party would have had against the Asset Sellers or the Buyer absent the Bankruptcy Case or the Buyer's assumption of such

Assumed Liabilities. Other than the Assumed Liabilities, the Buyer is not assuming and shall not be liable for any Liabilities of the Asset Sellers.

Section 2.4 Excluded Liabilities. Buyer shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of, or Action against, the Asset Sellers or relating to the Transferred Assets, of any kind or nature whatsoever, whether absolute, accrued, contingent or otherwise, liquidated or unliquidated, due or to become due, known or unknown, currently existing or hereafter arising, matured or unmatured, direct or indirect, and however arising, whether existing on the Petition Date or arising thereafter as a result of any act, omission, or circumstances taking place prior to the Petition Date, other than the Assumed Liabilities (all such Liabilities that are not Assumed Liabilities being referred to collectively herein as the “Excluded Liabilities”), including but not limited to the following:

(a) any and all Liabilities for Taxes related to or arising from or with respect to (i) the Transferred Assets, the Assumed Liabilities or the operation of the Business by the Asset Sellers, in each case that are incurred in, or attributable to, any taxable period, or portion thereof, ending on or prior to the Closing Date, including any such Taxes which are not due or assessed until after the Closing Date, (ii) any Transfer Taxes for which any Seller is responsible pursuant to Section 7.1 or (iii) the Excluded Assets or Excluded Liabilities;

(b) any and all Liabilities of the Asset Sellers under any Contract of the Asset Sellers that is not a Transferred Contract whether accruing prior to, at, or after the Petition Date;

(c) any and all Liabilities resulting from the failure to comply with any applicable “bulk sales,” “bulk transfer” or similar Law;

(d) any Liabilities of the Asset Sellers, other than Assumed Employee Liabilities, arising out of, resulting from or relating to (i) the employment or service or termination of employment or service, or the provision of compensation, severance, benefits or payments of any nature owed to any current or former employees, officers, directors or service providers of the Asset Sellers, whenever arising, (ii) the employment or termination of employment of any Business Employee by the Asset Sellers on or prior to the Closing, including any gratuity payment, severance, notice or other payment or benefit due on the termination of employment of any such Business Employee by the Asset Sellers at the Closing, (iii) any Excluded Plans, whenever arising, and (iv) Liabilities expressly retained by the Asset Sellers pursuant to Section 6.4;

(e) any Liabilities of the Asset Sellers in respect of indebtedness for borrowed money, or guarantees thereof, of the Asset Sellers or any predecessors or Affiliates of Sellers;

(f) any Liability to distribute to any Asset Seller’s shareholders (or other equity holders) or otherwise apply all or any part of the consideration received hereunder;

(g) any and all Liabilities arising under any Environmental Law or with respect to Hazardous Materials or any other environmental matter and arising from or related to (i) the ownership or operation of the Business or the Transferred Assets on or before the Petition

Date, (ii) any action or inaction of the Asset Sellers or any third party relating to the Business or Transferred Assets on or before the Petition Date, (iii) any formerly owned, leased or operated properties of the Asset Sellers that are not the Real Property, or (iv) any condition first occurring or arising on or before the Petition Date with respect to the Business or the Transferred Assets;

(h) any and all Liability for: (i) costs and expenses incurred by the Asset Sellers or owed in connection with the administration of the Bankruptcy Case (including the U.S. Trustee fees, the fees and expenses of attorneys, accountants, financial advisors, consultants and other professionals retained by the Asset Sellers, and any official or unofficial creditors' or equity holders' committee and the fees and expenses of the post-petition lenders or the pre-petition lenders incurred or owed in connection with the administration of the Bankruptcy Case); (ii) all costs and expenses of the Asset Sellers incurred in connection with the negotiation, execution and consummation of the transactions contemplated under this Agreement; and (iii) all costs and expenses of the Asset Sellers arising out of or related to services, products or product or service warranties of the Asset Sellers or any predecessor(s) or Affiliate(s) of the Asset Sellers arising under any Contract that is not a Transferred Contract, to the extent provided, developed, designed, manufactured, marketed, sold or distributed prior to the Petition Date;

(i) any and all Liabilities for Taxes of the Asset Sellers or any of their direct or indirect record holders or beneficial owners (including, for the avoidance of doubt, any such Liabilities arising out of the transactions contemplated by this Agreement);

(j) any Liability of the Asset Sellers under this Agreement or the Ancillary Agreements;

(k) all accounts payable of Asset Sellers or any predecessors of Asset Sellers, except for Cure Costs payable by the Buyer pursuant to Section 2.6(a) and accounts payable assumed by the Buyer pursuant to Section 2.3(a)(ii) or 2.3(a)(v);

(l) all Excluded Environmental Liabilities (regardless of whether such Liabilities accrue to the Asset Sellers or to the Buyer in the first instance);

(m) except for Cure Costs payable by the Buyer as contemplated in Section 2.6(a) and assumed by the Buyer pursuant to Section 2.3(a)(ii), all Liabilities of the Asset Sellers resulting from, caused by or arising out of, or which relate to, directly or indirectly, the conduct of the Asset Sellers (or any of their current or former officers, directors, employees or agents) anywhere or ownership or lease of any properties or assets or any properties or assets previously used by the Asset Sellers at any time, or other actions, omissions or events occurring prior to the Closing which (i) constitute, may constitute or are alleged to constitute a tort, breach of contract or violation of any Law or (ii) relate to any and all Actions against the Asset Sellers or their predecessors or Affiliates whether past, present, future, known or unknown, liquidated or unliquidated, accrued or unaccrued, pending or threatened;

(n) all Liabilities of the Asset Sellers arising out of any Action commenced against any Asset Seller or any predecessor or Affiliate of any Asset Seller after the Closing to the extent arising out of or relating to any occurrence or event happening prior to the Closing;



(o) all Liabilities of the Asset Sellers under any Transferred Contract which arises after the Closing but arises out of or relates to any breach that occurred prior to the Closing, excluding any Cure Costs;

(p) all Liabilities of the Asset Sellers arising out of or relating to any infringement or misappropriation of, or other conflict with, the Intellectual Property of any third-party to the extent arising out of or related to the conduct of the Business or any act or omission of the Asset Sellers or any predecessor or Affiliate of any Asset Seller prior to the Closing;

(q) all Liabilities arising out of, or relating to, any indemnification obligations of the Asset Sellers, including indemnification obligations pursuant to supply agreements, service agreements, purchase agreements, leases and any other type of Contract that, in each case does not arise pursuant to a Transferred Contract, to the extent arising out of or related to the conduct of the Business or any act or omission of the Asset Sellers or any predecessor or Affiliates of the Asset Sellers prior to the Petition Date and Liabilities to indemnify, reimburse or advance amounts to any officer, director, employee or agent of the Asset Sellers;

(r) all Liabilities of any Asset Seller to any current, former or prospective shareholder or other equity interest holder of any Asset Seller, including all Liabilities of any Asset Seller related to the right to or issuance of any capital stock or other equity securities;

(s) all Liabilities for any legal, accounting, investment banking, reorganization, restructuring (including bankruptcy administrative expenses), brokerage or similar fees or expenses incurred by the Asset Sellers in connection with, resulting from or attributable to the transactions contemplated by this Agreement, the Bankruptcy Case or otherwise;

(t) all Liabilities of the Asset Sellers or any predecessors of the Asset Sellers based upon such Person's acts or omissions occurring after the Closing;

(u) all Liabilities of the Asset Sellers to the Buyer, its Affiliates, and its Affiliate' agents, advisors and representatives, whether under this Agreement, any Ancillary Agreement or otherwise;

(v) all Liabilities pursuant to the Worker Adjustment and Retraining Notification Act or any similar state law (collectively referred to as "WARN") with respect to individuals employed by the Asset Sellers or Transferred Subsidiaries, and whose employment with such Asset Sellers or Transferred Subsidiaries terminates prior to or upon the Closing; and

(w) any Liability of the Asset Sellers or obligation to the extent relating to an Excluded Asset, including executory Contracts and unexpired Leases that are not Transferred Contracts;

provided, that in the event of any direct conflict between the terms of Section 2.3 and this Section 2.4, the terms of Section 2.3 will control.

Section 2.5 Consents to Certain Assignments.

(a) Notwithstanding anything in this Agreement or any Ancillary Agreement to the contrary, this Agreement and the Ancillary Agreements shall not constitute an agreement to transfer or assign any asset, permit, claim or right or any benefit arising thereunder or resulting therefrom if an attempted assignment thereof, without the consent of a third party, would constitute a breach or other contravention under any agreement or Law to which any Asset Seller is a party or by which it is bound, or materially and adversely affect the rights of the Asset Sellers or, upon transfer, the Buyer under such asset, permit, claim or right, unless the applicable provisions of the Bankruptcy Code permits and/or the Sale Order authorizes the assumption and assignment of such asset, permit, claim, or right irrespective of the consent or lack thereof of a third party. To the extent that the assignment to Buyer of any such asset, permit, claim, or right pursuant to this Agreement is not permitted without the consent of a third party and such restriction cannot be, or is not, effectively overridden or canceled by the Sale Order or other related order of the Bankruptcy Court, the Parties shall use commercially reasonable efforts to obtain such consent prior to the Closing. If, with respect to any such asset, permit, claim, or right, such consent is not obtained or such assignment is not attainable pursuant to the Bankruptcy Code or the Sale Order prior to the Closing, then such Transferred Asset shall not be transferred hereunder, and the Closing shall proceed with respect to the remaining Transferred Assets and the Sellers and Buyer shall, through the earlier of such time as such consent or assignment is so obtained and six (6) months following the Closing (or the remaining term of any such binding agreement or the closing of the Bankruptcy Case, if shorter), use their commercially reasonable efforts and shall cooperate to obtain any such consent and to resolve the impracticalities of assignment after the Closing. For the avoidance of doubt, the efforts contemplated by this Section 2.5(a) shall not include any obligation by any Seller or any of their respective Affiliates to pay money (advance or otherwise) to any third party or to incur out of pocket expenses unless Buyer funds such amounts.

(b) Except with respect to Transferred Contracts and Business Permits that are governed by Section 2.6(c) below, if (i) notwithstanding the applicable provisions of Sections 363 and 365 of the Bankruptcy Code and the Sale Order and the commercially reasonable efforts of the Sellers and Buyer, any consent is not obtained prior to Closing and as a result thereof the Buyer shall be prevented by a third party from receiving the rights and benefits with respect to a Transferred Asset intended to be transferred hereunder, (ii) any attempted assignment of a Transferred Asset would adversely affect the rights of the Asset Sellers thereunder so that the Buyer would not in fact receive all the rights and benefits contemplated, or (iii) any Transferred Asset is not otherwise capable of sale and/or assignment (after giving effect to the Sale Order and the Bankruptcy Code), then, in any such case, the Sellers shall, prior to the closing of the Bankruptcy Case and subject to any approval of the Bankruptcy Court that may be required and at the request of the Buyer, cooperate with Buyer in any lawful and commercially reasonable arrangement under which the Buyer would, to the extent practicable, obtain (for no additional cost or consideration) the economic claims, rights and benefits under such asset and assume the economic burdens and obligations with respect thereto in accordance with this Agreement, including by subcontracting, sublicensing or subleasing to the Buyer; provided, that Sellers' cooperation obligations contemplated by this Section 2.5(a) shall not include any obligation by any Seller or any of their respective Affiliates to pay money (advance or otherwise) to any third party or to incur out of pocket expenses unless Buyer funds such

amounts. Buyer shall cooperate with Sellers in order to enable Sellers to provide to Buyer the benefits contemplated by this Section 2.5(b). Seller Parent shall as promptly as practicable pay to the Buyer when received all monies received by the Asset Sellers attributable to such Transferred Asset from and after the Closing Date and the Buyer shall indemnify and promptly pay the Asset Sellers for all Liabilities of the Asset Sellers associated with, arising or resulting from such arrangement.

(c) To the extent that the Buyer has not obtained all of the Permits included in the Transferred Assets that are necessary for the Buyer to take title to all of the Transferred Assets at the Closing and to operate all aspects of the Business as of immediately following the Closing in a substantially similar manner in all material respects as it was operated by the Sellers immediately prior to the Closing, the Sellers shall, to the extent permitted by applicable Laws, use commercially reasonable efforts to maintain after the Closing such Permits that the Buyer reasonably requests, at the Buyer's sole expense, until the earlier of the time the Buyer has obtained such Permits and six (6) months following the Closing (or the remaining term of any such Permit or the closing of the Bankruptcy Case, if shorter).

#### Section 2.6 Assumption and Assignment of Certain Contracts.

(a) Assumption and Assignment of Executory Contracts. The Asset Sellers shall provide timely and proper written notice of the motion seeking entry of the Sale Order to all parties to any executory Contracts or unexpired leases to which any Asset Seller is a party that are Transferred Contracts and take all other actions necessary to cause such Contracts to be assumed by the Asset Sellers and assigned to Buyer pursuant to section 365 of the Bankruptcy Code to the extent that such Contracts are Transferred Contracts at Closing. At the Closing, the Asset Sellers shall, pursuant to the Sale Order and the Assignment and Assumption Agreement(s), assume and assign to Buyer (the consideration for which is included in the Purchase Price), all Transferred Contracts that may be assigned by any such Seller to Buyer pursuant to sections 363 and 365 of the Bankruptcy Code. At the Closing, Buyer shall (i) pay all Cure Costs by wire transfer of immediately available funds to the account(s) designated in writing by the counterparties to the applicable Transferred Contracts unless otherwise agreed by such counterparty, (ii) cure any and all other defaults and breaches under the Transferred Contracts and Assumed Leases so that such Contracts may be assumed by the applicable Seller and assigned to Buyer in accordance with the provisions of section 365 of the Bankruptcy Code and this Agreement, and (iii) assume, and thereafter in due course and in accordance with its respective terms pay, fully satisfy, discharge and perform all of the obligations under each Transferred Contract pursuant to section 365 of the Bankruptcy Code.

(b) Excluding or Adding Transferred Contracts Prior to Closing. Buyer shall have the right to notify the Sellers in writing of any Transferred Contract that it does not wish to assume or a Contract to which any Asset Seller is a party that Buyer wishes to add as a Transferred Contract up to one (1) Business Day prior to the Closing Date, and (i) any such previously considered Transferred Contract that Buyer no longer wishes to assume shall be automatically deemed removed from the Schedules related to Transferred Contracts and automatically deemed added to the Schedules related to Excluded Contracts, in each case, without any adjustment to the Purchase Price, and (ii) any such previously considered Excluded Contract that Buyer wishes to assume as a Transferred Contract shall be automatically deemed

added to the Schedules related to Transferred Contracts, automatically deemed removed from the Schedules related to Excluded Contracts, and assumed by Sellers to sell and assign to Buyer, in each case, without any adjustment to the Purchase Price.

(c) Non-Assignment. Notwithstanding the foregoing, a Contract shall not be a Transferred Contract hereunder and shall not be assigned to, or assumed by, Buyer to the extent that such Contract (i) is rejected by a Seller or terminated by a Seller as permitted by Section 6.1 or any other party thereto, or terminates or expires by its terms, on or prior to such time as it is to be assumed by Buyer as a Transferred Contract hereunder and is not continued or otherwise extended upon assumption or (ii) requires a Consent or Governmental Authorization (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Buyer of the applicable Seller's rights under such Contract, and such Consent or Governmental Authorization has not been obtained prior to such time as it is to be assumed by Buyer as a Transferred Contract hereunder. In addition, a Business Permit shall not be assigned to, or assumed by, Buyer to the extent that such Business Permit requires a Consent or Governmental Authorization (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Buyer of the applicable Seller's rights under such Permit, and no such Consent or Governmental Authorization has been obtained prior to the Closing. In the event that any Transferred Contract is deemed not to be assigned pursuant to clause (ii) of the first sentence of this Section 2.6(c), the Closing shall nonetheless take place subject to the terms and conditions set forth herein and, thereafter, through the earlier of such time as such Consent or Governmental Authorization is obtained and six (6) months following the Closing (or the remaining term of such Contract or the closing of the Bankruptcy Case, if shorter), Sellers and Buyer shall (A) use commercially reasonable efforts to secure such Consent or Governmental Authorization as promptly as practicable after the Closing and (B) cooperate in good faith in any lawful and commercially reasonable arrangement reasonably proposed by Buyer, including subcontracting, licensing, or sublicensing to Buyer any or all of any Seller's rights and obligations with respect to any such Transferred Contract, under which (1) Buyer shall obtain (without infringing upon the legal rights of such third party or violating any Law) the economic rights and benefits (net of the amount of any related Tax costs imposed on Sellers or their respective affiliates) under such Transferred Contract with respect to which the Consent and/or Governmental Authorization has not been obtained and (2) Buyer shall assume any related burden (including the amount of any related Tax benefit obtained by Sellers or their respective affiliates) and obligation (including performance) with respect to such Transferred Contract. Upon satisfying any requisite Consent or Governmental Authorization requirement applicable to such Transferred Contract after the Closing, such Transferred Contract shall promptly be transferred and assigned to Buyer in accordance with the terms of this Agreement. For the avoidance of doubt, the efforts contemplated by this Section 2.6(c) shall not include any obligation by any Seller to pay money (advance or otherwise) to any third party or to incur out of pocket expenses unless Buyer funds such amounts.

#### Section 2.7 Consideration.

(a) The aggregate consideration (the "Purchase Price") for the sale and transfer of the Transferred Stock and the Transferred Assets from the Sellers to the Buyer shall consist of:

- (i) the Credit Bid Amount;
- (ii) the assumption of the Assumed Liabilities;
- (iii) the Wind-Down Amount, payment of which shall be payable by the Buyer at Closing by wire transfer of immediately available funds to the account(s) designated by the Sellers to the Buyer in writing in the amount of the Wind-Down Amount Payment;
- (iv) the amount of the ABL Payment Amount, payable by the Buyer at Closing by wire transfer of immediately available funds to the account(s) designated by Bank of America, N. A. in a payoff letter delivered to the Buyer at least 2 Business Days prior to Closing; and
- (v) the budgeted amounts (less actual amounts paid) for estate professionals from the Petition Date through the Closing Date as further described in the Financing Order and which are to be paid by the DIP Lenders, payable by the Buyer at Closing by wire transfer of immediately available funds to the account(s) designated by the Sellers to the Buyer in writing.

(b) In accordance with Section 2.7(a), Buyer shall satisfy the Purchase Price at the Closing (i) as to the Credit Bid Amount by discharging Sellers, and Sellers shall be deemed to be discharged, from the DIP Credit Agreement Indebtedness in an aggregate amount equal to the Credit Bid Amount and (ii) as to the amounts set forth in Sections 2.7(a)(iii), 2.7(a)(iv) and 2.7(a)(v), by wire transfer of immediately available funds to the accounts designated to the Buyer pursuant to such Sections. For the avoidance of doubt, any Encumbrance in favor of the holders of the outstanding DIP Credit Agreement Indebtedness on any asset that is not a Transferred Asset shall not be released and will continue to secure the remaining outstanding amount of the Credit Agreement Indebtedness).

