

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

In re:

TELIGENT, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 21-11332 (BLS)

Objection Deadline:
November 23, 2021 at 4:00 p.m. (ET)

Hearing Date:
November 30, 2021 at 11:00 a.m. (ET)

**DEBTORS' MOTION FOR (A) ENTRY OF AN ORDER APPROVING PROCEDURES
FOR THE PRIVATE SALE OF CERTAIN TAX ATTRIBUTES FREE AND CLEAR OF
LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, (B) ENTRY OF AN
ORDER APPROVING THE SALE, AND (C) GRANTING RELATED RELIEF**

Teligent, Inc. and its affiliates, as debtors and debtors in possession (collectively, the “Debtors”), hereby submit this motion (the “Motion”) pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), (a) for the entry of an order, substantially in the form attached hereto as Exhibit A (the “Proposed Order”) approving procedures for the private sale (the “Sale”) of certain valuable tax attributes held by the Debtors (collectively, the “Tax Attributes”) free and clear of any and all liens, claims, encumbrances, and other interests to a qualified purchaser (the “Purchaser”) pursuant to the terms and conditions of the *Purchase and Sale Agreement* (the “Purchase Agreement”),² by and between Teligent, Inc. (the “Seller”) and a third-party purchaser

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Teligent, Inc. (5758); Igen, Inc. (7443); Teligent Pharma, Inc. (1639); and TELIP LLC (8395). The Debtors’ corporate headquarters is located at 33 Wood Avenue, 7th Floor, Iselin, New Jersey 08830.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement.

that is qualified to purchase such assets under New Jersey law (a “Purchaser”), a copy of which is attached as Exhibit 1 to the Proposed Order, (b) for the entry of the Proposed Sale Order (defined below) attached hereto as Exhibit B approving the Sale of the Tax Attributes, and (c) granting certain related relief. In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief requested herein are sections 105(a), and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 9014, and Local Rule 6004-1.

BACKGROUND

A. General Background

3. On October 14, 2021 (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).

4. On October 27, 2021, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors in the Chapter 11 Cases (the “Committee”). *See* D.I. 73. No requests have been made for the appointment of a trustee or examiner in the Chapter 11 Cases.

5. Additional information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the filing of the Chapter 11 Cases is set forth in the First Day Declaration.

B. The NOL Program and the Tax Attributes

6. In the ordinary course of their business, the Debtors generate various valuable tax attributes on a state and federal level.³ The New Jersey Economic Development Authority (the “NJEDA”), has established a program, the Technology Business Tax Certificate Transfer Program (the “NOL Program”), through which a qualifying entity may sell its unused carryforward net operating losses (the “NOLs”) and research and development tax credits (the “R&D Credits”) to a profitable unrelated entity for at least 80% of the value of those tax attributes. To be eligible for participation in the NOL Program, a company must meet the following criteria:

- a. The company has fewer than 225 employees (including parent company and subsidiaries);
- b. The company is a technology or biotechnology company whose primary business involves the provision of a scientific process, product or service;
- c. The company owns, has filed for, or has a license to use a patent or registered copyright.
- d. The company has not had positive net operating income on either of its last two full-year GAAP income statements, nor has any parent company, and the applicant company is not a member of a consolidated group of affiliates with positive net operating income.
- e. The company has at least (i) one full-time employee working in New Jersey if incorporated or formed in the last three years; (ii) five full-time employees

³ This Motion only seeks to sell the Tax Attributes generated in and applicable to New Jersey state taxes. Nothing set forth herein or in the documents governing the Sale shall be construed to impact any federal or other state tax attributes.

in New Jersey if incorporated or formed more than three but less than five years; or (iii) ten full-time employees in New Jersey if incorporated or formed more than five years ago; and

- f. Healthcare coverage must be available and offered to all full-time New Jersey employees.

7. The Debtors are a qualifying entity, and have approximately \$2.95 million in qualifying Tax Attributes. Specifically, approximately \$2.65 million of the Tax Attributes are R&D Credits, and approximately \$300,000 are NOLs.⁴ Historically, the Debtors have had limited or no taxable income or tax liabilities at the New Jersey state level against which the NOLs or R&D Credits could be applied. By participating in the NOL Program, the Debtors have the ability to monetize and maximize the value associated with the Tax Attributes. As allowed by the NOL Program and New Jersey state law, the Tax Attributes cover a seven-year lookback period. Accordingly, through the NOL Program, the Debtors have the ability to realize no less than approximately \$2,360,000 (80% of \$2.95 million) on account of a sale of the Tax Attributes through the NOL Program.