#### Section 2.8 Closing.

(a) The sale and purchase of the Transferred Stock and the Transferred Assets and the assumption of the Assumed Liabilities contemplated by this Agreement shall take place at a closing (the “Closing”) to be held by telephone conference and electronic exchange of documents (or, if the Parties agree to hold a physical closing, at the offices of White & Case LLP, located at 1221 Avenue of the Americas, New York, New York 10020 at 10:00 a.m. New York Time on the second (2<sup>nd</sup>) Business Day following the satisfaction or, to the extent permitted by applicable Law, valid waiver of all conditions to the obligations of the Parties set forth in Article VII (other than such conditions as may, by their terms, only be satisfied at the Closing or on the Closing Date, but subject to the satisfaction or waiver of such conditions), or at such other place or at such other time or on such other date as the Sellers and the Buyer mutually may agree in writing. The day on which the Closing takes place is referred to as the “Closing Date.”

(b) At or prior to the Closing, the Sellers shall deliver or cause to be delivered to the Buyer:

(i) the ~~bill of sale,~~ assignment and assumption agreement in a form reasonably acceptable to Seller Parent and the Buyer (the “Assignment Agreement”), duly executed by the applicable Sellers;

~~(ii) the assignment of leases substantially in a form reasonably acceptable to Seller Parent and the Buyer (the “Assignment of Leases”), duly executed by the applicable Sellers, including duly executed Lease Consents to Assignment;~~

(ii) ~~(iii)~~ the intellectual property assignment agreement in a form reasonably acceptable to Seller Parent and the Buyer (the “IP Assignment Agreement”), duly executed by the applicable Sellers;

(iii) ~~(iv)~~ a copy of the Sale Order, as entered by the Bankruptcy Court;

(iv) ~~(v)~~ certificates evidencing the Transferred Stock, duly endorsed in blank (or with customary stock powers, duly executed by the Equity Sellers), or instruments of transfer reasonable and customary for the jurisdiction applicable to such Transferred Stock, in each case free and clear of all Encumbrances (except for Encumbrances under applicable securities Laws);

(v) ~~(vi)~~ an IRS Form W-9 from each Seller duly executed by each such Seller;

~~(vii) quitclaim (or equivalent) deeds in recordable form for all Seller Owned Real Property, duly executed by the applicable Sellers;~~

(vi) ~~(viii)~~ a duly executed certificate of a duly authorized officer of Seller Parent certifying the satisfaction of the conditions set forth in Section 8.3(a), Section 8.3(b), and Section 8.3(f);

(vii) ~~(ix)~~ termination agreements for the agreements listed on Schedule 2.8(b) hereto; and

(viii) ~~(x)~~ all other material documents, instruments or writings of conveyance reasonably necessary to consummate the transactions contemplated by this Agreement.

(c) At or prior to the Closing, the Buyer shall deliver or cause to be delivered to the Sellers:

(i) the Assignment Agreement, duly executed by the Buyer;

(ii) the IP Assignment Agreement, duly executed by the Buyer;

(iii) a duly executed certificate of an executive officer of the Buyer certifying the satisfaction of the conditions set forth in Section 8.2(a) and Section 8.2(b); and

(iv) all other material documents, instruments or writings of conveyance reasonably necessary to consummate the transactions contemplated by this Agreement.

**Section 2.9 Tax Allocation.** The portion of the Purchase Price paid to any Seller (plus the applicable Assumed Liabilities and any other amounts, to the extent properly taken into account under the Code), shall be allocated among the applicable Transferred Assets and the applicable Transferred Stock (and, to the extent necessary under applicable Tax Law, to the assets of any applicable Transferred Subsidiary) in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder (any such allocation, an “Allocation”). A draft of each Allocation shall be prepared by the Buyer and delivered to the Sellers as promptly as reasonably practicable following the Closing Date. The Sellers shall promptly review such draft allocation and the Buyer shall consider the Sellers’ comments in good faith in preparing the final Allocation. The Buyer and the Sellers agree to, and to cause their respective Affiliates to, (a) timely file with each relevant Governmental Authority all forms and Tax Returns required to be filed in connection with the applicable Allocation, (b) be bound by the applicable Allocation for the purpose of determining Taxes and (c) prepare and file, and cause their respective Affiliates to prepare and file, all Tax Returns on a basis consistent with the applicable Allocation.

**Section 2.10 Exclusion of Transferred Assets or Transferred Subsidiaries.** At any time on or prior to the third (3<sup>rd</sup>) Business Day after the date of the Auction, the Buyer may, in its discretion by written notice to the Sellers, designate any of the Transferred Assets as additional Excluded Assets, which notice shall set forth in reasonable detail the Transferred Assets so designated; provided that there shall be no reduction in the Purchase Price if the Buyer elects to designate any Transferred Asset as an Excluded Asset. Notwithstanding any other provision hereof, the Liabilities of the Asset Sellers under or related to any Transferred Asset excluded under this paragraph will constitute Excluded Liabilities.

**Section 2.11 Withholding.** Notwithstanding anything in this Agreement to the contrary, the Buyer and any Affiliate or agent of the Buyer shall be entitled to deduct and withhold from any amount (or portion thereof) payable under this Agreement such Taxes required to be deducted and withheld from such amount under the Code or any other applicable provision of U.S. or foreign Tax Law. The Buyer shall use commercially reasonable efforts to provide the Sellers notice of any amounts it intends to withhold at least five (5) days prior to Closing. The Buyer and Sellers shall work together in good faith to minimize any withholding. To the extent that any amounts are so deducted or withheld, such deducted and withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

### **ARTICLE III. REPRESENTATIONS AND WARRANTIES OF THE SELLERS**

Except as set forth in the Disclosure Schedules to be delivered to the Buyer in accordance with Section 6.14 (collectively, the “Disclosure Schedules”), each of the Sellers jointly and severally represents and warrants to the Buyer as follows:

Section 3.1 Organization. Each Seller and each Transferred Subsidiary (a) is an entity duly incorporated or organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, as applicable, (b) has all requisite corporate (or equivalent) power and authority to own and operate its properties and to carry on its businesses as now conducted, subject to the provisions of the Bankruptcy Code, and (c) is qualified to do business and is in good standing (or its equivalent) in every jurisdiction in which the Transferred Assets, Assumed Liabilities or the operation of the Business as it is now being conducted requires it to qualify, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect.

Section 3.2 Authority. Subject to required Bankruptcy Court approvals, (a) each Seller has the corporate (or equivalent) power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby, (b) the execution, delivery and performance by such Seller of this Agreement and each of the Ancillary Agreements to which it will be a party and the consummation by such Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate (or equivalent) action and (c) this Agreement has been, and upon its execution each of the Ancillary Agreements to which such Seller will be a party will have been, duly executed and delivered by such Seller and, assuming due execution and delivery by each of the other parties hereto and thereto, this Agreement constitutes, and upon its execution each of the Ancillary Agreements to which such Seller will be a party will constitute, the legal, valid and binding obligations of such Seller, enforceable against such Seller in accordance with their respective terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law) (the "Enforceability Exceptions").

Section 3.3 No Conflict; Required Filings and Consents.

(a) Except as set forth in Section 3.3(a) of the Disclosure Schedules and assuming that (w) requisite Bankruptcy Court approvals are obtained, (x) the notices, authorizations, approvals, Orders, permits or consents set forth in Section 3.3(b) of the Disclosure Schedules are made, given or obtained (as applicable), (y) the requirements of the HSR Act and any other applicable antitrust, competition or merger control Laws promulgated by any Governmental Authority ("Foreign Competition Laws") are complied with, and (z) any filings required by any applicable federal or state securities or "blue sky" Laws are made, the execution, delivery and performance by the Sellers of this Agreement and the consummation by the Sellers of the transactions contemplated hereby, do not: (i) violate the certificate of formation, limited liability company agreement or equivalent organizational documents of the Sellers or the Transferred Subsidiaries; (ii) violate any Law applicable to the Sellers or the Transferred Subsidiaries or by which any Transferred Asset or any property or asset of the Transferred Subsidiaries is bound; or (iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, create in any party thereto the right to terminate or cancel, or require any consent under, or result in the creation or imposition of any Encumbrance (other than a Permitted Encumbrance) on any Transferred Asset or any of the Transferred Subsidiaries under, any Contract listed in Section



3.16 of the Disclosure Schedule; except, in the case of clauses (ii) and (iii), for any such violations, breaches, defaults or other occurrences that are not material to Seller Parent and its Subsidiaries taken as a whole.

(b) Except as set forth in Section 3.3(b) of the Disclosure Schedules, no Seller nor any Transferred Subsidiary is required to file, seek or obtain any notice, authorization, approval, Order, permit, or consent of or with any Governmental Authority in connection with the execution, delivery and performance by the Sellers of this Agreement or the consummation by the Sellers of the transactions contemplated hereby, except (i) requisite Bankruptcy Court approvals, (ii) any filings required to be made under the HSR Act and any applicable Foreign Competition Laws, (iii) such filings as may be required by any applicable federal or state securities or “blue sky” Laws, (iv) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification is not material to Seller Parent and its Subsidiaries taken as a whole, or (v) as may be necessary as a result of any facts or circumstances relating to Buyer or any of its Affiliates.

#### Section 3.4 Transferred Assets.

(a) Each Asset Seller, as applicable, has indefeasible title to, and owns and possesses all rights and interests in, including the right to use, each of the material Transferred Assets, or with respect to material leased Transferred Assets, valid leasehold interests in, or with respect to such material licensed Transferred Assets, valid licenses to use.

(b) This Agreement and the instruments and documents to be delivered by the Sellers to the Buyer at the Closing shall be adequate and sufficient, in all material respects, to transfer (i) Asset Sellers’ entire right, title and interest in and to the Transferred Assets and subject to the terms hereof (including Section 2.5) and (ii) to the Buyer, good title to the Transferred Assets, free and clear of all Encumbrances (other than Permitted Encumbrances), subject in each case to entry of the Sale Order.

Section 3.5 Transferred Subsidiaries. All of the outstanding shares of capital stock of (or comparable interest in) each Transferred Subsidiary (i) are owned directly or indirectly by Seller Parent, (ii) are as of the date hereof free and clear of any Encumbrance (other than Permitted Encumbrances and other than restrictions on transfer of unregistered securities arising under applicable federal, state or foreign securities Laws) and will be as of the Closing Date free and clear of any Encumbrance (other than Encumbrances those created by Buyer or arising out of ownership of the Transferred Stock by Buyer and other than restrictions on transfer of unregistered securities arising under applicable federal, state or foreign securities Laws) and (iii) have been validly issued and are fully paid and, as applicable, non-assessable. Section 3.5(a) of the Disclosure Schedules lists all of the Transferred Subsidiaries and the outstanding shares of capital stock or voting securities of, or other equity securities therein and, in each case, the owner(s) thereof. There are no options, warrants, convertible securities or other rights, agreements, arrangements or commitments relating to the Transferred Stock (other than this Agreement and any other agreement entered into in connection with the Bankruptcy Case) obligating any Seller or any Transferred Subsidiary to issue or sell any shares of capital stock of, or any other comparable interest in, a Transferred Subsidiary (other than this Agreement and any other agreement entered into in connection with the Bankruptcy Case). No Transferred Subsidiary owns, directly or indirectly, any capital stock, membership interest, partnership interest, joint venture interest or other equity interest in any other Person (other than a Transferred Subsidiary). There are no voting trusts or other agreements or understandings with respect to the equity interests of the Transferred Subsidiaries. None of the Transferred Subsidiaries have entered into silent partnership agreements granting the silent partner entitlements to its proceeds.

Section 3.6 Financial Statements; No Undisclosed Liabilities.

(a) The audited consolidated balance sheets of Seller Parent as of December 31, 2019 and 2018, together with the related consolidated statements of income, stockholders' equity and cash flows ended December 31, 2019 and 2018, and (ii) the unaudited consolidated balance sheets of Seller Parent as of March 31, 2020 (the "Balance Sheet Date"), together with the related unaudited interim consolidated statements of income, stockholders' equity and cash flows for the ~~two~~three months ended March 31, 2020 (the "Seller Financial Statements") have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of the Seller Parent and its Subsidiaries and the Business at the respective dates thereof and the results of their operations and cash flows for the periods indicated (subject, in each case, to normal year-end adjustments).

(b) No Seller nor any of the Transferred Subsidiaries has any Liabilities in respect of the Business, required by GAAP to be disclosed or reflected on or reserved against a consolidated balance sheet (or the notes thereto) of Seller and the Transferred Subsidiaries, except for Liabilities (i) reflected or reserved against in the Seller Financial Statements, (ii) incurred in the Ordinary Course of Business since the Balance Sheet Date, (iii) that are Excluded Liabilities, (iv) incurred in connection with the transactions contemplated by this Agreement or arising from the commencement of the Bankruptcy Case, (v) that have not had, or would not

reasonably be expected to have, a Material Adverse Effect and (vi) arising from performance obligations under any Contract.

Section 3.7 Absence of Certain Changes or Events. Since the Balance Sheet Date through the date of this Agreement, there has not been any event, change, condition, occurrence or effect that, individually or in the aggregate, has had, or would be reasonably expected to have, a Material Adverse Effect. Without limiting the generality of the foregoing, except (x) for the solicitation of, discussions and negotiations with, presentations and provision of other diligence to and similar engagement with other potential bidders for the Transferred Assets, the negotiation and execution of this Agreement, (y) for the preparation and commencement of the Bankruptcy Case and Sellers' debtor-in-possession financing in the Bankruptcy Case, or (z) as set forth on Section 3.7 of the Disclosure Schedules or as expressly contemplated by this Agreement, from the Balance Sheet Date until the date hereof, no Seller nor any Transferred Subsidiary has:

(a) amended or modified the certificate of incorporation or bylaws (or other organizational or governance documents) of any Seller or Transferred Subsidiary;

(b) (i) made or granted any material cash compensation increase to any former or current employee receiving (before or after such increase) base compensation in excess of \$300,000 per annum, except in the Ordinary Course of Business or pursuant to agreements listed on Section 3.7 of the Disclosure Schedules or any Transferred Plan, or (ii) increased the benefit required under any material Employee Benefit Plan, adopted any new material Employee Benefit Plan or terminated any existing material Employee Benefit Plan, except for increases in benefits under existing Employee Benefit Plans in the Ordinary Course of Business and except as approved by the Bankruptcy Court with respect to the Sellers generally;

(c) adopted a plan of liquidation, dissolution, merger, consolidation or other reorganization, other than in the Bankruptcy Case;

(d) made any change in its accounting methods, principles or practices that would be material to the Business, taken as a whole, except as may be required by GAAP, the Code or applicable Law or in connection with the Bankruptcy Case;

(e) made any acquisition of all or substantially all of the assets, properties, capital stock or business of any other Person, whether by merger, stock or asset purchase;

(f) solely with respect to the Transferred Subsidiaries, Transferred Assets or the Business, changed, made or revoked any Tax election, changed any method of accounting with respect to Taxes, filed any amended Tax Return, surrendered or compromised any right to claim a Tax refund, settled or compromised any claim, notice, audit, assessment or other proceeding related to Taxes, entered into any agreement affecting any Tax Liability or any refund or filed any request for rulings or special Tax incentives with any Governmental Authority, entered into any Tax allocation, sharing or indemnity agreement (in each case, if the subject matter thereof primarily related to Taxes), or extended or waived the statute of limitations period applicable to any Tax or Tax Return; or

(g) agreed or committed in writing to do any of the foregoing.

### Section 3.8 Compliance with Law; Permits.

(a) The Business is being conducted in material compliance with, and Sellers and the Transferred Subsidiaries have in all material respects complied with, all applicable Laws relating to the operation of the Business and the Transferred Assets taken as a whole. There are no pending or, to the Knowledge of the Sellers, threatened, claims or investigations from any Governmental Authority relating to any material non-compliance of the Business, the Transferred Subsidiaries or the Transferred Assets, except, for any such claim that would not reasonably be expected to have a Material Adverse Effect.

(b) The Asset Sellers and the Transferred Subsidiaries are in possession of all material permits, licenses, franchises, approvals, certificates, consents, waivers, concessions, exemptions, orders, registrations, notices or other authorizations of any Governmental Authority (the “Permits”) necessary for them to own, lease and operate their assets and properties and to carry on the Business as currently conducted, except as would not reasonably be expected to have a Material Adverse Effect. All material Permits held by the Asset Sellers and the Transferred Subsidiaries: (i) are valid and in full force and effect and no Asset Seller or Transferred Subsidiary is in default under, or in violation of, any such Permit, except for such defaults or violations which would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect and no suspension or cancellation of any such Permit is pending (other than pursuant to its terms) or, to Sellers’ Knowledge, threatened and (ii) subject to entry of the Sale Order, each such Permit may be transferred or reissued to the Buyer in accordance with this Agreement and without the approval of any Person (other than the Bankruptcy Court).

Section 3.9 Litigation. Except for the Bankruptcy Case, and any Order entered in the Bankruptcy Case, there is not, as of the date hereof, any Action by or against any Transferred Subsidiary in connection with the Business pending, or to the Knowledge of the Sellers, threatened other than any Action pursuant to which no injunctive or equitable relief is sought and where the monetary damages are covered by insurance or would not reasonably be expected to have a Material Adverse Effect.

### Section 3.10 Employee Benefit Plans.

(a) With respect to the Employee Benefit Plans, (i) each of the Employee Benefit Plans has been operated and administered in all material respects in accordance with applicable Law and administrative or governmental rules and regulations, including ERISA, the Patient Protection and Affordable Care Act and the Code, and with any applicable collective bargaining agreement and all other agreements or instruments applicable to any Employee Benefit Plan, (ii) there is no material Action pending or, to the Knowledge of the Sellers, threatened in writing by, on behalf of or against any Employee Benefit Plan or any administrator or fiduciary thereof (other than routine claims for benefits), nor, to the Knowledge of the Sellers, is there any basis for such action, suit or claim.

(b) Each Employee Benefit Plan intended to be “qualified” within the meaning of Section 401(a) of the Code has received a favorable determination or opinion letter as to such qualification from the IRS and, to the Knowledge of the Sellers, has, in operation, been qualified under the Code from the effective date of such Employee Benefit Plan. To the Knowledge of the Sellers, no event has occurred, either by reason of any action or failure to act, which would reasonably be expected to cause the loss of any such qualification.