8. The NOL Program also places certain restrictions on how a seller may use sale proceeds. Under New Jersey law and the Purchase Agreement, the funds may only be used for “Allowable Expenditures,” which include “expenses of fixed assets, such as the construction, acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, and research and development expenditures.” *See* Purchase Agreement at 2. If the sale proceeds are not used for “Allowable Expenditures,” the Debtors may be “subject to the recapture of up to the [f]ace [v]alue of the [Tax Attributes].” *Id.* at 8.⁵

⁴ NTD: Company to confirm.

⁵ The Debtors may also be subject to this recapture if they fail to maintain a headquarters or “base of operation” in New Jersey for five years following the Date of Closing. However, this restriction does not apply if the failure is due to the liquidation of the business. *See* N.J.A.C. 19:31-12.8(b).

9. Before the Petition Date, the Debtors submitted an application to participate in the NOL Program for the 2021 program year. The NJEDA approved the application before the Petition Date, and the Debtors have been working with a broker, Tax Credits US, that specializes in connecting NOL Program participants with buyers (the “Broker”). The Debtor and the Broker are in the process of compiling and finalizing the documentation necessary to facilitate the Sale of the Tax Attributes through the NOL Program, and expect to select a purchaser and close on a sale of the Tax Attributes in December 2021.

C. The Broker

10. The Broker is a firm that provides specialized guidance regarding tax programs across the United States to qualifying entities like the Debtors. Using a central database of eligible purchasers established by the NJEDA, the Broker connects sellers, such as the Debtors, with parties who are qualified to purchase the Tax Attributes through the NOL Program.

11. The sale of the Tax Attributes will be documented in a form purchase agreement approved by the NJEDA and the State of New Jersey. The Broker will assist the Debtors with completing the Purchase Agreement and proceeding to closing with the chosen Purchaser. It is the Debtors’ understanding that, on behalf of the Debtors, the Broker will typically negotiate with the Purchaser for a sale price for the Tax Attributes that is not less than a certain amount (typically 93.5%) of the value of the Tax Attributes. Based on the Debtors’ historical experience, the Broker will typically take a commission equal to 6.5% of the value of the Tax Attributes minus the actual discounted sale price for the Tax Attributes (the “Commission”). For example, if the Tax Attributes were sold at a 5% discount, under historic terms, the Broker would earn a Commission equal to 1.5% of the Tax Attributes. The net amount due to the Debtors will remain the same—93.5% of the face value of the Tax Attributes.

RELIEF REQUESTED

12. By this Motion, the Debtors, pursuant to sections 105(a) and 363 of Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 9014, and Local Rule 6004-1, request the Court to enter an order authorizing the implementation of procedures (the “Procedures”) for the sale of the Tax Attributes free and clear of liens, and authorizing the payment of fees and expenses to the Broker engaged by the Debtors in connection with the sale of the Tax Attributes.

PROPOSED PROCEDURES

13. The Debtors request that the following Procedures be implemented with regard to the sale of the Tax Attributes:

- a. Upon selection of a Purchaser and execution of a Purchase Agreement, the Debtors will file and serve a notice (the “Sale Notice”) of Sale by e-mail, if possible, and hand delivery or overnight mail on the following parties or their counsel, if known: (i) the U.S. Trustee; (ii) counsel for the Committee; (iii) the NJEDA; (iv) counsel for the First Lien Agent for the Debtors’ prepetition secured lenders; (v) counsel for the Second Lien Agent for the Debtors’ prepetition secured lenders; (vi) counsel for the DIP Agents; (vii) the Indenture Trustee for the Debtors’ Series D zero-coupon Convertible Senior Notes due 2023; and (viii) all parties who, as of the filing of this Motion, have requested notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002 (collectively, the “Interested Parties”).
- b. The Sale Notice will include the following information with respect to the Sale:
 - i. a description of the Tax Attributes that are the subject of the Sale;
 - ii. the identity of the non-debtor party or parties to the Sale and any relationship of the non-debtor party or parties with the Debtors;
 - iii. the identity of any parties known to the Debtors to hold liens on or other interests in the assets and a statement indicating that all such liens or interests are capable of monetary satisfaction;
 - iv. the principal economic terms and conditions of the Sale; and
 - v. instructions consistent with the terms described below regarding the procedures to assert objections to the Sale.
- c. The deadline for filing objections to the Sale (a “Sale Objection”) shall be five (5) days after service of the Sale Notice at 4:00 p.m. (prevailing Eastern Time) (the