(c) To the Knowledge of the Sellers, none of the Sellers or any of their ERISA Affiliates has ever maintained, sponsored, contributed to, or had an obligation to maintain, sponsor or contribute to, or has any Liability with respect to (i) a “defined benefit plan,” as defined in Section 3(35) of ERISA, (ii) a plan subject Title IV of ERISA or Sections 412 or 430 of the Code or to the minimum funding standards of Section 302 of ERISA, or (iii) a “multiemployer plan,” as defined in Section 3(37) of ERISA.

(d) To the Knowledge of the Sellers, no Seller, not any ERISA Affiliate of any Seller, provides, nor have they ever provided, coverage under any welfare plan, as defined in Section 3(1) of ERISA, with respect to, life insurance, disability, medical, dental, prescription drugs or accidental death or dismemberment to any of their former employees, other than any continuation coverage which any such former employee may have purchased at his or her own expense.

(e) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement will not, alone or in combination with any other event, (i) entitle any Business Employee to any material payment (including severance pay, unemployment compensation or any other compensation), (ii) accelerate the time of payment or vesting, or materially increase the amount of compensation due to any Business Employee, (iii) cause any individual to accrue or receive additional material benefits, service or accelerated rights to payment of benefits under any Employee Benefit Plan or employment agreement, (iv) directly or indirectly cause the Sellers or any ERISA Affiliate of the Sellers to transfer or set aside any assets to fund or otherwise provide for benefits for any individual, or (v) result in any payment or benefit that would constitute an “excess parachute payment” (as such term is defined in Section 280G(b)(1) of the Code) or subject any Person to Liability for Tax under Section 4999 of the Code or cause the loss of deduction to any Transferred Subsidiary or Asset Seller under Section 280G of the Code.

(f) Each Employee Benefit Plan that is a “nonqualified deferred compensation plan” within the meaning of Section 409A(d)(1) of the Code and any award thereunder, in each case that is subject to Section 409A of the Code, (i) has at all times been operated in material compliance in all respects with Section 409A of the Code and all applicable IRS guidance promulgated thereunder, and (ii) either (A) has at all times been in a form which materially complies with the requirements of Section 409A of the Code or (B) has been timely amended under guidance issued pursuant to Section 409A of the Code so that its terms and provisions materially comply with the requirements of Section 409A of the Code.

(g) There have been no written statements or communications made, or materials provided to any Business Employee, in each case, by Sellers, or, to the Knowledge of the Sellers, any of Sellers’ officers, that provide for or could be construed as a contract or

promise regarding employment or terms and conditions of employment with the Buyer or its Affiliates following the Closing.

(h) With respect to each Transferred Plan and each other Employee Benefit Plan established or maintained by any Transferred Subsidiary outside of the United States of America primarily for benefit of current or former employees, officers, directors or service providers of Sellers, the Transferred Subsidiaries or any of their respective Subsidiaries residing outside the United States of America (a “Foreign Benefit Plan”): (i) all employer and employee contributions to each Foreign Benefit Plan required by law or by the terms of such Foreign Benefit Plan have been made in all material respects, or, if applicable, accrued, in accordance with normal accounting practices; and (ii) each Foreign Benefit Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

(i) All contributions and premiums required by Law or by the terms of any Employee Benefit Plan or any “multiemployer plan” (as defined in Section 3(37) of ERISA) have been timely made by the Sellers or any of their ERISA Affiliates to any funds or trusts established thereunder or in connection therewith, in each case, in all material respects.

#### Section 3.11 Labor and Employment Matters.

(a) Except as disclosed in Section 3.11(a) of the Disclosure Schedules, (i) the Sellers are neither party to, nor bound by, any organized labor agreement, collective bargaining agreement, or any similar labor-related agreements or arrangements with any labor union, labor organization, or works council applicable to the Business Employees; there are no labor agreements, collective bargaining agreements, or any similar labor-related agreements or arrangements that pertain to any Business Employees and (ii) no Business Employees are represented by any labor union, labor organization or works council with respect to their employment with the Sellers or the Transferred Subsidiaries.

(b) There are no material unfair labor practice charges, work stoppages, slowdowns, strikes, lockouts, grievances, picketings, or other similar material activities relating to labor matters pending, or to the Knowledge of the Sellers, threatened in writing against any Seller or Transferred Subsidiary that pertain to the Business Employees.

(c) No labor union, labor organization, works council or group of Business Employees has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or, to the Knowledge of the Sellers, threatened in writing to be brought or filed with the National Labor Relations Board or any other labor relations tribunal or authority pertaining to the Business Employees. To the Knowledge of the Sellers, there are no labor union organizing activities with respect to any Business Employees.

(d) Each Asset Seller and Transferred Subsidiary is in compliance in all material respects with all applicable Laws respecting labor, labor relations, employment and employment practices pertaining to the Business Employees, including but not limited to all Laws respecting collective bargaining, the terms and conditions of employment, wages, hours,

equal employment opportunity, employment discrimination, worker classification (including the proper classification of workers as independent contractors and consultants, and employees as exempt or non-exempt for overtime pay), immigration, work authorization, occupational health and safety, workers' compensation, paid sick leave, vacation pay, the payment of social security and other employment Taxes, disability rights or benefits, plant closures and layoffs, affirmative action, labor relations, employee leave issues and unemployment insurance. Prior to the Closing Date, the Asset Sellers and Transferred Subsidiaries have not incurred Liabilities or other charges under WARN.

(e) Each of the Asset Sellers and the Transferred Subsidiaries is not and has not been: (i) a "contractor" or "subcontractor" (as defined by Executive Order 11246), (ii) required to comply with Executive Order 11246 or (iii) required to maintain an affirmative action plan.

(f) To the Knowledge of the Sellers, except as would not have a Material Adverse Effect, no employee of any of the Sellers is in any material respect in violation of any term of any employment agreement, nondisclosure agreement, common law nondisclosure obligation, fiduciary duty, non-competition agreement, restrictive covenant or other obligation: (i) to any of the Sellers or (ii) to a former employer of any such employee relating (A) to the right of any such employee to be employed by any such Seller or (B) to the knowledge or use of trade secrets or proprietary information.

(g) Within the past three years, there have not been any (i) unfair labor practice charges or complaints pending or, to the Knowledge of the Sellers, threatened in writing before the National Labor Relations Board or any other Governmental Authority against them, (ii) complaints, grievances, or arbitrations arising out of any collective bargaining agreement or any other complaints, grievances, or arbitration procedures against them, (iii) charges or complaints with respect to or relating to them pending before the Equal Employment Opportunity Commission or any other Governmental Authority responsible for the prevention of unlawful employment practices, (iv) written notice of the intent of any Governmental Authority responsible for the enforcement of labor, employment, wages and hours of work, child labor, immigration, or occupational safety and health laws to conduct an investigation with respect to or relating to them or notices that such investigation is in progress, or (v) Actions pending or threatened in any forum by or on behalf of any present or former employee of such entities, any applicant for employment, or classes of the foregoing alleging breach of any express or implied contract of employment, any applicable law governing employment or the termination thereof, or other discriminatory, wrongful, or tortious conduct in connection with the employment relationship, that in each case of clauses (i) through (v) would reasonably be expected to result, individually or in the aggregate, in material Liability to the Asset Sellers or the Transferred Subsidiaries.

(h) The execution of this Agreement and the consummation of the transactions contemplated by this Agreement will not result in any material breach or other violation of any collective bargaining agreement, employment agreement, consulting agreement or any other labor-related any other labor-related agreement to which the Asset Sellers or the Transferred Subsidiaries are a party that is applicable to the Business Employees.

(i) Section 3.11(g)(i) of the Disclosure Schedules includes a list of employees of the Asset Sellers and Transferred Subsidiaries whose employment has been involuntarily terminated (not including employees who remain active but on furlough) within the ninety (90) day period preceding the date hereof and includes such employees' position and title (if any) and the then-current rate of compensation as of his or her termination date. Except as disclosed on Section 3.11(k)(iii) of the Disclosure Schedules, the Asset Sellers and Transferred Subsidiaries have no unsatisfied Liability (that is material to the Business taken as a whole) to any such previously terminated employee, officer, director, consultant, or independent contractor.

#### Section 3.12 Real Property.

(a) Section 3.12(a)(i) of the Disclosure Schedules lists the street address of each parcel of Owned Real Property owned by the Sellers and used for the Business (the "Seller Owned Real Property"). Section 3.12(a)(ii) of the Disclosure Schedules lists the street address of each parcel of Owned Real Property owned by a Transferred Subsidiary (the "Transferred Subsidiary Owned Real Property"). The applicable Asset Seller or Transferred Subsidiary has good and valid fee simple title (or equivalent title) to the Owned Real Property and, subject to the entry of the Sale Order, free and clear of all Encumbrances, other than Permitted Encumbrances.

(b) Section 3.12(b)(i) and Section 3.12(b)(ii) of the Disclosure Schedules, respectively, set forth for each Seller Leased Real Property and Transferred Subsidiary Lease Property and the street address of each parcel of Leased Real Property. The Asset Seller or Transferred Subsidiary party thereto has a valid leasehold estate in all Leased Real Property, and, subject to the entry to the Sale Order, free and clear of all Encumbrances, other than Permitted Encumbrances. Section 3.12(b)(iii) of the Disclosure Schedule sets forth a true and complete list of all leases pursuant to which the Sellers or any Transferred Subsidiary is leasing any Leased Real Property as tenant, and any and all material ancillary documents pertaining to the Seller Leases and the Transferred Subsidiary Leases (including all material amendments, modifications, supplements, exhibits, schedules, addenda and restatements in such party's possession).

(c) The Asset Sellers and Transferred Subsidiaries have not granted to any Person (other than pursuant to this Agreement) any right to occupy or possess or otherwise encumber any portion of the Real Property. No Seller or Transferred Subsidiary has vacated or abandoned any portion of the Real Property or given notice to any Person of their intent to do the same. Either the Sellers or a Transferred Subsidiary, as the case may be, is in peaceful possession of each parcel of Real Property, and, except as would not be reasonably likely to have a Material Adverse Effect, there are no contractual or legal restrictions that preclude or restrict the ability to use the Real Property for the purposes for which it is currently being used.

(d) No Asset Seller or Transferred Subsidiary is a party to or obligated under any option, right of first refusal or other contractual right to sell, dispose of or lease any of the Real Property or any portion thereof or interest therein to any Person other than the Buyer.

(e) Except as would not have a Material Adverse Effect, the interests of the Sellers and the Transferred Subsidiaries in the Owned Real Property and the Leased Real



Property to be transferred pursuant to this Agreement are sufficient for the occupation of, and operations and the Business conducted on, the Real Property after the Closing in substantially the same manner of the such occupation of, and operations and the Business conducted on the Real Property prior to the Closing.

(f) There are no condemnation proceedings or eminent domain proceedings of any kind pending or, to the Knowledge of the Sellers, threatened against the Real Property..

### Section 3.13 Intellectual Property.

(a) The Asset Sellers or the Transferred Subsidiaries, as applicable, are the sole and exclusive beneficial and record owners of all of the Intellectual Property set forth in Section 3.13(a)(i) and Section 3.13(a)(ii) of the Disclosure Schedules, and all such Intellectual Property are subsisting, enforceable and, to the Knowledge of the Sellers, valid (and there is no Action pending, or, to the Knowledge of the Sellers, threatened challenging the scope, validity or enforceability of any such Intellectual Property).

(b) To the Knowledge of the Sellers, the conduct of the Business (including the products and services of the Sellers and Transferred Subsidiaries) does not infringe, misappropriate or otherwise violate in any material respect, any Person's Intellectual Property rights and there is no Action pending or, to the Knowledge of Sellers, threatened against any Seller or Transferred Subsidiary alleging any of the foregoing, except for such infringement, misappropriation, violation or Action that would not reasonably be expected to have a Material Adverse Effect.

(c) To the Knowledge of the Sellers, no Person is infringing, misappropriating or otherwise violating in any material respect, any Intellectual Property owned by or exclusively licensed to Asset Sellers or Transferred Subsidiaries in the conduct of the Business, and no such Action is pending or threatened against any Person by any Asset Seller or Transferred Subsidiary, except for such infringement, misappropriation, violation or Action that would not reasonably be expected to have a Material Adverse Effect.

(d) Each Asset Seller and Transferred Subsidiary is in compliance with its own rules, policies, and procedures, relating to privacy, data protection, and the collection and use of personal information collected, used, or held for use by the Asset Sellers or Transferred Subsidiaries, except where such non-compliance would not reasonably be expected to have a Material Adverse Effect.

(e) In the past three (3) years, (i) the Asset Sellers and Transferred Subsidiaries have not experienced any material defects in the Software used in the Business that have not been remediated in all material respects as of the date hereof, (ii) to the Knowledge of the Sellers, there have been no material security breaches in the Asset Sellers' or the Transferred Subsidiaries' information technology systems, and (iii) there have been no disruptions in any of the Asset Sellers' or Transferred Subsidiaries' information technology systems, except, in the case of clauses (i), (ii) and (iii), for such defects, breaches or disruptions that would not reasonably be expected to have a Material Adverse Effect.

Section 3.14 Taxes. Except as set forth in Section 3.14 of the Disclosure Schedules:

(a) All income and other material Tax Returns required to be filed by or with respect to the Transferred Subsidiaries, or with respect to the Transferred Assets, the Assumed Liabilities or the Business have been timely filed, and all such Tax Returns are true, correct and complete in all material respects. All material Taxes due and payable by or with respect to the Transferred Subsidiaries, or with respect to the Transferred Assets, the Assumed Liabilities or the Business, in each case whether or not shown as due on any Tax Return, have been timely paid in full to the proper Governmental Authority. Adequate accruals have been made on the Seller Financial Statements for all Taxes not yet due and payable by or with respect to the Transferred Subsidiaries for periods covered by such Seller Financial Statements. No Tax Liability has been incurred outside the Ordinary Course of Business by or with respect to the Transferred Subsidiaries since the date of the Seller Financial Statements.

(b) All material Taxes relating to or arising in connection with the Transferred Assets, the Assumed Liabilities or the Business, or of or with respect to the Transferred Subsidiaries, in each case that are required to be withheld and paid under applicable Law (including in connection with any amounts owing to any employee, independent contractor, creditor, stockholder or other third party), have been timely withheld and remitted to the appropriate Governmental Authority, and all IRS Forms W-2 and 1099 and other applicable forms required with respect thereto have been properly completed and timely filed in all material respects. Each of the Transferred Subsidiaries has timely collected all material sales, use and value added Taxes required to be collected by them, and has timely remitted all such Taxes to the appropriate Governmental Authority.

(c) There is no action, suit, claim, assessment, or audit pending, or proposed in writing (tentatively or definitively), or to the Knowledge of the Sellers, asserted or threatened, by any Governmental Authority with respect to Taxes or Tax Returns of or with respect to the Transferred Subsidiaries or with respect to the Transferred Assets, the Assumed Liabilities or the Business.

(d) There are no Encumbrances for Taxes upon the Transferred Assets or any of the assets of the Transferred Subsidiaries, in each case other than for Taxes not yet due.

(e) Neither the Business nor any of the Transferred Assets, Assumed Liabilities or Transferred Subsidiaries is subject to any Tax allocation, indemnity or sharing agreement or similar agreement, arrangement or understanding, other than any such agreement entered into in the Ordinary Course of Business the principal purpose of which is not to address Taxes. There is no “gain recognition agreement” under Section 367 of the Code, or the Treasury Regulations promulgated thereunder, currently in effect with respect to any asset of, or equity interest in, any Transferred Subsidiary (or any agreement or arrangement under any state, local or foreign Tax Law) for which a Transferred Subsidiary could be liable.

(f) No closing agreements (as described in Section 7121 of the Code or any corresponding, analogous or similar provision of state, local or foreign Law), private letter rulings, technical advice memoranda or similar agreements or rulings have been entered into or

requested by or with respect to the Transferred Subsidiaries or with respect to the Business or with respect to any Transferred Assets or Assumed Liabilities.

(g) No agreement, waiver, extension or consent regarding the application of the statute of limitations with respect to any Taxes or Tax Returns of or with respect to the Transferred Subsidiaries, or with respect to the Transferred Assets, the Assumed Liabilities or the Business is outstanding, nor is there pending any request for such an agreement, waiver, extension or consent. No power of attorney has been granted with respect to any matter relating to Taxes payable by or with respect to the Transferred Subsidiaries, or with respect to any of the Transferred Assets, Assumed Liabilities or the Business, in each case that is currently in force.

(h) None of the Transferred Subsidiaries (nor any beneficial owner of any interest in a Transferred Subsidiary) will be required to include any item of income in, or exclude any item of deduction from, taxable income with respect to the Transferred Subsidiaries for any taxable period (or portion thereof) beginning after the Closing Date as a result of (i) any installment sale or open transaction disposition made on or prior to the Closing Date; (ii) any prepaid amount received on or prior to the Closing Date; (iii) any change in a method of accounting or use of an improper method of accounting for a taxable period ending on or prior to the Closing Date or (iv) any election under Section 108(i) of the Code.

(i) None of the Transferred Subsidiaries has distributed stock of another entity, or had its stock distributed by another entity, in a transaction that was purported or intended to be governed in whole or in part by Section 355 or Section 361 of the Code (i) in the two years immediately preceding the date of this Agreement or (ii) in a distribution which could otherwise constitute part of a “plan” or “series of related transactions” (within the meaning of Section 355(e) of the Code) in connection with the transactions contemplated by this Agreement.

(j) No claim has been made by any Governmental Authority in a jurisdiction in which a Transferred Subsidiary does not file Tax Returns or pay Taxes to the effect that such Transferred Subsidiary is or may be subject to taxation by, or required to file any Tax Return in, such jurisdiction.

(k) None of the Transferred Subsidiaries has entered into, participated in or engaged in any “listed transaction” (as defined in Treasury Regulations Section 1.6011-4(b) or any similar provision under any state, local or foreign Tax Law).

(l) None of the Transferred Subsidiaries (i) is or has been a member of a group filing an affiliated, consolidated, combined or unitary Tax Return, or (ii) has any liability for Taxes of another Person under Treasury Regulations Section 1.1502-6 (or any analogous, comparable or similar provision of state, local or non-U.S. Law).

### Section 3.15 Environmental Matters.

(a) The Asset Sellers, the Transferred Subsidiaries and the Transferred Assets (to the extent relating to the Asset Sellers’ or the Transferred Subsidiaries’ operations) are in compliance with all applicable Environmental Laws, which compliance includes the possession of, and compliance with the terms of, all Environmental Permits required under applicable

Environmental Laws in connection with the conduct or operation of the Business taken as a whole as currently conducted, except for such non-compliance that would not reasonably be expected to have a Material Adverse Effect. There is no written claim or action currently pending or, to the Knowledge of the Sellers, threatened, that is or would reasonably be expected to result in the cancellation, revocation, non-renewal or other adverse or limiting modification or amendment of any such Environmental Permit, except for such claim or Action that would not reasonably be expected to have a Material Adverse Effect.

(b) Neither the Asset Sellers, the Transferred Subsidiaries, the Transferred Assets (to the extent relating to the Asset Sellers' or the Transferred Subsidiaries' operations) nor the Business is or has been involved in any written claim, action or proceeding relating to an Environmental Claim, whether as claimant, defendant or otherwise, nor is any such written claim, action or proceeding, or any investigation by any Governmental Authority relating to an Environmental Claim pending or, to the Knowledge of the Sellers, threatened against the Asset Sellers, the Transferred Subsidiaries, the Transferred Assets (to the extent relating to the Asset Sellers' or the Transferred Subsidiaries' operations) or the Business, except for such written claim, action, proceeding or investigation that would not reasonably be expected to have a Material Adverse Effect.

(c) To the Knowledge of the Sellers, there are no circumstances or environmental conditions relating to noncompliances with Environmental Law and the Transferred Assets (to the extent relating to the Asset Sellers' or the Transferred Subsidiaries' operations), including the presence of any Hazardous Material at the Real Property, except as would not reasonably be expected to have a Material Adverse Effect.

(d) The representations and warranties set forth in this Section 3.15 are the sole and exclusive representations of the Sellers concerning environmental matters.

#### Section 3.16 Material Contracts.

(a) Except as set forth on Section 3.16(a) of the Disclosure Schedules, neither Seller Parent nor any of its Subsidiaries is a party to any of the following Contracts as of the date hereof (each, a "Material Contract"):

- (i) collective bargaining agreement with any labor union;
- (ii) agreement for the employment of any officer, individual employee or other person on a full-time or consulting basis providing for base compensation in excess of \$250,000 per annum that is not terminable by the Seller Parent or such Subsidiary upon notice of sixty (60) days or less for a cost of \$250,000 or less;
- (iii) material license of any material Intellectual Property that involves payments (by or to Seller Parent or any of its Subsidiaries) in excess of \$200,000 per annum and is not terminable by the Seller Parent or such Subsidiary upon notice of sixty (60) days or less for a cost of \$200,000 or less (other than licenses of commercially available, off-the-shelf software and other than licenses entered into in the Ordinary Course of Business);

(iv) agreement or group of related agreements with the same party for the purchase of products or services, in either case, under which the aggregate undelivered balance of such products and services has a selling price in excess of \$1,000,000 and which is not terminable by Seller Parent or such Subsidiary upon notice of sixty (60) days or less for a cost of \$1,000,000 or less (other than purchase orders entered into in the Ordinary Course of Business);

(v) agreement that materially prohibits the Seller Parent or any of the Transferred Subsidiaries from freely engaging in business anywhere in the world;

(vi) agreement relating to any acquisition or disposition by the Seller Parent of any business (whether by asset or stock purchase or otherwise) or any merger, consolidation or similar business combination transaction, in each case, pursuant to which Seller Parent has an outstanding obligation to pay any material purchase price thereunder;

(vii) agreement that involves any take-or-pay or requirements arrangement;

(viii) agreement relating to any material joint venture or partnership;

(ix) agreement that is a material Employee Benefit Plan;

(x) agreement under which the Transferred Subsidiaries or any Asset Seller is expected to receive or pay in excess of \$500,000 in any twelve (12) month period; or

(xi) agreement in writing to enter into any of the foregoing.

(b) Subject to requisite Bankruptcy Court approvals, and assumption by the applicable Seller of the applicable Contract in accordance with applicable Law (including satisfaction of any applicable Cure Costs by Buyer in accordance with the terms of this Agreement) and except as a result of the commencement of the Bankruptcy Case, each of the agreements listed on Section 3.16(a) of the Disclosure Schedules and each of the Leases is in full force and effect and is a valid, binding and enforceable obligation of the Sellers and the Transferred Subsidiaries and, to the Knowledge of the ~~Seller Parent~~Sellers, each of the other parties thereto, except as may be limited by the Enforceability Exceptions. Except as set forth on Section 3.16(a) of the Disclosure Schedules, as a result of the commencement of the Bankruptcy Case or as would not reasonably be expected to have a Material Adverse Effect, neither the Seller Parent nor any of its Subsidiaries, as applicable, is in material default, or is alleged in writing by the counterparty thereto to have materially breached or to be in material default, under any Lease or agreement listed on Section 3.16(a) of the Disclosure Schedules, and, to the Knowledge of the ~~Seller Parent~~Sellers, the other party to each Lease or each of the agreements listed on Section 3.16(a) of the Disclosure Schedules is not in material default thereunder. The Seller Parent has made available to Buyer complete and correct copies of all agreements required to be listed on Section 3.16(a) of the Disclosure Schedules and all Leases, each as amended to the date hereof. None of the agreements listed on Section 3.16(a) of the Disclosure Schedules or any of the Leases has been canceled or otherwise terminated, and

neither the Seller Parent, nor its Subsidiaries, has received any written notice from any Person regarding any such cancellation or termination.

**Section 3.17 Anti-Corruption & International Risk.** Each Transferred Subsidiary, and, to the Knowledge of the Sellers, all directors, officers, employees and Affiliates of such Transferred Subsidiary, are in compliance in all material respects with Anti-Corruption Laws and Global Trade Laws. No Transferred Subsidiary, nor, to the Knowledge of the Sellers, any of such Transferred Subsidiaries' directors, officers, employees agents or Affiliates, is the subject of any investigations, reviews, audits, or inquiries by a Governmental Authority related to Anti-Corruption Laws or Global Trade Laws, and, to the Knowledge of the Sellers, no investigation, review, audit, or inquiry by any Governmental Authority with respect to Anti-Corruption Laws or Global Trade Laws is pending or threatened, in each case, except for such investigations, reviews, audits or inquiries that would not reasonably be expected to have a Material Adverse Effect.

(a) Except as would not reasonably be expected to have a Material Adverse Effect, each Transferred Subsidiary, and, to the Knowledge of the Sellers, all of such Transferred Subsidiary's directors, officers, employees, agents and Affiliates, are not engaged in, and have not been engaged in, directly or knowingly indirectly, any business or dealings with, or used any corporate funds in violation of Law to contribute to or finance the activities of, any Person in any Restricted Country.

**Section 3.18 Affiliate Transactions.** To the Knowledge of the Sellers, no Affiliate of the Business (other than the Sellers or the Transferred Subsidiaries), or any officer or director of the Sellers or the Transferred Subsidiaries (a) is a party to any agreement or transaction with the Sellers or the Transferred Subsidiaries having a potential or actual value or a contingent or actual liability exceeding \$250,000, other than (i) loans and other extensions of credit to directors and officers of the Business and the Transferred Subsidiaries for travel, business or relocation expenses or other employment-related purposes in the Ordinary Course of Business, (ii) employment arrangements in the Ordinary Course of Business and (iii) the Transferred Plans, (b) has any material interest in any material property used by the Sellers and the Transferred Subsidiaries or (c) owns any material interest in, or is an officer, director, employee or consultant of, any Person which is, or is engaged in business as a Material Supplier or Material Customer.

**Section 3.19 Insurance.** **Section 3.19** of the Disclosure Schedules lists, as of the date hereof, each material insurance policy maintained by Seller Parent and its Subsidiaries on their properties, assets, products, business or personnel. With respect to each such insurance policy and except as a result of the commencement of the Bankruptcy Case or except as would not reasonably be expected to have a Material Adverse Effect, the policy is legal, valid, binding, enforceable on Seller Parent or its Subsidiaries, as applicable, and in full force and effect, and all premiums with respect thereto covering all periods up to and including the date hereof have been paid, and to the Knowledge of the Sellers, no notice of cancellation, termination or denial of coverage for any material claim has been received with respect to any such insurance policy.

**Section 3.20 Brokers.** Except as set forth on **Section 3.20** of the Disclosure Schedules, no broker, finder or investment banker is entitled to any brokerage, finder's or other

fee or commission in connection with the transactions contemplated hereby based upon arrangements made by or on behalf of the Sellers or the Transferred Subsidiaries.

### Section 3.21 Customers and Suppliers.

(a) Section 3.21(a) of the Disclosure Schedules sets forth a complete and accurate list of the five (5) largest customers (measured by revenue) of the Transferred Subsidiaries and Asset Sellers (collectively, the “Material Customers”) for the twelve (12) month period ended December 31, 2019. Except as disclosed on Section 3.21(a) of the Disclosure Schedules, or as would not reasonably be expected to have a Material Adverse Effect, (i) no customer that was billed more than \$500,000 during the preceding 12-month period has materially reduced, or indicated in writing its present intention to materially reduce, its business with any Transferred Subsidiary from the current levels or amounts of such business, and (ii) no Transferred Subsidiary or Asset Seller has received any written notice or communication to the effect that (A) any such customer has cancelled or terminated, or presently intends to cancel or terminate, its relationship with any Transferred Subsidiary or Asset Seller, or (B) any such customer intends to amend any material terms of any Material Contract with any Transferred Subsidiary or Asset Seller, or cease to purchase from or use the services of, or substantially reduce purchases from or the use of services of any Transferred Subsidiary or Asset Seller.

(b) Section 3.21(b) of the Disclosure Schedules sets forth a complete and accurate list of the five (5) largest vendors and suppliers (measured by fees paid or payable) of the Transferred Subsidiaries and Asset Sellers (collectively, the “Material Suppliers”) for the twelve (12) month period ended December 31, 2019. Except as disclosed on Section 3.21(b) of the Disclosure Schedules, or as would not reasonably be expected to have a Material Adverse Effect, (i) no vendor or supplier for which any Transferred Subsidiary or Asset Seller was invoiced more than \$500,000 during the preceding 12-month period has materially reduced, or, indicated in writing its intention to materially reduce, its business with any Transferred Subsidiary or Asset Seller, or (ii) no Transferred Subsidiary has received any written notice or written communication to the effect that (A) any such vendor or supplier has cancelled or terminated, or presently intends to cancel or terminate, its relationship with any Transferred Subsidiary or Asset Seller, (B) any such vendor or supplier intends to amend any material terms of any Material Contract with any Transferred Subsidiary or Asset Seller, cease to sell to, or substantially reduce sales to, any Transferred Subsidiary or Asset Seller, or (C) except in the ordinary course of business consistent with past practice, any such vendor or supplier has increased or will increase the prices it charges any Transferred Subsidiary or Asset Seller or has reduced, will reduce or has threatened to reduce the discounts it offers to any Transferred Subsidiary or Asset Seller.

### Section 3.22 Product Warranty; Product Liability.

(a) Each product designed, manufactured or sold by or on behalf of the Transferred Subsidiaries (collectively, the “Products”) is, and since January 1, 2015 has been, designed, manufactured and sold in conformity in all material respects with the specifications and standards required by or contained in any contracts, agreements or purchase orders for such Products.

(b) No Transferred Subsidiary has any material Liability (and, to the Knowledge of the Seller, there is no basis for any present action giving rise to any such Liability) arising out of any injury to any individual or property as a result of any Products provided by any Transferred Subsidiary, and no Person has asserted a written claim alleging that any Transferred Subsidiary is responsible for any material Liability arising out of any injury to individuals or property caused by any Product.

(c) There have been no material voluntary or involuntary product recalls, field fix or retrofit campaigns involving any Product designed or manufactured by or on behalf of any Transferred Subsidiary since January 1, 2018.

(d) Since January 1, 2018, no Transferred Subsidiary (i) has been subject to a Governmental Authority shutdown or import or export prohibition or (ii) has received from any Governmental Authority any written notice of inspectional observations, “warning letters,” “untitled letters” or requests or requirements to make changes to Product processes or procedures, in each case as would not reasonably be expected to have a Material Adverse Effect.

Section 3.23 Exclusivity of Representations and Warranties. None of the Sellers, the Transferred Subsidiaries or any of their Affiliates or Representatives is making, and none of the Buyer or any of its Affiliates or Representatives is relying on, any representation or warranty of any kind or nature whatsoever, oral or written, express or implied (including any relating to financial condition or results of operations of the Business or maintenance, repair, condition, design, performance, value, merchantability or fitness for any particular purpose of the Transferred Assets), except as expressly set forth in this Article III (as modified by the Disclosure Schedules), and the Sellers hereby disclaim all Liability and responsibility whatsoever for any such other representations or warranties, including any representation, warranty, projection, forecast, statement or information made, communicated or furnished (orally or in writing) to Buyer or its Affiliates or Representatives (including any opinion, information, projection or advice that may have been or may be provided to Buyer by any director, officer, employee, agent, consultant or Representative of Sellers or any of their Affiliates). Except as expressly set forth herein, the condition of the Transferred Assets shall be “as is”, “where is” and “with all faults” and the Sellers make no warranty of merchantability, suitability, adequacy, fitness for a particular purpose or quality with respect to the Business and any of the Transferred Assets or as to the condition or workmanship thereof or the absence of any defects therein, whether latent or patent. The Sellers are not, directly or indirectly, and no other Person on behalf of the Sellers is, making any representations or warranties regarding any *pro-forma* financial information, financial projections or other forward-looking prospects, risks or statements (financial or otherwise) of the Business, the Transferred Assets or the Transferred Subsidiaries made, communicated or furnished (orally or in writing) to Buyer or its Affiliates or their respective Representatives (including any opinion, information, projection or advice in any management presentation or the confidential information memorandum provided to Buyer and its Affiliates and their respective Representatives), and the Sellers hereby disclaim all Liability and responsibility for any such information and statements. It is understood that any due diligence materials made available to Buyer or its Affiliates or their respective Representatives do not, directly or indirectly, and shall not be deemed to, directly or indirectly, contain representations or warranties of the Sellers or its Affiliates or their respective Representatives.



Nothing contained herein shall limit Buyer's ability to make a claim against the Sellers for ~~fraud~~Fraud.

**ARTICLE IV.  
REPRESENTATIONS AND WARRANTIES OF THE BUYER**

The Buyer represents and warrants to the Sellers as follows:

Section 4.1 Organization. The Buyer is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization and has all necessary corporate (or equivalent) power and authority to perform its obligations hereunder and under any Ancillary Agreement.

Section 4.2 Authority. The Buyer has the corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it will be a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Buyer of this Agreement and each of the Ancillary Agreements to which it will be a party and the consummation by the Buyer of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action and this Agreement has been, and upon its execution each of the Ancillary Agreements to which the Buyer will be a party will have been, duly executed and delivered by the Buyer and assuming due execution and delivery by each of the other parties hereto and thereto, this Agreement constitutes, and upon its execution each of the Ancillary Agreements to which the Buyer will be a party will constitute, the legal, valid and binding obligations of the Buyer, enforceable against the Buyer in accordance with its respective terms, except as enforcement may be limited by the Enforceability Exceptions.

Section 4.3 No Conflict; Required Filings and Consents.

(a) The execution, delivery and performance by the Buyer of this Agreement and each of the Ancillary Agreements to which the Buyer will be a party, and the consummation of the transactions contemplated hereby and thereby, or compliance by the Buyer with any of the provisions hereof, do not and will not:

(i) conflict with or violate the certificate of incorporation or bylaws or other similar organizational documents of such Buyer;

(ii) conflict with or violate any Law applicable to such Buyer or by which any property or asset of such Buyer is bound or affected;

(iii) conflict with or violate any Order of any Governmental Authority;  
or

(iv) conflict with, result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, or give rise to a right of termination, modification, notice or cancellation or require any consent of any Person pursuant to, any Contract to which the Buyer is a party;

except, in the case of clause (ii), (iii) or (iv), for any such conflicts, violations, breaches, defaults or other occurrences that would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect.

(b) The Buyer is not required to file, seek or obtain any notice, authorization, approval, order, permit or consent of or with any Governmental Authority in connection with the execution, delivery and performance by the Buyer of this Agreement and each of the Ancillary Agreements to which it will be a party or the consummation of the transactions contemplated hereby or thereby, except (i) for any filings required to be made under the HSR Act or Foreign Competition Laws or (ii) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to have a Buyer Material Adverse Effect.

Section 4.4 Investment Intent. The Buyer acknowledges that neither the offer nor the sale of the Transferred Stock has been registered under the Securities Act of 1933 (together with the rules and regulations promulgated thereunder, the “Securities Act”) or under any state or foreign securities Laws. The Buyer is acquiring the Transferred Stock for its own account for investment, without a view to, or for a resale in connection with, the distribution thereof in violation of the Securities Act or any applicable state or foreign securities Laws and with no intention of distributing or reselling any part thereof. Buyer acknowledges that the Transferred Stock may not be transferred, sold, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act and any other provision of applicable state securities Laws or pursuant to an applicable exemption therefrom. Buyer acknowledges that there is no public market for the Transferred Stock and that there can be no assurance that a public market will develop. Buyer understands that the acquisition of the Transferred Assets and the Transferred Stock to be acquired by it pursuant to the terms of this Agreement involves substantial risk. Buyer and its Affiliates have experience as an investor in securities and equity interests of companies such as the ones being transferred pursuant to this Agreement, and Buyer can bear the economic risk of its investment (which may be for an indefinite period) and has such knowledge and experience in financial or business matters that Buyer is capable of evaluating the merits and risks of its investment in the Transferred Assets and the Transferred Stock to be acquired by it pursuant to the transactions contemplated hereby.

Section 4.5 Brokers. No broker, finder or investment banker is entitled to any fee, commission or expense from the Buyer that would be payable by the Sellers in connection with the transactions contemplated hereby.

Section 4.6 No Litigation. There are no Actions pending or, to the Buyer’s knowledge, threatened against or affecting the Buyer that challenge or seek to prevent, enjoin or otherwise delay the consummation of the transactions contemplated by this Agreement.

Section 4.7 Credit Bid Direction. Certain of the lenders to the DIP Credit Agreement, as holders of a majority of the outstanding DIP Credit Agreement Indebtedness, delivered to the Buyer, on or prior to the date hereof, a direction letter to fully authorize the Buyer to, among other things, enter into and perform and comply with this Agreement and consummate the transactions contemplated hereby, including the Credit Bid.

Section 4.8 Financing. The Buyer will have at the Closing sufficient unrestricted funds in an aggregate amount necessary to pay the Purchase Price, to perform the Assumed Liabilities as they become due in accordance with their terms and to consummate all of the other transactions contemplated by this Agreement. The obligations of Buyer under this Agreement are not contingent upon the availability of financing.