“Sale Objection Deadline”). A Sale Objection will be considered timely only if it is filed with the Court and actually received by the following parties (collectively, the “Objection Notice Parties”) on or before the Sale Objection Deadline: (i) proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael R. Nestor, Esq. (mnestor@ycst.com) and Matthew B. Lunn, Esq. (mlunn@ycst.com); (ii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Richard L. Schepacarter, Esq. (richard.schepacarter@usdoj.gov); (iii) counsel for the First Lien Agent for the Debtors’ prepetition secured lenders, (a) Latham & Watkins LLP, 355 South Grand Avenue, Suite 100, Los Angeles, CA 90071, Attn: Ted A. Dillman, Esq. (ted.dillman@lw.com) and Jason R. Bosworth, Esq. (Jason.bosworth@lw.com), and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney, Esq. (rdehney@morrisnichols.com); (iv) counsel for the Second Lien Agent for the Debtors’ prepetition secured lenders, (a) Morgan, Lewis & Bockius LLP, 101 Park Avenue, New York, NY 10178, Attn: Frederick F. Eisenbiegler, Esq. (frederick.eisenbiegler@morganlewis.com) and Kurt A. Mayr, Esq. (kurt.mayr@morganlewis.com), and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney, Esq. (rdehney@morrisnichols.com); (v) counsel to the Indenture Trustee for the Debtors’ Series D zero coupon Convertible Senior Notes due 2023, Grushko & Mittman, P.C., 515 Rockaway Avenue, Valley Stream, NY 11581, Attn: Edward M. Grushko, Esq. (Ed@grushkomittman.com); and (vi) proposed counsel to the Committee, (a) Saul Ewing Arnstein & Lehr LLP, 1201 North Market Street, Suite 2300, P.O. Box 1266, Wilmington, DE 19899, Attn: Mark Minuti, Esq. (mark.minuti@saul.com), Lucian B. Murley, Esq. (luke.murley@saul.com), and Monique B. DiSabatino, Esq. (monique.disabatino@saul.com), and (b) Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654, Attn: Catherine L. Steege, Esq. (csteege@jenner.com), Melissa M. Root, Esq. (mroot@jenner.com), Landon S. Raiford, Esq. (lraiford@jenner.com), and William A. Williams, Esq. (wwilliams@jenner.com).

- d. To the extent a competing bid is received for the purchase of the Tax Attributes after service of the Sale Notice that, in the Debtors’ business judgment and discretion, materially exceeds the value of the consideration described in the Sale Notice, then the Debtors may file and serve an amended Sale Notice for the Sale of the Tax Attributes to the subsequent bidder. If an amended or revised Sale Notice is required (an “Amended Sale Notice”), the Sale Objection Deadline will be extended for an additional five (5) days, the specific date of which will be set forth in the Amended Sale Notice (the “Extended Sale Objection Deadline”).
- e. If no Sale Objection is received prior to the expiration of the Sale Objection Deadline or, if applicable, the Extended Sale Objection Deadline, the Debtors shall submit a proposed order approving the Sale under certification of counsel (the “Proposed Sale Order”), a form of which is attached hereto as **Exhibit B**. The Sale will be deemed final and fully authorized by the Court upon the entry of the

Proposed Sale Order without further notice or a hearing. Upon entry of the Proposed Sale Order, the Debtors may immediately consummate the sale of the Tax Attributes identified in the Sale Notice and take any actions that are reasonable and necessary to close the transaction and obtain the sale proceeds, including, but not limited to, paying the Commission to the Broker.