Section 4.9 Buyer's Investigation and Non-Reliance. The Buyer is a sophisticated purchaser and has made its own independent investigation, review and analysis regarding the Business, the Transferred Subsidiaries, the Transferred Assets, the Assumed Liabilities and the transactions contemplated hereby, which investigation, review and analysis was conducted by the Buyer together with expert advisors, including legal counsel, that it has engaged for such purpose. The Buyer and its Representatives have been provided with reasonable access to the Representatives, properties, offices, plants and other facilities, books and records of the Sellers and the Transferred Subsidiaries relating to the Business and other information that they have requested in connection with their investigation of the Business, the Transferred Subsidiaries, the Transferred Assets, the Assumed Liabilities and the transactions contemplated hereby. None of the Sellers, the Transferred Subsidiaries or any of their Affiliates or Representatives has made, and none of the Buyer or any of its Affiliates or Representatives is relying on, any representation or warranty, express or implied, as to the accuracy or completeness of any information concerning the Business, the Transferred Subsidiaries, the Transferred Assets or the Assumed Liabilities contained herein or made available in connection with the Buyer's investigation of the foregoing, except as expressly set forth in Article III (as modified by the Disclosure Schedules). The Buyer acknowledges that, should the Closing occur, the Buyer shall acquire the Business, the Transferred Subsidiaries and the Transferred Assets without any surviving representations or warranties, on an "as is", "where is" and "with all faults" basis. In entering into this Agreement, Buyer acknowledges that it has relied solely upon the aforementioned investigation, review and analysis and not on any factual representation, warranty, inducement, promise, understanding, omission, condition or opinion of the Sellers or any of its Affiliates or their respective Representatives (except the specific representations and warranties of the Sellers set forth in Article III, in each case, as qualified by the Disclosure Schedules). Buyer acknowledges and agrees, to the fullest extent permitted by Law, that none of the Sellers, Seller Parent or any of their respective directors, officers, employees, equityholders, members, Affiliates, controlling Persons, agents, advisors, Representatives or any other Person shall have any Liability or responsibility whatsoever to Buyer or its directors, officers, employees, Affiliates, controlling Persons, agents or Representatives on any basis (including in contract, tort or equity, under federal or state securities Laws or otherwise) based upon any information provided or made available, or statements made (including set forth in management summaries relating to the Business provided to Buyer, in materials furnished in the Sellers' data site (virtual or otherwise), in presentations by the Sellers' management or otherwise), to Buyer or its directors, officers, employees, Affiliates, controlling Persons, advisors, agents or Representatives (or any omissions therefrom). Nothing contained herein shall limit Buyer's ability to make a claim against the Sellers for ~~fraud~~Fraud.

**ARTICLE V.  
BANKRUPTCY COURT MATTERS**

**Section 5.1     Bankruptcy Actions.**

~~(a) Approval of Break-Up Fee and Expense Reimbursement. In the event that a Competing Bid is consummated, in consideration for Buyer having expended considerable time and expense in connection with this Agreement and the negotiation thereof and the identification and quantification of assets of Sellers, Sellers shall pay Buyer, in accordance with the terms hereof and, subject to the entry of and terms of the Sale Procedures Order, a break-up fee in an amount equal to two percent (2)% of the Credit Bid Amount (the “Break Up Fee”). The Break-Up Fee shall be paid on the first Business Day following the date of consummation of a Competing Bid from the proceeds of a Competing Bid (or from other assets of Sellers if the Competing Bid does not result in provision of sufficient Cash Equivalents to Seller to make such payment) if no material breach by Buyer of this Agreement has occurred. In addition, if this Agreement is validly terminated in accordance with the terms set forth in Section 9.1 (other than (i) any termination pursuant to Section 9.1(a), (ii) any termination by Seller Parent pursuant to Section 9.1(b)(iv), unless Buyer at such time would have been entitled to terminate this Agreement, (iii) any termination pursuant to Section 9.1(d)(i) or (ii) or (iv) any termination pursuant to Section 9.1(b)(v)), then the Sellers, jointly and severally, shall pay to the Buyer in cash not later than five (5) Business Days following receipt of documentation supporting the request for reimbursement of out of pocket costs, fees and expenses, an amount equal to the reasonable and documented out of pocket costs, fees and expenses incurred by the Buyer and its Affiliates (including fees and expenses of legal, accounting and financial advisors) in connection with the negotiation, execution, delivery and approval by the Bankruptcy Court of this Agreement and the transactions contemplated hereby, and not otherwise reimbursed or required to be reimbursed pursuant to the DIP Credit Agreement, in an amount not to exceed \$750,000 (the “Expense Reimbursement Amount” and, together with the Break-Up Fee, the “Termination Payment”), by wire transfer of immediately available funds to an account specified by the Buyer to the Sellers in writing. Notwithstanding anything to the contrary herein, if this Agreement is terminated pursuant to Section 9.1(b)(ii) or (iii), Buyer’s receipt of the Termination Payment shall be the sole and exclusive remedy of Buyer and its Affiliates~~

~~(b) Nothing in this Section 5.1 shall relieve Buyer or Sellers of any Liability for a breach of this Agreement prior to the date of termination. For the avoidance of doubt, each Party may pursue any remedies available to it for such breaches by the other Party prior to such termination, in accordance with the terms hereof. Buyer will be entitled to seek specific performance of this Agreement in accordance with Section 10.16 while also seeking payment of the Termination Payment, but Buyer shall not be entitled to both obtain specific performance to cause the Closing to occur and also receive the Termination Payment. Upon payment of the Termination Payment to Buyer in accordance with this Section 5.1, Sellers and their respective Representatives and Affiliates, on the one hand, and Buyer and its Representatives and Affiliates, on the other, will be deemed to have fully released and discharged each other from any Liability resulting from the termination of this Agreement and neither Sellers, their Representatives or Affiliates, on the one hand, nor Buyer, its Representatives or Affiliates, on the other hand, or any other Person will have any other remedy or cause of action under or relating to this Agreement or any applicable Law, including for reimbursement of expenses. The~~

~~parties acknowledge and hereby agree that in no event shall Sellers be required to pay the Termination Payment on more than one occasion.~~

(a) ~~(e) Competing Transaction.~~ This Agreement is subject to approval of the procedures set forth in the Sale Procedures Order, including with respect to payment of the Expense Reimbursement Amount, and the consideration by Sellers of higher or better Competing Bids in respect of all or any part of the Transferred Assets and/or the Transferred Subsidiaries in accordance with the Sale Procedures Order. From the date hereof (and any prior time) and until the Closing, Sellers are permitted to and to cause their Representatives and Affiliates to, initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Buyer and its Affiliates and Representatives) in connection with a Competing Bid, including, to (and to cause their Representatives and Affiliates to) respond to any inquiries or offers to purchase all or any part of the Transferred Assets, (including supplying information relating to the Business and the assets of Sellers to prospective purchasers).

(b) ~~(d) Bankruptcy Court Filings.~~

(i) As soon as reasonably practicable following the execution of this Agreement and the commencement of the Bankruptcy Cases, the applicable Sellers shall file with the Bankruptcy Court a motion seeking entry of the Sale Procedures Order (which shall, among other things, ~~approve and authorize payment of the Termination Payment, and shall~~ establish procedures for the conduct of the Auction, and to determine Cure Costs for the Transferred Contracts), and shall diligently prosecute such motion. Buyer agrees that it will promptly take such actions as are reasonably requested by the applicable Sellers to assist in obtaining entry of the Sale Procedures Order. In the event the entry of the Sale Procedures Order shall be appealed, the applicable Sellers and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

(ii) Provided Buyer is selected as the winning bidder in respect of the Transferred Assets and the Transferred Subsidiaries at the Auction, if any, undertaken in accordance with the Sale Procedures Order, or if no Competing Bid is submitted with respect to the Transferred Assets and the Transferred Subsidiaries, Sellers shall diligently seek entry of the Sale Order and any other necessary orders to close the sale of the Transferred Assets and the Transferred Subsidiaries (the “Related Orders”) by the Bankruptcy Court in accordance with the terms and conditions of the Sale Procedures Order. Buyer and Sellers understand and agree that the consummation of the transactions contemplated by this Agreement is subject to approval by the Bankruptcy Court. Buyer agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Sale Order and any Related Orders including a finding of adequate assurance of future performance by Buyer, including by furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a “good faith” purchaser under section 363(m) of the Bankruptcy Code. Buyer shall not, without the prior written consent of Seller Parent, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Transferred Assets and the Transferred Subsidiaries hereunder. In the event the

entry of the Sale Order shall be appealed, Sellers and Buyer shall use their respective commercially reasonable efforts to defend such appeal.

(iii) The applicable Sellers shall file such motions or pleadings, in form and substance reasonably acceptable to Buyer, as may be appropriate or necessary to assume and assign the Transferred Contracts and to determine the amount of the Cure Costs; provided, that nothing herein shall preclude Sellers from filing such motions, including upon commencement of the Bankruptcy Cases, to reject any Contracts that are not Transferred Contracts.

(c) ~~(e)~~ Back-up Bidder. Sellers and Buyer agree that, in the event that Buyer is not the winning bidder at the Auction, if and only if (i) Buyer submits the second highest or second best bid at the Auction for the Transferred Assets and the Transferred Subsidiaries which is memorialized by an acceptable agreement incorporating terms established at the Auction, or the terms of this Agreement constitute the second highest or best bid for the Transferred Assets and the Transferred Subsidiaries, and (ii) Sellers give written notice to Buyer on or before the date that is twenty-eight (28) days from the entry of an Order of the Bankruptcy Court approving the winning bidder's definitive agreement, stating that Sellers (A) failed to consummate the sale of the Transferred Assets and/or the Transferred Subsidiaries with the winning bidder, and (B) terminated the purchase agreement with the winning bidder, so long as Buyer has not previously terminated this Agreement in accordance with its terms, Buyer shall promptly consummate the transactions contemplated hereby upon the terms and conditions as set forth herein, or as set forth on the record of the Auction, including the Purchase Price, as the same may be increased by Buyer at the Auction.

## ARTICLE VI. COVENANTS

Section 6.1 Conduct of Business Prior to the Closing. From the date of this Agreement until the Closing Date or earlier termination of this Agreement, except (1) as otherwise expressly contemplated by this Agreement, (2) as required by Law or any Order or any Contract to which Sellers or any of the Transferred Subsidiaries are bound, (3) as required or prohibited pursuant to a Bankruptcy Court Order or the Bankruptcy Code or the DIP Credit Agreement, (4) with the prior written consent of the Buyer (which consent shall not be unreasonably withheld, conditioned or delayed) or (5) as set forth on Section 6.1 of the Disclosure Schedules; provided, that the consent of the Buyer shall be deemed to have been given if the Buyer does not object within seven (7) Business Days from the date on which request for such consent is provided in writing to Buyer) or the approval of the Bankruptcy Court,

(a) the Sellers shall, and shall cause the Transferred Subsidiaries to use commercially reasonable efforts to (x) conduct the Business in the Ordinary Course of Business, (y) preserve the material business relationships with customers, suppliers, distributors and others with whom the Sellers or the Transferred Subsidiaries deal in the Ordinary Course of Business; and (z) Sellers shall maintain the Transferred Assets in reasonably good operating condition (normal wear and tear excepted);

(b) the Sellers shall not, and shall cause the Transferred Subsidiaries not to, undertake any of the following:

(i) sell, transfer, lease, sublease, encumber or otherwise dispose of (1) any material Transferred Assets or (2) any material assets of a Transferred Subsidiary, in each case other than immaterial dispositions thereof and Inventory sold or disposed of in the Ordinary Course of Business;

(ii) issue, sell, grant, pledge, dispose or transfer any equity interests in any Seller or Transferred Subsidiary;

(iii) acquire any corporation, partnership, limited liability company, other business organization or division thereof;

(iv) merge or consolidate with or into any legal entity, dissolve, liquidate or otherwise terminate its existence;

(v) split, combine, consolidate, subdivide or reclassify any of the Transferred Subsidiaries' capital stock, other equity interests or voting securities, or securities convertible into or exchangeable or exercisable for capital stock or other equity interests or voting securities, or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for its capital stock, other equity interests or voting securities or enter into silent partnership agreements granting the silent partner entitlements to its proceeds;

(vi) declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof) in respect of any securities of any Transferred Subsidiary or Seller, or repurchase, redeem or otherwise acquire, or offer to repurchase, redeem or otherwise acquire, any capital stock or voting securities of, or equity interests in, any Transferred Subsidiary or Seller or any securities of any Transferred Subsidiary or Seller convertible into or exchangeable or exercisable for capital stock or voting securities of, or equity interests in, any Transferred Subsidiary or Seller, or any warrants, calls, options or other rights to acquire any such capital stock, securities or interests, other than any transfers among Transferred Subsidiaries, among Sellers, or between any Transferred Subsidiary and any Seller;

(vii) amend the certificate of incorporation, bylaws or comparable organizational documents of any Seller or Transferred Subsidiary in a manner that would reasonably be expected to materially delay or impede the Sellers' ability to consummate the transactions contemplated hereby;

(viii) enter into any joint venture agreement that involves a sharing of profits, cash flows, expenses or losses with other Persons related to or affecting the Business, the Transferred Assets or the Transferred Subsidiaries;

(ix) amend or modify (other than by automatic extension or renewal) or terminate (other than by expiration in accordance with its terms) any Material Contract or



enter into a Contract which, had it been entered into prior to the date hereof, would have been a Material Contract;

(x) take any action (other than any actions required by the Bankruptcy Court or applicable Law) in breach of the Sale Procedures or the Sale Order;

(xi) (1) reject or terminate (other than by expiration in accordance with its terms) any Material Contract or seek Bankruptcy Court approval to do so, or (2) fail to use commercially reasonable efforts to oppose any action by a third party to so terminate (including any action by a third party to obtain Bankruptcy Court approval to terminate) any Material Contract, except in each case, to the extent the Buyer has indicated in writing that it wishes the Sellers to reject such Contract;

(xii) with respect to any Transferred Asset (1) agree to allow any form of relief from the automatic stay in the Bankruptcy Cases; or (2) fail to use commercially reasonable efforts to oppose any action by a third party to obtain relief from the automatic stay in the Bankruptcy Cases;

(xiii) solely with respect to the Transferred Subsidiaries, Transferred Assets or the Business, change, make or revoke any Tax election, change any method of accounting with respect to Taxes, file any amended Tax Return, surrender or compromise any right to claim a Tax refund, settle or compromise any claim, notice, audit, assessment or other proceeding related to Taxes, enter into any agreement affecting any Tax Liability or any refund or file any request for rulings or special Tax incentives with any Governmental Authority, enter into any Tax allocation, sharing or indemnity agreement (in each case, if the subject matter thereof primarily relates to Taxes), or extend or waive the statute of limitations period applicable to any Tax or Tax Return;

(xiv) make any change in any method of accounting or accounting practice or policy, except as required by applicable Law or GAAP;

(xv) fail to maintain in full force and effect existing insurance policies;

(xvi) make any loans, advances or capital contributions to, or investments in, any other Person (other than to a Seller or Transferred Subsidiary);

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

(xviii) subject any of the Transferred Assets to any Encumbrance, other than Permitted Encumbrances;

(xix) incur any indebtedness for borrowed money, enter into any capital lease or guarantee any such indebtedness, in each case that would constitute an Assumed Liability;



(xx) enter into any commitment for capital expenditures, except to the extent permitted under the terms of the Sellers' debtor-in-possession financing;

(xxi) except as required under the terms of any Employee Benefit Plan, with respect to Business Employees, (1) make or grant any general or special wage or salary increase (other than merit increases consistent with past practice within the past three years), (2) make any material increase in the payment of benefits under any Employee Benefit Plan, (3) take any action with respect to the grant of any material severance or termination pay (other than pursuant to policies, agreements or arrangements in effect on the date of this Agreement) which will become due, (4) adopt, amend or terminate any Employee Benefit Plan, other than in the Ordinary Course of Business and consistent with past practice, and (5) enter into any material employment, consulting or similar agreement or materially amend any existing employment agreement, or

(xxii) agree or commit to any of the foregoing.

#### Section 6.2 Covenants Regarding Information.

(a) From the date hereof until the Closing Date or earlier termination of this Agreement, upon reasonable request, the Sellers shall afford the Buyer and its Representatives, at Buyer's sole expense, reasonable access to make investigation of the properties, offices, plants and other facilities, books and records (including Tax books and records) of the Sellers and the Transferred Subsidiaries, and shall furnish the Buyer with such financial, operating and other data and information, and reasonable access to all the officers, employees, accountants and other Representatives of the Sellers and the Transferred Subsidiaries to the extent Buyer may reasonably request and to make extracts and copies of such books and records; provided, that any such investigation shall be conducted during normal business hours upon prior notice and advanced written consent of Seller Parent (such consent not to be unreasonably withheld, conditioned or delayed) under the supervision of the Sellers' personnel and in such a manner as not to unreasonably interfere with the normal operations of the Transferred Subsidiaries. Notwithstanding anything to the contrary in this Agreement, the Sellers shall not be required to disclose any information to the Buyer or its Representatives if such disclosure (i) would violate applicable Law, including Antitrust Laws and data protection Laws, rules or regulations or the terms of any Contract to which the Sellers or any Transferred Subsidiaries are party (including confidentiality obligations) or (ii) would adversely affect any attorney-client or other legal privilege or contravene any applicable Laws (the "Disclosure Limitations"); provided that the Parties shall reasonably cooperate in seeking to find a way to allow disclosure of such information to the extent doing so would not (in the good faith belief of the Sellers after consultation with outside counsel) reasonably be likely to cause such violation to occur or such privilege to be undermined with respect to such information. The information provided pursuant to this Section 6.2 will be used solely for the purposes of effecting the transactions contemplated hereby. No Seller makes any representation or warranty as to the accuracy of any information provided pursuant to this Section 6.2. Except as otherwise contained in this Agreement, the Sellers shall not be required to provide to Buyer any information relating to bids received from other Persons in connection with the Auction and information and analysis (including financial analysis) relating to such bids. Prior to the Closing, without the prior written consent of Seller

Parent, which may be withheld for any reason, Buyer shall have no right to perform invasive or subsurface investigations of the Real Property.

(b) From the date hereof until the Closing Date or earlier termination of this Agreement, the Sellers shall use, and shall cause the Transferred Subsidiaries to use, commercially reasonable efforts to cause their respective directors and officers to, on a reasonably timely basis, cooperate as reasonably requested by the Buyer and/or any potential lender to assist the Buyer in connection with any debt financing entered into in connection with the transactions contemplated by this Agreement, including (i) requesting its certified independent auditors to provide auditors' reports and customary comfort letters with respect to financial information relating to the Sellers or the Transferred Subsidiaries in customary form, (ii) directing appropriate personnel of the Sellers or the Transferred Subsidiaries to participate at reasonable times in a reasonable number of sessions with prospective lenders, (iii) furnishing the Buyer and such potential lenders, as promptly as reasonably practicable, with such customary financial and other pertinent information regarding the Sellers or the Transferred Subsidiaries as may be reasonably requested by the Buyer in connection with such financing, (iv) assisting in the preparation of definitive financing documents, including guarantee and collateral documents and customary closing certificates as may be reasonably required by such financing and (v) providing customary documentation and other information about the Sellers or the Transferred Subsidiaries reasonably requested by the Buyer or such potential lenders in connection with such financing and required under applicable "know your customer," sanctions and anti-money-laundering rules and regulations); provided, that the Sellers shall not be required to provide, or cause the Transferred Subsidiaries to provide, cooperation under this Section 6.2(b) that: (1) unreasonably interferes with the normal operations of the Transferred Subsidiaries; (2) causes any representation, warranty covenant or agreement in this Agreement to be breached; or (3) causes any closing condition set forth in Article VIII to fail to be satisfied or otherwise causes the breach of this Agreement or any Contract to which any Transferred Subsidiary is a party or the breach prior to Closing of any Material Contract; and, provided, further, the effect of any such breach shall be excluded when determining if the conditions set forth in Sections 8.3(a) and 8.3(b) are satisfied. None of the Sellers or any Transferred Subsidiary shall be required to execute prior to the Closing any definitive financing documents, including any credit or other agreements, pledge or security documents, or other certificates, legal opinions or documents in connection with such financing, except to the extent any such documents shall be subject to the consummation of the transactions contemplated hereby at the Closing and such documents will not take effect until the Closing occurs and will not encumber the assets of any Transferred Subsidiary prior to the Closing. In no event shall the Sellers be in breach of this Agreement because of the failure to deliver any financial or other information that is not currently readily available to the Sellers on the date hereof or is not otherwise prepared in the Ordinary Course of Business at the time requested by Buyer or for the failure to obtain any comfort with respect to, or review of, any financial or other information by its accountants. Any and all reasonable and documented out-of-pocket costs and expenses incurred at the request of the Buyer in connection with any cooperation, investigation or other matter related to this Section 6.2(b) shall be borne by the Buyer.

(c) From and after the Closing, for a period of six (6) years following the Closing Date (or, if later, the closing of the Bankruptcy Case), the Buyer will provide the Sellers and their Representatives, at Sellers' sole expense, with reasonable access, during normal

business hours, and upon reasonable advance notice, subject to reasonable denials of access or delays to the extent any such access would unreasonably interfere with the operations of the Buyer or the Business, to the books and records, including work papers, schedules, memoranda, and other documents (for the purpose of examining and copying) relating to the Transferred Assets, the Excluded Assets, the Assumed Liabilities or the Excluded Liabilities with respect to periods or occurrences prior to the Closing Date, for the purposes of (i) complying with the requirements of any Governmental Authority, including the Bankruptcy Court, (ii) the closing of the Bankruptcy Cases and the wind down of the Sellers' estates (including reconciliation of claims), (iii) making insurance claims, (iv) complying with applicable Laws and (v) any Action to which any Seller is a party; provided that the Buyer shall not be obligated to provide any such access that would conflict with the Disclosure Limitations; provided, further, that the Parties shall reasonably cooperate in seeking to find a way to allow disclosure of such information to the extent doing so would not (in the good faith belief of the Buyer after consultation with outside counsel) reasonably be likely to cause such violation to occur or such privilege to be undermined with respect to such information. Unless otherwise consented to in writing by Seller Parent, the Buyer will not, for a period of six (6) years following the Closing Date (or, if later, the closing of the Bankruptcy Cases), destroy, alter or otherwise dispose of any of such books and records without first offering to surrender to Seller Parent such books and records or any portion thereof that the Buyer may intend to destroy, alter or dispose of, provided that the Buyer may dispose of books and records in accordance with its document retention policies which are offered to, but not accepted by, Seller Parent. From and after the Closing, the Buyer will, at Sellers' sole expense, provide Sellers with reasonable assistance, support and cooperation with Sellers' wind-down of the Sellers' operations and related activities (e.g., helping to locate documents or information related to prosecution or processing of insurance/benefit claims). This Section 6.2(c) shall not apply with respect to Taxes.

Section 6.3 Notification of Certain Matters. Each Party shall promptly notify the other Parties in writing of any fact, change, condition, circumstance or occurrence or nonoccurrence of any event of which it is aware that will or is reasonably likely to result in (a) any of the conditions set forth in Section 8.2(a)(i), Section 8.2(a)(ii), Section 8.2(b), Section 8.3(a), Section 8.3(a)(i) or Section 8.3(a)(ii) becoming incapable of being satisfied or (b) a Material Adverse Effect; provided, that failure to deliver any such notice by any Party shall not constitute a failure of the conditions to Closing set forth in Section 8.2 or Section 8.3 to be satisfied.

Section 6.4 Employee Matters.

(a) Where applicable Law provides for the automatic transfer of employment of any Business Employee, including the Transferred Subsidiaries Employees, upon the consummation of the transactions contemplated hereby, the parties (i) shall take or cause to be taken such actions as are required under applicable Law to accomplish such transfer of employment of such Business Employee to Buyer or a Subsidiary of Buyer by operation of Law as of the Closing and (ii) shall not take and shall not cause to be taken any such actions that would reasonably be expected to result in the employment of such Business Employee not transferring to Buyer or a Subsidiary of Buyer by operation of Law as of the Closing.

(b) The Sellers shall retain all Liabilities relating to unpaid wages, salaries, commissions and other amounts, earned or accrued by or in respect of employees of the Asset Sellers.

(c) Nothing express or implied in this Section 6.4 or this Agreement shall (i) confer upon any Business Employee, or legal representative or beneficiary thereof, any rights or remedies, including any right to employment or benefits for any specified period, of any nature or kind whatsoever, under or by reason of this Agreement, (ii) be treated as an amendment to, or prevent the termination of any Employee Benefit Plan, or any other employee benefit plan, program, arrangement or agreement sponsored or maintained by the Buyer, the Sellers or their respective Affiliates, as applicable, or (iii) obligate the Buyer, the Sellers or any of their respective Affiliates to maintain any particular employee benefit plan, program or arrangement.

#### Section 6.5 Consents and Filings; Further Assurances.<sup>+</sup>

(a) Each of the Parties shall, and shall cause their Affiliates to, use reasonable best efforts to take, or cause to be taken, all appropriate action to do, or cause to be done, all things necessary, proper or advisable under applicable Law or otherwise to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements, including to use commercially reasonable efforts to obtain all necessary waivers, consents and approvals and effecting all necessary registrations and filings, including all necessary waivers, consents and approvals from customers and other parties. Without limiting the generality of the previous sentence, the Parties shall, and shall cause their Affiliates to, (i) use reasonable best efforts to obtain from Governmental Authorities all consents, approvals, authorizations, qualifications and orders as are necessary for the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements, as promptly as practicable, and in any event prior to the Outside Date; (ii) promptly, and in no event later than the fifth (5<sup>th</sup>) Business Day following the date hereof, make all necessary filings, and thereafter make any other required submissions, with respect to this Agreement required under the HSR Act or any other applicable Law, including any other Antitrust Law; (iii) use reasonable best efforts to comply at the earliest practicable date with any request under the HSR Act, or other Antitrust Law, for additional information, documents or other materials received by each of them or any of their respective Subsidiaries from the Federal Trade Commission, the Antitrust Division of the United States Department of Justice or any other Governmental Authority in respect of such filings (collectively, an “Antitrust Authority”); (iv) cooperate with each other in connection with any such filing or request (including, to the extent permitted by applicable Law, providing copies of all such documents to the non-filing parties prior to filing and considering all reasonable additions, deletions or changes suggested in connection therewith) and in connection with resolving any investigation or other inquiry of any of the Antitrust Authorities under the HSR Act or Foreign Competition Law with respect to any such filing; (v) not extend any waiting period under the HSR Act or enter into any agreement with an Antitrust Authority not to consummate the transactions contemplated hereby; (vi) defend and resolve any investigation or other inquiry of any Governmental Authority under all applicable Laws, including by defending against and contesting administratively and in court any litigation or adverse determination

<sup>+</sup> ~~Note to Draft: HSR, Foreign Competition Laws filings remain subject to further consideration.~~

initiated or made by a Governmental Authority under applicable Law. This Section 6.5(a) does not apply with respect to Taxes.

(b) Each of the Parties shall promptly notify the other Parties of any material communication it or any of its Affiliates receives from any Governmental Authority relating to the matters that are the subject of this Agreement and, subject to applicable Law, if practicable, permit the other Parties to review in advance any proposed communication by such Party to any Governmental Authority and consider in good faith and incorporate the other Parties' reasonable comments. No Party shall agree to participate in any substantive meeting or discussion with any Governmental Authority in respect of any filings, investigation or other inquiry unless it consults with the other Parties in advance and, to the extent permitted by such Governmental Authority, gives the other Parties the opportunity to attend and participate at such meeting. The Parties will coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other Parties may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods, including under the HSR Act. Subject to applicable Law, the Parties will provide each other with copies of all correspondence, filings or communications between them or any of their Representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to this Agreement and the transactions contemplated hereby. This Section 6.5(b) does not apply with respect to Taxes.

(c) In furtherance, and without limiting any, of the covenants and agreements under Section 6.5(a) and Section 6.5(b), each Party shall, and shall cause its Affiliates to, take all actions necessary, proper or advisable to (i) avoid or eliminate each and every impediment that may be asserted by a Governmental Authority related to any filings or consents contemplated by this Section 6.5, as soon as practicable and (ii) to enable the Closing to occur as soon as practicable and in any event prior to the Outside Date, in each case, which actions shall include (1) proposing, negotiating, committing to and effecting, by consent decree, hold separate order, settlement or otherwise, the sale, divestiture, licensing or disposition of any assets or businesses of the Buyer or its Affiliates (including, after the Closing, the Transferred Subsidiaries), (2) terminating existing relationships, contractual rights or obligations of the Buyer or its Affiliates (including, after the Closing, the Transferred Subsidiaries), (3) agreeing to any limitation on the conduct of the Buyer or its Affiliates (including, after the Closing, the Transferred Subsidiaries), (4) taking any other action as may be required by a Governmental Authority in order to obtain any consent thereof that is necessary, appropriate or advisable to consummate the Closing or avoiding the entry of, or having vacated, lifted, dissolved, reversed or overturned Legal Restraint, in each case, as soon as possible (each of the actions described in the foregoing clauses (1)–(4), a “Regulatory Concession”). Notwithstanding the foregoing, nothing in this Agreement shall require, or be construed to require, the Buyer or its Affiliates (including, after the Closing, the Transferred Subsidiaries), to make or agree to any Regulatory Concession, to the extent that it, individually or in the aggregate, would reasonably be expected to have a material adverse effect on the Buyer or its Affiliates, the Transferred Subsidiaries or the Business.

(d) From time to time, whether at or following the Closing, the Sellers and the Buyer shall execute, acknowledge and deliver all such further conveyances, notices, assumptions and releases and such other instruments, and shall take such further actions, as may be necessary or appropriate to vest in the Buyer all the right, title, and interest in, to or under the Transferred

Assets, to provide the Buyer and the Sellers all rights and obligations to which they are entitled and subject pursuant to this Agreement and the Ancillary Agreements, and to otherwise make effective as promptly as practicable the transactions contemplated by this Agreement and the Ancillary Agreements. Each of the Parties will use its commercially reasonable efforts to cause all of the obligations imposed upon it in this Agreement to be duly complied with and to cause all conditions precedent to such obligations to be satisfied.

(e) The Sellers and the Buyer shall cooperate with each other and, as promptly as practicable after the date of this Agreement use reasonable best efforts to obtain the transfer or reissuance to the Buyer of all Environmental Permits necessary to lawfully own and operate the Business and Transferred Assets. The Parties shall use reasonable best efforts to respond promptly to any requests for additional information made by such agencies, use their respective commercially reasonable efforts to participate in any hearings, settlement proceedings or other proceedings ordered with respect to applications to transfer or reissue such Environmental Permits, and use respective reasonable best efforts to cause regulatory approval to be obtained as soon as practicable after the date of filing. Each Party will bear its costs of the preparation and review of any such filing. The Sellers and the Buyer shall have the right to review in advance all characterizations of the information relating to the transactions contemplated by this Agreement which appear in any filings to transfer the Environmental Permits and the filing Party shall consider in good faith any revisions reasonably requested by the non-filing Party.

#### Section 6.6 Refunds and Remittances.

(a) After the Closing: (i) if the Sellers or any of their Affiliates receive any refund or other amount that is a Transferred Asset or is otherwise properly due and owing to the Buyer in accordance with the terms of this Agreement, the Sellers promptly shall remit, or shall cause to be remitted, such amount to the Buyer and (ii) if the Buyer or any of its Affiliates receive any refund or other amount that is an Excluded Asset or is otherwise properly due and owing to the Sellers or any of their Affiliates in accordance with the terms of this Agreement, the Buyer promptly shall remit, or shall cause to be remitted, such amount to the Sellers.

(b) In the event that, from and after the Closing, (i) Sellers or any of their Affiliates have retained ownership of a Transferred Asset as contemplated by this Agreement, then, for no additional consideration to the Sellers or any of their Affiliates, the Sellers shall, and shall cause their controlled Affiliates to, convey, assign or transfer promptly such Transferred Asset to the Buyer or its designees, and the Parties shall execute all other documents and instruments, and take all other lawful actions reasonably requested, in order to assign and transfer such Transferred Asset to the Buyer or its designees or (ii) any Excluded Asset has been conveyed to or is received by the Buyer, then, without any consideration payable to the Buyer or any of its Affiliates, the Buyer shall convey, assign or transfer promptly such Excluded Asset to the Sellers, and the Parties shall execute all other documents and instruments, and take all other lawful actions reasonably requested, in order to assign and transfer such Excluded Asset to Sellers or their designees. To the extent that Buyer receives any mail or packages addressed to Sellers not relating to the Transferred Assets or the Assumed Liabilities, Buyer shall promptly deliver such mail or packages to Sellers. To the extent Sellers receive any mail or packages

addressed to Sellers but relating to the Transferred Assets or the Assumed Liabilities, Sellers shall promptly deliver such mail or packages to Buyer.

**Section 6.7 Public Announcements.** From and after the date hereof, the Parties shall consult with each other before making any press release or otherwise making any public statements with respect to this Agreement or the transactions contemplated hereby, and neither the Buyer nor the Sellers shall make any press release or any public statement prior to obtaining Seller Parent's (in the case of the Buyer) or the Buyer's (in the case of the Sellers) written approval, which approval shall not be unreasonably withheld, conditioned or delayed, except that no such approval shall be necessary to the extent disclosure is made in any filing made to any court or may be required by applicable Law or by the Bankruptcy Court in connection with this Agreement; provided, that the Party intending to make such release shall use commercially reasonable efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Party with respect to the text thereof; provided, further, that nothing in this Agreement shall restrict or prohibit Sellers or the Transferred Subsidiaries from (i) making any announcement to their respective employees to the extent Sellers determine in good faith that such announcement is necessary or advisable or (ii) communicating with customers and other business relations in the Ordinary Course of Business.

**Section 6.8 Name Change.** The Sellers shall, as promptly as practicable (but in no event later than forty-five (45) days) after the Closing, cease using and displaying any Trademarks set forth in Section 6.8 of the Disclosure Schedules, and in accordance with such requirement, the Sellers shall use commercially reasonable efforts to, no later than thirty (30) days after the Closing, legally change their corporate and business names (to the extent such names include such Trademarks or a confusingly similar Trademarks) to names that are not confusingly similar to such Trademarks, and file notices of such name changes with the Bankruptcy Court. Under no circumstance shall the Sellers, after the Closing, use or otherwise exploit the Trademarks included in the Transferred Assets or any other indicia confusingly similar to the Trademarks included in the Transferred Assets, Copyrights included in the Transferred Assets, or any work substantially similar to the Copyrights included in the Transferred Assets, as a source identifier in connection with any Seller product, service or corporate, business or domain name. Notwithstanding the foregoing, the Sellers are not prohibited from using the Trademarks for non-trademark uses, including to factually describe their prior ownership of the Business, for internal business purposes, records and other historical or archived documents containing or referencing such Trademarks or in a manner that constitutes fair use under applicable Law. Any inadvertent non-permitted use of any Trademarks included in the Transferred Assets by Sellers after Closing shall not be a breach of this Section 6.8, provided that within thirty (30) days of Buyer discovering or becoming aware of such use, Sellers, or its Affiliate or sublicensee, as applicable, ceases such use or removes such Trademarks from such materials or destroys the applicable materials.

**Section 6.9 Assumed Liabilities; Adequate Assurance of Future Performance.** The Buyer will use commercially reasonable actions to provide the evidence required to establish that the Buyer can provide adequate assurance of future performance of the Transferred Contracts, including such affidavits, non-confidential financial information and other documents

or information as may be necessary or desirable for filing with the Bankruptcy Court and making the Buyer's Representatives available to testify before the Bankruptcy Court.

**Section 6.10 Sale Free and Clear.** The Sellers acknowledge and agree, and the Sale Order shall be drafted to provide, without limitation, that, (a) on the Closing Date and concurrently with the Closing, all then existing Encumbrances against or created by the Sellers, any of their Affiliates, or the bankruptcy estate, to the fullest extent permitted by Section 363 of the Bankruptcy Code, shall be fully released from and with respect to the Transferred Assets and (b) the Buyer is not a successor to any Seller or the bankruptcy estate by reason of any theory of law or equity, and the Buyer shall not assume or in any way be responsible for any Liability of the Sellers, any of their Affiliates and/or the bankruptcy estate, except as expressly provided in this Agreement. On the Closing Date, the Transferred Assets and Transferred Stock shall be transferred to the Buyer free and clear of all Encumbrances (other than Permitted Encumbrances) to the fullest extent permitted by Section 363 of the Bankruptcy Code.

**Section 6.11 Intellectual Property Registrations.** Upon the reasonable and specific request of Buyer, which shall be made no later than five (5) Business Days prior to the Closing Date, the Sellers shall use commercially reasonable efforts to effect the necessary change of ownership and records, effective as of the Closing Date, with all patent, trademark, and copyright offices and domain name registrars and other similar authorities (i) where Intellectual Property included in the Transferred Assets is still recorded in the name of legal predecessors of any Seller or any Person other than a Seller or (ii) where, to the Knowledge of the Sellers, the relevant records of the patent, copyright, and trademark offices, and domain name registrars, and other similar authorities, with respect to any Seller's Intellectual Property, are materially incorrect for any other reason.