- f. If a Sale Objection is timely filed and received and cannot be resolved consensually, then the Tax Attributes will not be sold or transferred except upon order of the Court, after notice and a hearing, or resolution of the Sale Objection.
- g. The Sale of the Tax Attributes shall be free and clear of all liens, claims and encumbrances (collectively, "Interests") pursuant to Bankruptcy Code section 363(f), with any such Interests attaching to the net sale proceeds (to the extent the underlying security agreement provides for the continuation of such Interests and the holder of the Interest has not agreed otherwise) with the same force, validity, priority, perfection, and effect as such Interests had on the asset immediately prior to the sale. If a holder of an Interest receives a Sale Notice and does not object within the prescribed time period, such holder will be deemed to have consented to the Sale.

BASIS FOR RELIEF REQUESTED

14. For the reasons explained in detail below, the approval of a private sale of the Tax Attributes to the Purchaser pursuant to the terms and conditions of the Purchase Agreement is in the best interest of the Debtors, their estates, and their creditors, as well as appropriate under the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).⁶ In pertinent part, Bankruptcy Rule 6004 states that “all sales not in the ordinary course of business may be by private sale or by public auction.” Fed. R. Bankr. P. 6004(f)(1). With respect to the notice required in connection with a private sale, Bankruptcy Rule 2002(c)(1) states, in pertinent part, that:

[T]he notice of a proposed use, sale or lease of property . . . shall include . . . the terms and conditions of any private sale and the

⁶ The Debtors have previously participated in the NOL Program in the ordinary course of their business. Accordingly, a Sale of the Tax Attributes through the NOL Program is arguably allowable as an ordinary course transaction under section 363(c) of the Bankruptcy Code. However, out of an abundance of caution, the Debtors submit this Motion under section 363(b) of the Bankruptcy Code for authority to consummate a Sale of the Tax Attributes.

deadline for filing objections. The notice of a proposed use, sale or lease of property, including real estate, is sufficient if it generally describes the property.

Fed. R. Bankr. P. 2002(c)(1). In addition, section 105(a) of the Bankruptcy Code provides that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

15. To approve the use, sale, or lease of property out of the ordinary course of business, the Court must find some articulated business justification for the proposed action. *See In re Abbotts Dairies of Pa. Inc.*, 788 F.2d 143, 145–47 (3d Cir. 1986) (implicitly adopting the articulated business justification and good faith tests of *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983)); *see also In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175–76 (D. Del. 1991) (concluding that the Third Circuit had adopted a “sound business purpose” test in *Abbotts Dairies*).

16. Generally, courts have applied four factors in determining whether a sale of a debtor’s assets should be approved: (i) whether a sound business reason exists for the proposed transaction; (ii) whether fair and reasonable consideration is provided; (iii) whether the transaction has been proposed and negotiated in good faith; and (iv) whether adequate and reasonable notice is provided. *See Lionel*, 722 F.2d at 1071 (setting forth the “sound business purpose” test); *Abbotts Dairies*, 788 F.2d at 145–57 (implicitly adopting the articulated business justification test and adding the “good faith” requirement); *Del. & Hudson Ry.*, 124 B.R. at 176 (“Once a court is satisfied that there is a sound business reason or an emergency justifying the pre-confirmation sale, the court must also determine that the trustee has provided the interested parties with adequate and reasonable notice, that the sale price is fair and reasonable and that the purchaser is proceeding in good faith.”).

17. This fundamental analysis does not change if the proposed sale is private, rather than public. *See, e.g., In re Ancor Expl. Co.*, 30 B.R. 802, 808 (Bankr. N.D. Okla. 1983) (“[T]he bankruptcy court should have wide latitude in approving even a private sale of all or substantially all of the estate assets not in the ordinary course of business under § 363(b).”). The bankruptcy court “has ample discretion to administer the estate, including authority to conduct public or private sales of estate property.” *In re WPRV-TV, Inc.*, 143 B.R. 315, 319 (D.P.R. 1991), *vacated on other grounds*, 165 B.R. 1 (D.P.R. 1992); *accord In re Canyon P’ship*, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985). Here, the proposed private sale of the Property to the Purchaser meets all of these requirements and should be approved.

A. Proceeding by Private Sale Reflects a Prudent Exercise of the Debtors’ Business Judgment

18. There is more than ample business justification, under the circumstances of the Chapter 11 Cases, to sell the Tax Attributes through a private sale to a Purchaser, rather than conducting a formal auction process. Under the State of New Jersey’s NOL Program, there are strict limitations on who