**Section 6.12 Contact with Customers and Suppliers.** From the date hereof until the earlier to occur of the Closing and the date that this Agreement is validly terminated, Buyer shall not, and shall cause its Affiliates and Representatives not to, contact or communicate with the employees (other than the employees identified on Section 6.12 of the Disclosure Schedules), customers, potential customers or suppliers of the Business or any other Person having a business relationship with the Business concerning the Business or the transactions contemplated hereby without the prior written consent of Seller Parent, which will not be unreasonably withheld, delayed or conditioned.

**Section 6.13 Resignation of Directors and Officers.** The Sellers shall use commercially reasonable efforts to cause the officers and directors of the Transferred Subsidiaries identified by Buyer to Sellers prior to signing to deliver customary resignation letters effective as of the Closing.

**Section 6.14 Disclosure Schedules and Ancillary Agreements.** The Sellers and the Buyer shall work expeditiously and in good faith to finalize the Disclosure Schedules, the Assignment Agreement, ~~the Assignment of Leases~~ and the IP Assignment Agreement, each in a form that is reasonably acceptable to each of Seller Parent and the Buyer as soon as reasonably practicable and in any event prior to ~~the Bidding Procedures Order Date (as defined below).~~ 11:59 p.m. New York Time on May 22, 2020.



## ARTICLE VII. TAX MATTERS

Section 7.1 Transfer Taxes. Any and all sales, harmonized sales, use, property transfer or gains, real estate or land transfer or gains, documentary, stamp, registration, recording, filing, goods and services or other similar Taxes payable solely as a result of the sale or transfer of the Transferred Stock or the Transferred Assets and the assumption of the Assumed Liabilities pursuant to this Agreement (“Transfer Taxes”) shall (to the extent not subject to an exemption under the Bankruptcy Code) be borne 50% by the Sellers and 50% by the Buyer. The Sellers and the Buyer shall use commercially reasonable efforts and cooperate in good faith to mitigate, reduce, or eliminate any such Transfer Taxes, and shall each sign and file (or cause its respective Affiliates to sign and file) all documentation with the relevant Governmental Authority relating to such Transfer Taxes as it may be required to sign or file under applicable Law. The Sellers shall prepare and file all necessary Tax Returns or other documents with respect thereto and shall promptly provide a copy of any such Tax Returns or other documents to the Buyer.

Section 7.2 Tax Cooperation. The Buyer and the Sellers agree to furnish or cause to be furnished to each other, upon reasonable request, as promptly as practicable, such information (including access to books and records relating to Taxes) and assistance relating to the Business, the Transferred Subsidiaries, the Transferred Assets and the Assumed Liabilities as is reasonably necessary for determining any Liability for Taxes, the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Governmental Authority and the prosecution or defense of any claim, suit or proceeding relating to any Tax; provided, however, that the Buyer shall not be required to disclose the contents of its Tax Returns to any Person. Any reasonable expenses incurred in furnishing such information or assistance pursuant to this Section 7.2 shall be borne by the Party requesting it.

Section 7.3 Tax Returns / Tax Elections. After the Closing, with respect to Tax Returns of the Transferred Subsidiaries for tax periods (i) ending on or prior to the Closing Date or (ii) that are Straddle Periods (in each case, (i) and (ii), “Seller Returns”), Buyer shall prepare such Seller Returns in accordance with applicable Law. The Buyer shall provide the Sellers with draft Seller Returns with respect to income Taxes for review and comment on or before twenty (20) days prior to the due date for such Seller Returns and Buyer shall consider the Sellers’ comments in good faith. No election under Section 338 or 336 of the Code shall be filed with respect to the purchase of the Transferred Subsidiaries.

Section 7.4 Allocations. With respect to a Straddle Period, Taxes and Tax liabilities with respect to the income, property or operations of the Business, Transferred Assets or Transferred Subsidiaries shall be apportioned between the period ending on and including the Closing Date and the period beginning after the Closing Date as follows: (i) in the case of Taxes other than income, sales and use and withholding Taxes, on a per-diem basis, and (ii) in the case of income, sales and use and withholding Taxes, as determined based on a closing of the books of the relevant entity on the Closing Date.

Section 7.5 Bulk Sales. Notwithstanding any other provisions in this Agreement, the Buyer and the Sellers hereby waive compliance with all “bulk sales,” “bulk

transfer” and similar Laws that may be applicable with respect to the sale and transfer of any or all of the Transferred Assets to the Buyer.

## **ARTICLE VIII. CONDITIONS TO CLOSING**

Section 8.1 General Conditions. The respective obligations of the Buyer and the Sellers to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions, any of which may, to the extent permitted by applicable Law, be waived in writing by each of the Buyer and Seller Parent in its sole discretion (provided that such waiver shall only be effective as to the obligations of such Party):

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law or Order (whether temporary, preliminary or permanent) that enjoins, restrains, makes illegal or otherwise prohibits the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements (any such Law or Order, a “Legal Restraint”).

(b) Any waiting period (and any extension thereof) under the HSR Act or any other Antitrust Law applicable to the transactions contemplated by this Agreement and the Ancillary Agreements shall have expired or shall have been terminated or the necessary clearance thereunder shall have been received and shall remain in full force and effect.

Section 8.2 Conditions to Obligations of the Sellers. The obligations of the Sellers to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions, any of which may be waived in writing by Seller Parent in its sole discretion:

(a) Representations and Warranties.

(i) The representations and warranties of the Buyer set forth in Section 4.1, Section 4.2, Section 4.3(a) and Section 4.5 (the “Buyer Fundamental Representations”) shall be true and correct in all respects as of date when made and as of the Closing Date (other than in the case of Buyer Fundamental Representations that are made as of a specified date, which representations and warranties shall be true and correct in all respects as of such specified date);

(ii) The representations and warranties of the Buyer contained in this Agreement (other than the Buyer Fundamental Representations) shall be true and correct as of the date when made and as of the Closing Date (other than in the case of representations and warranties that are made as of a specified date, which representations and warranties shall be true and correct in all material respects as of such specified date), without giving effect to any limitation or qualification by a materiality standard (including “in all material respects,” “material” or “Buyer Material Adverse Effect”) set forth therein, except for such failures to be true and correct that do not have or would not reasonably be expected to have, individually or in the aggregate, a Buyer Material Adverse Effect.

(b) The Buyer shall have, in all material respects, performed all obligations and agreements and complied with all covenants and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing.

(c) The Sellers shall have received the deliverables listed in Section 2.8(c).

(d) The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall be a Final Order.

(e) The Bankruptcy Court shall have approved and authorized the Buyer's ability, pursuant to Section 363(k) of the Bankruptcy Code, to credit bid the Credit Bid Amount in satisfaction of the Purchase Price set forth in Section 2.7.

**Section 8.3 Conditions to Obligations of the Buyer.** The obligations of the Buyer to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions, any of which may be waived in writing by the Buyer in its sole discretion:

(a) Representations and Warranties.

(i) Each Fundamental Representation shall be true and correct in all respects as of the date when made and as of the Closing Date (other than in the case of Fundamental Representations that are made as of a specified date, which Fundamental Representations shall be true and correct in all respects as of such specified date).

(ii) The representations and warranties of the Sellers contained in this Agreement (other than the Fundamental Representations) shall be true and correct as of the date when made and as of the Closing Date (other than in the case of representations and warranties that are made as of a specified date, which representations and warranties shall be true and correct as of such specified date), without giving effect to any limitation or qualification by a materiality standard (including "in all material respects," "material" or "Material Adverse Effect") set forth therein, except for such failures to be true and correct that do not have a Material Adverse Effect.

(b) The Sellers shall have, in all material respects, performed all obligations and agreements and complied with all covenants and conditions required by this Agreement to be performed or complied with by them prior to or at the Closing.

(c) The Buyer shall have received the deliverables listed in Section 2.8(b).

(d) A "Termination Date" (as defined in the DIP Credit Agreement) shall not have occurred and the indebtedness outstanding under the DIP Credit Agreement shall not have otherwise been paid off.

(e) The Bankruptcy Court shall have approved and authorized the Buyer's ability, pursuant to Section 363(k) of the Bankruptcy Code, to credit bid the Credit Bid Amount in satisfaction of a portion of the Purchase Price as set forth in Section 2.7.

(f) The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall be a non-appealable Final Order.

(g) Sellers shall have delivered to Buyer the consents listed on Schedule 8.3(g) hereof.

## ARTICLE IX. TERMINATION

Section 9.1 Termination. This Agreement may be terminated at any time prior to the Closing:

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

(b) either Seller Parent or the Buyer, if:

(i) a Legal Restraint is in effect that has become final and nonappealable; provided that no Party may terminate this Agreement pursuant to this Section 9.1(b)(i) unless it has complied in all material respects with Section 6.5;

(ii) any Seller enters into a definitive agreement with respect to an Alternative Transaction because the Buyer is not the Successful Bidder at the Auction; provided, however, that if the Buyer is the Back-Up Bidder, then the Buyer may not terminate this Agreement pursuant to this Section 9.1(b)(ii) for a period of twenty-eight (28) days from the entry of an Order of the Bankruptcy Court approving such definitive agreement and the transactions contemplated thereby (for the avoidance of doubt, nothing in this Section 9.1(b)(ii) shall restrict the ability of the Buyer to terminate this Agreement in accordance with any other provision of this Agreement);

(iii) if (i) any Seller enters into one or more Alternative Transactions with one or more Persons other than Buyer or (ii) the Bankruptcy Court approves an Alternative Transaction other than with the Buyer;

(iv) the Closing shall not have occurred on or before the date that is ninety (90) days from the date hereof (the "Outside Date"); provided that the right to terminate this Agreement under this Section 9.1(b)(iv) shall not be available to any Party if such Party is then in material breach of this Agreement that is the cause of the failure of the Closing to occur prior to such date; provided, further, that the right to terminate this Agreement pursuant to this Section 9.1(b)(iv) shall not be available to any Party in the event that the other Party or Parties have initiated proceedings prior to the Outside Date to specifically enforce this Agreement which such proceedings are still pending;

(v) all of the Disclosure Schedules, the Assignment Agreement, ~~the Assignment of Leases~~ and the IP Assignment Agreement are not finalized in a form that is reasonably acceptable to each of Seller Parent and the Buyer by ~~the day prior to the Bidding Procedures Order Date~~. 11:59 p.m. New York Time on May 22, 2020.

(c) by the Buyer, if:

(i) the Buyer is not in material breach of this Agreement such that the conditions in Section 8.2(a) or Section 8.2(b) would not be satisfied, and the Sellers breach or fail to perform in any respect any of their representations, warranties or covenants contained in this Agreement and such breach or failure to perform (1) would give rise to the failure of a condition set forth in Section 8.3(a) or Section 8.3(b) and (2) cannot be or has not been cured before the earlier to occur of (A) thirty (30) days following delivery of written notice of such breach or failure to perform and (B) one (1) day prior to the Outside Date;

(ii) if the Bankruptcy Case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code, and neither such dismissal nor conversion expressly contemplate the transactions provided for in this Agreement;

(iii) there shall have occurred any event, change, condition, occurrence or effect that has, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and such Material Adverse Effect shall not have been cured within three (3) Business Days (A) of written notice from the Buyer to Sellers of such Material Adverse Effect or (B) of written notice to the Buyer pursuant to Section 6.3;

(iv) the Sellers publicly announce any plan of reorganization or plan of liquidation or support any such plan filed by any third party, other than any such transaction related to the wind down of the Sellers and that would not prevent or materially delay the Closing from occurring in accordance with the terms of this Agreement;

(v) for any reason (including an Order of the Bankruptcy Court), the Buyer is legally prohibited, pursuant to Section 363(k) of the Bankruptcy Code or otherwise, to (a) credit bid up to the full Credit Bid Amount in satisfaction of a portion of the Purchase Price as set forth in Section 2.7, or (b) to increase the Credit Bid Amount up to the full amount of the indebtedness under the Prepetition Notes in connection with the Auction;

(vi) a "Termination Date" (as defined in the DIP Credit Agreement) occurs and has not been waived or the indebtedness outstanding under the DIP Credit Agreement is otherwise paid off;

(vii) the Interim Financing Order (as defined in the DIP Credit Agreement), in form and substance satisfactory to the Requisite Lenders in their sole discretion, has not been entered within three (3) days of the Petition Date;

(viii) the Final Financing Order (as defined in the DIP Credit Agreement), in form and substance satisfactory to the Requisite Lenders in their sole discretion, has not been entered ~~within thirty (30) days of the Petition Date~~ on or before June 5, 2020;

(ix) the Bidding Procedures Motion (as defined in the DIP Credit Agreement), in form and substance satisfactory to the Requisite Lenders in their sole discretion, has not been filed on the Petition Date;

(x) the Bidding Procedure Order (as defined in the DIP Credit Agreement), in form and substance satisfactory to the Requisite Lenders in their sole discretion, has not been entered ~~within fourteen (14) days of the Petition Date~~ on or before May 21, 2020 (such date, the “Bidding Procedures Order Date”);

(xi) the bid deadline set forth in the Bidding Procedures Order (as defined in the DIP Credit Agreement) has not occurred ~~within ten (10) days of~~ on or before June 1, 2020, unless extended by the Sellers in accordance with the Bidding Procedures Order ~~Date~~;

(xii) if qualifying bids are received in accordance with the Bidding Procedures Order (as defined in the DIP Credit Agreement), an auction has not been conducted ~~within eleven (11) days of the Bidding Procedures Order Date~~ on or before June 2, 2020;

(xiii) the Sale Hearing is not held on or before June ~~25~~, 2020, or if the Sale Hearing is delayed due to the Bankruptcy Court’s unavailability, the next Business Day on which the Bankruptcy Court is available;

(xiv) the entry of an order authorizing the sale to a successful bidder in accordance with the Bidding Procedures Order (as defined in the DIP Credit Agreement) has not been entered ~~within thirteen (13) days of the Bidding Procedures Order Date~~ on or before June 5, 2020;

(xv) the closing of an Acceptable Sale (as defined in the DIP Credit Agreement) has not occurred within forty-four (44) days of the Petition Date; or

(xvi) the Sellers withdraw or seek authority to withdraw the Sale Motion;

; provided, that if any of the milestone dates set forth in Sections 9.1(c)(vii) through (xv) occurs on a day that is not a Business Day, then such date shall be deemed to be the following Business Day; provided, further, that Buyer shall not have the right to terminate this Agreement pursuant to any of Sections 9.1(c)(vii) through (xv) unless Buyer delivers written notice to Sellers that it intends to terminate this Agreement within five (5) Business Days following the applicable date set forth in such subclause; provided, further, that Buyer shall not have the right to terminate this Agreement pursuant to any of Sections 9.1(c)(vii) through (xv) if the action or inaction of Buyer or any of its Affiliates is the primary cause of the failure of the applicable milestones to occur on or prior to the applicable dates.

(d) by Seller Parent, if:

(i) the Sellers are not in material breach of this Agreement such that the conditions in Section 8.3(a) or Section 8.3(b) would not be satisfied, and the Buyer breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement and such breach or failure to perform (1) would give rise to the failure of a condition set forth in Section 8.2(a) or Section 8.2(b) and (2) cannot be or has not been cured before the earlier to occur of (A) thirty (30) days following delivery of written notice of such breach or failure to perform and (B) one (1) day prior to the Outside Date;

(ii) (1) the Buyer's conditions to Closing set forth in Section 8.1 and Section 8.3 have been satisfied (or waived by the Buyer), other than those conditions that by their nature can only be satisfied at the Closing, (2) the Buyer shall have failed to consummate the Closing on or prior to the date that is three (3) Business Days following the day the Closing was required to occur under Section 2.8(a) and (3) on or after such date, the Sellers have confirmed in a written notice to the Buyer that they are ready, willing and able to consummate the transactions contemplated by this Agreement and that Sellers' conditions to Closing set forth in Section 8.1 and Section 8.2 have been satisfied (or waived by the Sellers), other than those conditions that by their nature can only be satisfied at the Closing; or

(iii) any Seller or the board of directors, board of managers or similar governing body of any Seller determines that proceeding with the transactions contemplated by this Agreement or failing to terminate this Agreement would be inconsistent with its or such Person's or body's fiduciary duties.

The Party seeking to terminate this Agreement pursuant to this Section 9.1 (other than Section 9.1(a)) shall, if such Party is Seller Parent, give prompt written notice of such termination to the Buyer, and if such Party is the Buyer, give prompt written notice of such termination to the Sellers.

Section 9.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 9.1, this Agreement shall forthwith become void and there shall be no liability on the part of any Party except (i) for the provisions of Article V (Bankruptcy Court Matters), Section 6.7 (Public Announcements), Section 10.4 (Fees and Expenses), Section 10.8 (Notices), Section 10.11 (Parties in Interest), Section 10.12 (Governing Law), Section 10.13 (Submission to Jurisdiction) and this Article IX and (ii) that no such termination shall relieve any Party from liability for any willful and material breach of this Agreement.

## **ARTICLE X. GENERAL PROVISIONS**

Section 10.1 Nonsurvival of Representations, Warranties and Covenants. The respective representations, warranties and covenants of the Sellers and the Buyer contained in this Agreement, any other document contemplated hereby or in any certificate delivered pursuant hereto or thereto shall terminate at, and not survive, the Closing; provided that this Section 10.1 shall not limit (i) any covenant or agreement of the Parties to the extent that its terms require performance after the Closing or (ii) any rights or remedies of any Person for breach of any such surviving covenant or agreement.

### Section 10.2 Control of Attorney-Client and All Other Privileges.

(a) Buyer and all of its Affiliates agree that all privileged communications between or among Sellers or any of their Affiliates and any legal counsel or restructuring advisor to Sellers or any of their Affiliates (including, White & Case LLP, Fox Rothschild LLP and any other lawyer representing Sellers or any of their Affiliates) shall not be acquired by Buyer and shall remain privileged and fully owned by Sellers and their Affiliates from and after the Closing

except as otherwise provided in this Agreement. For the period immediately prior to the Closing, the attorney-client and all other privileges available to Sellers and their Affiliates shall remain privileged and the expectation of client confidence belongs to, and shall remain controlled by, Sellers and will not pass to or be claimed by Buyer or its Affiliates. Any disclosure of privileged materials or communications shall be agreed as between Buyer and Sellers to be inadvertent and in good faith mistake, and Buyer agrees to promptly transfer and deliver all privileged documents and communications relating to Sellers or their Affiliates to Sellers in the event any such privileged documents are discovered after the Closing.

(b) Sellers agree that Sellers shall protect and shall not waive any attorney-client and other legal privileges available to Sellers and their Affiliates, and Sellers agree that Sellers will make efforts that are satisfactory to Buyer in its reasonable discretion to ensure that any such attorney-client and other legal privileges are protected and not waived notwithstanding the dissolution of any of the Sellers after Closing. This Section 10.2(b) is subject to compliance with the covenant set forth in Section 10.2(a).

(c) Notwithstanding any other provision of this Agreement, the covenants set forth in Section 10.2(b) shall survive the Closing in accordance with the full performance of their terms.

### Section 10.3 Disclaimers.

(a) To the extent required by applicable Laws to be operative, the disclaimers of certain warranties contained in this Section 10.3 are “conspicuous disclaimers” for purposes of any applicable Laws.

(b) **EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLERS EXPRESSLY SET FORTH IN ARTICLE III (AS MODIFIED OR QUALIFIED BY THE DISCLOSURE SCHEDULES HERETO OR OTHERWISE AS PROVIDED HEREIN), (I) NONE OF THE SELLERS, ANY SUBSIDIARY OF SELLERS NOR ANY OTHER PERSON MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, STATUTORY OR IMPLIED OR OTHERWISE, WITH RESPECT TO, OR IN RELATION TO, ANY OF THE ASSETS OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, AND BUYER EXPRESSLY WAIVES AND ACKNOWLEDGES THAT NONE OF THE SELLERS, ANY SUBSIDIARY OF SELLERS NOR ANY OTHER PERSON MAKE ANY SUCH WARRANTY OR REPRESENTATION, AND BUYER IS NOT RELYING ON ANY SUCH WARRANTY OR REPRESENTATION, (II) EACH SELLER, ON BEHALF OF ITSELF AND ITS SUBSIDIARIES, EXPRESSLY DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, STATEMENT OR INFORMATION MADE OR COMMUNICATED (ORALLY, IN WRITING OR OTHERWISE) TO BUYER OR ANY OF ITS AFFILIATES, EMPLOYEES, AGENTS, CONSULTANTS OR REPRESENTATIVES (INCLUDING ANY STATEMENT, OPINION, INFORMATION, PROJECTION OR ADVICE THAT MAY HAVE BEEN PROVIDED TO BUYER BY ANY OFFICER, DIRECTOR, EMPLOYEE, AGENT, CONSULTANT, REPRESENTATIVE OR ADVISOR OF EACH SELLER OR ANY OF ITS RESPECTIVE AFFILIATES) AND (III) ALL PROPERTIES INCLUDED IN THE**



**TRANSFERRED ASSETS WILL BE CONVEYED BY SELLERS OR THE APPLICABLE ASSET SELLER AND ACCEPTED BY BUYER PRECISELY AND ONLY AS IS, WHERE IS, AND WITH ALL DEFECTS AND FAULTS WITHOUT RECOURSE AND WITHOUT WARRANTY (INCLUDING WITHOUT ANY WARRANTY OF TITLE). NOTHING CONTAINED HEREIN SHALL LIMIT BUYER'S ABILITY TO MAKE A CLAIM AGAINST THE SELLERS FOR FRAUD.**

**(c) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLERS EXPRESSLY SET FORTH IN ARTICLE III OF THIS AGREEMENT (AS MODIFIED OR QUALIFIED BY THE DISCLOSURE SCHEDULES HERETO OR OTHERWISE AS PROVIDED HEREIN), BUYER ACKNOWLEDGES AND AGREES THAT THE ASSET SELLERS ARE CONVEYING THE TRANSFERRED ASSETS WITHOUT REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED AT COMMON LAW, BY STATUTE, OR OTHERWISE (ALL OF WHICH SELLERS HEREBY DISCLAIM), RELATING TO (I) TITLE, (II) THE MERCHANTABILITY, DESIGN, OR QUALITY OF THE TRANSFERRED ASSETS, (III) THE FITNESS OF THE TRANSFERRED ASSETS FOR ANY PARTICULAR PURPOSE, (IV) THE ABSENCE OF PATENT, LATENT OR REDHIBITORY VICES OR DEFECTS, (V) THE ENVIRONMENTAL OR PHYSICAL CONDITION OF THE TRANSFERRED ASSETS (SURFACE AND SUBSURFACE) , ANY RELEASES OF HAZARDOUS MATERIALS OR ANY ENVIRONMENTAL OR HEALTH OR SAFETY MATTER, (VI) COMPLIANCE WITH APPLICABLE LAWS, INCLUDING ENVIRONMENTAL LAWS, (VII) THE CONTENTS, CHARACTER OR NATURE OF ANY INFORMATION MEMORANDUM OR MANAGEMENT PRESENTATION, (VIII) ANY ESTIMATES OF THE VALUE OF THE TRANSFERRED ASSETS OR FUTURE REVENUES GENERATED BY THE TRANSFERRED ASSETS, (IX) CONTRACTUAL, ECONOMIC, FINANCIAL INFORMATION AND/OR OTHER DATA AND ANY RELATED ESTIMATIONS OR PROJECTIONS MADE IN SALE PRESENTATIONS OR MARKETING MATERIALS, (X) CONTINUED FINANCIAL VIABILITY, INCLUDING PRESENT OR FUTURE VALUE OR ANTICIPATED INCOME OR PROFITS, (XI) THE CONTENT, CHARACTER OR NATURE OF ANY INFORMATION MEMORANDUM, REPORTS, BROCHURES, CHARTS OR STATEMENTS PREPARED BY THIRD PARTIES, (XII) ANY OTHER MATERIALS OR INFORMATION THAT MAY HAVE BEEN MADE AVAILABLE OR COMMUNICATED TO BUYER OR ITS AFFILIATES, OR ITS OR THEIR EMPLOYEES, AGENTS, CONSULTANTS, REPRESENTATIVES OR ADVISORS IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY DISCUSSION OR PRESENTATION RELATING THERETO, (XIII) ANY IMPLIED OR EXPRESS WARRANTY OF FREEDOM FROM INTELLECTUAL PROPERTY INFRINGEMENT, MISAPPROPRIATION OR OTHER VIOLATION OR (XIV) ANY OTHER MATTER WHATSOEVER (INCLUDING THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED TO BUYER), IT BEING EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES THAT BUYER WILL BE DEEMED TO BE OBTAINING THE TRANSFERRED ASSETS IN THEIR PRESENT STATUS, CONDITION AND STATE OF REPAIR, "AS IS" AND "WHERE IS" WITH ALL FAULTS, INCLUDING WITH REGARD TO THEIR ENVIRONMENTAL CONDITION, AND THAT BUYER HAS MADE OR CAUSED TO BE MADE SUCH INSPECTIONS AS BUYER DEEMS APPROPRIATE AND BUYER**

**IRREVOCABLY WAIVES ANY AND ALL CLAIMS IT MAY HAVE AGAINST SELLERS OR ANY AFFILIATE OF SELLERS ASSOCIATED WITH SAME, INCLUDING ANY CLAIMS FOR CONTRIBUTION OR OTHERWISE UNDER CERCLA OR ANY OTHER ENVIRONMENTAL LAW. NOTHING CONTAINED HEREIN SHALL LIMIT BUYER'S ABILITY TO MAKE A CLAIM AGAINST THE SELLERS FOR FRAUD.**

**(d) NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, THE PARTIES HERETO HEREBY AGREE THAT FOR PURPOSES OF DETERMINING WHETHER A PARTY HAS A CLAIM FOR FRAUD, SUCH CLAIM SHALL BE DETERMINED WITHOUT REGARD TO ANY OF THE MATERIAL ADVERSE EFFECT QUALIFIERS SET FORTH IN THIS AGREEMENT.**

Section 10.4 Fees and Expenses. Except as otherwise provided herein (including Section 6.5 and Section 7.1), all fees and expenses incurred in connection with or related to this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby shall be paid by the Party incurring such fees or expenses, whether or not such transactions are consummated.

Section 10.5 Amendment and Modification. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing signed by Buyer and Seller Parent.

Section 10.6 Waiver. No failure or delay of any Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. Any agreement on the part of any Party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such Party.

Section 10.7 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, (b) on the first Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier, (c) on the day of transmission if sent via email transmission to the email address(es) given below and the sender does not receive a notice of such transmission being undeliverable to such email address (with copies by recognized next-day courier or registered or certified) or (d) on the earlier of confirmed receipt or the fifth (5th) Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

(i) if to the Sellers, to:

Techniplas, LLC

c/o FTI Consulting, Inc.  
227 West Monroe Street  
Suite 900  
Chicago, IL, 60606  
United States  
Attention: Pete Smidt  
Email: [pete.smidt@fticonsulting.com](mailto:pete.smidt@fticonsulting.com)

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

White & Case LLP  
1221 Avenue of the Americas  
New York, NY 10020  
Attention: David Turetsky  
Andrew Zatz  
Adam Cieply  
Email: [david.turetsky@whitecase.com](mailto:david.turetsky@whitecase.com)  
[azatz@whitecase.com](mailto:azatz@whitecase.com)  
[adam.cieply@whitecase.com](mailto:adam.cieply@whitecase.com)

and

Fox Rothschild LLP  
919 N. Market St., Suite 300  
P.O. Box 2323  
Wilmington DE 19899-2323  
Attention: Jeffrey M. Schlerf  
Email: [jschlerf@foxrothschild.com](mailto:jschlerf@foxrothschild.com)

(ii) if to the Buyer, to:

Techniplas Acquisition Co, LLC  
c/o ~~[-]~~ [Arnold & Porter Kaye Scholer LLP](#)  
[250 West 55th Street](#)  
[New York, NY 10019](#)

~~[-]~~

~~[-]~~

~~[-]~~

Attention: ~~[-]~~ [Jonathan Levine](#)

~~Email: [-]~~

[Lowell Dashefsky](#)  
Email: [jonathan.levine@arnoldporter.com](mailto:jonathan.levine@arnoldporter.com)  
[lowell.dashefsky@arnoldporter.com](mailto:lowell.dashefsky@arnoldporter.com)

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

H.I.G. Capital Management, LLC  
1450 Brickell Avenue, 31st Floor  
Miami, FL 33131

Attention: ~~[•]~~

Email: tax@higcapital.com

and

Arnold & Porter Kaye Scholer LLP  
250 West 55th Street  
New York, NY 10019

Attention: Jonathan Levine  
Lowell Dashefsky

Email: jonathan.levine@arnoldporter.com  
lowell.dashefsky@arnoldporter.com

Section 10.8 Interpretation. When a reference is made in this Agreement to a Section, Article, Exhibit or Schedule such reference shall be to a Section, Article, Exhibit or Schedule of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement or in any Exhibit or Schedule are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall have the meaning as defined in this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth herein. The word “including” and words of similar import when used in this Agreement will mean “including, without limitation,” unless otherwise specified. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to the Agreement as a whole and not to any particular provision in this Agreement. The term “or” is disjunctive and not exclusive. The word “will” shall be construed to have the same meaning and effect as the word “shall.” References to days mean calendar days unless otherwise specified. The phrases “delivered” or “made available”, when used in this Agreement, shall mean that the information referred to has been physically or electronically delivered to the relevant parties (including, in the case of “made available” to Buyer, material that has been posted, retained and thereby made available to Buyer through the on-line “data room” (virtual or otherwise) established by the Sellers and/or its Representatives). References to “the date hereof” shall mean ~~“as of the date of this Agreement~~ May 6, 2020”.

Section 10.9 Entire Agreement. This Agreement (including the Exhibits and Schedules hereto) and the Ancillary Agreements constitute the entire agreement, and supersede all prior written agreements, arrangements, communications and understandings and all prior and contemporaneous oral agreements, arrangements, communications and understandings between the Parties with respect to the subject matter hereof and thereof. Neither this Agreement nor any Ancillary Agreement shall be deemed to contain or imply any restriction, covenant, representation, warranty, agreement or undertaking of any Party with respect to the transactions

contemplated hereby or thereby other than those expressly set forth herein or therein or in any document required to be delivered hereunder or thereunder, and none shall be deemed to exist or be inferred with respect to the subject matter hereof.

Section 10.10 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each Party, and nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (including employees of the Sellers) other than the Parties and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 10.11 Governing Law. Except to the extent of the mandatory provisions of the Bankruptcy Code, this Agreement and all disputes or controversies arising out of or relating to this Agreement or the transactions contemplated hereby (in contract or tort) shall be governed by, and construed in accordance with the internal Laws of the State of Delaware, without regard to the Laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of Delaware

Section 10.12 Submission to Jurisdiction. Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (x) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby and (y) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Action or proceeding; provided, however, that, if the Bankruptcy Case is closed or declines jurisdiction, each of the Parties irrevocably agrees that any Action or proceeding arising out of or relating to this Agreement brought by another Party or its successors or assigns shall be heard and determined in the Delaware Chancery Court and any Delaware state court to which an appeal from the Delaware Chancery Court may be validly taken (or, if the Delaware Chancery Court declines jurisdiction over a particular matter, any state or federal court sitting in Delaware), and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the Parties further agrees that notice as provided in Section 10.8 shall constitute sufficient service of process and the Parties further waive any argument that such service is insufficient, without limiting any other manner of service permitted by Law. Nothing in this Agreement will affect the right of any Party to this Agreement to serve process in any other matter permitted by Law. Each of the Parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (a) any claim that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) that (i) the suit, action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, action or

proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

Section 10.13 Disclosure Generally. Notwithstanding anything to the contrary contained in the Disclosure Schedules or in this Agreement, the information and disclosures contained in any Disclosure Schedule corresponding to a Section in Article III of this Agreement shall be deemed to be disclosed and incorporated by reference in any other Disclosure Schedule corresponding to a Section in Article III of this Agreement as though fully set forth in such Disclosure Schedule to the extent the applicability of such information and disclosure is reasonably apparent on its face. The fact that any item of information is disclosed in any Disclosure Schedule shall not be construed to be an admission by any Party to any third party of any liability or obligation with respect thereto or to mean that such information is material or immaterial or would have a Material Adverse Effect, within or outside of the Ordinary Course of Business, or required to be disclosed by this Agreement. Such information and the dollar thresholds set forth herein shall not be used as a basis for interpreting the terms “material” or “Material Adverse Effect” or other similar terms in this Agreement. In addition, matters reflected in the Disclosure Schedules are not necessarily limited to matters required by this Agreement to be reflected in the Disclosure Schedules. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. No information set forth in the Disclosure Schedules will be deemed to broaden in any way the scope of the Parties’ representations and warranties. Any description of any agreement, document, instrument, plan, arrangement or other item set forth on any Disclosure Schedule is a summary only and is qualified in its entirety by the terms of such agreement, document, instrument, plan, arrangement or item, which terms will be deemed disclosed for all purposes of this Agreement. The information contained in this Agreement, in the Disclosure Schedules and Exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein will be deemed to be an admission by any Party to any third party of any matter whatsoever, including any violation of Law or breach of contract.

Section 10.14 Personal Liability. This Agreement may only be enforced against, and any Action based upon, arising out of or related to this Agreement may only be brought against, the Persons that are expressly named as parties to this Agreement. Except to the extent named as a party to this Agreement, and then only to the extent of the specific obligations of such parties set forth in this Agreement, no past, present or future direct or indirect stockholder, officer, director, employee, Affiliate, Representative or investor of the Sellers or the Buyer will have any liability (whether in contract, tort, equity or otherwise) for any of the representations, warranties, covenants, agreements or other obligations or liabilities of any of the parties to this Agreement or for any Action based upon, arising out of or related to this Agreement.

Section 10.15 Assignment; Successors. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise, by any Seller without the prior written consent of the Buyer, and by the Buyer without the prior written consent of Seller Parent, and any such assignment without such prior written consent shall be null and void; provided, however, that Buyer may assign this Agreement to an Affiliate so long as (i) such Affiliate is designated in writing by the Buyer to Seller Parent prior to Closing, (ii) Buyer continues to remain obligated in full hereunder, and (iii) any such assignment would not reasonably be expected to impede or

delay the Closing; provided, further, that the Sellers may assign some or all of their rights or delegate some or all of their obligations hereunder to successor entities pursuant to a plan of reorganization confirmed by the Bankruptcy Court without the prior approval of Buyer. Any attempted or purported assignment in violation of this Section 10.15 will be deemed void *ab initio*. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

Section 10.16 Enforcement. The Parties agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, including if any of the Parties fails to take any action required of it hereunder to consummate the transactions contemplated by this Agreement. Accordingly, (x) each of the Parties shall be entitled to specific performance of the terms hereof or other equitable relief, including an injunction or injunctions, to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, without proof of damages or otherwise (this being in addition to any other remedy to which any such Party may be entitled under this Agreement) and (y) the right of specific performance and other equitable relief is an integral part of the transactions contemplated by this Agreement and without that right, neither the Sellers nor Buyer would have entered into this Agreement. The Parties acknowledge and agree that any Party pursuing an injunction or injunctions or other Order to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 10.16 will not be required to provide any bond or other security in connection with such Order. The remedies available to the Parties pursuant to this Section 10.16 will be in addition to any other remedy to which they were entitled at law or in equity, and the election to pursue an injunction or specific performance will not restrict, impair or otherwise limit any Party from seeking to collect or collecting damages or terminating this Agreement in accordance with the terms of this Article IX. Each of the Parties hereby further waives (a) any defense in any Action for specific performance that a remedy at law would be adequate and (b) any requirement under any Law to post security as a prerequisite to obtaining equitable relief. In no event will this Section 10.16 be used, alone or together with any other provision of this Agreement, to require any Seller to remedy any breach of any representation or warranty of any Seller made herein.

Section 10.17 Currency. All references to “dollars” or “\$” in this Agreement or any Ancillary Agreement refer to United States dollars, which is the currency used for all purposes in this Agreement and any Ancillary Agreement.

Section 10.18 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and the Parties will 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 in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 10.19 Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 10.20 Approval of the Bankruptcy Court. Notwithstanding anything herein to the contrary, any and all rights, interests or obligations under this Agreement are subject to approval of the Bankruptcy Court.

Section 10.21 Counterparts. Notwithstanding anything else herein to the contrary, this Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties.

Section 10.22 Facsimile or .pdf Signature. This Agreement may be executed by facsimile or .pdf signature and a facsimile or .pdf signature shall constitute an original for all purposes.

Section 10.23 No Presumption Against Drafting Party. Each of the Buyer and the Sellers acknowledges that each Party to this Agreement has been represented by legal counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting Party has no application and is expressly waived.

[The remainder of this page is intentionally left blank.]



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

**SELLERS:**

**TECHNIPLAS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**DMP MONTERREY HOLDINGS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**DMP INTERNATIONAL HOLDINGS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**NYLONCRAFT, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**NYLONCRAFT OF MICHIGAN, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**WEIDPLAS NORTH AMERICA, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**BUYER:**

**TECHNIPLAS ACQUISITION CO, LLC**

By: \_\_\_\_\_  
Name:  
Title: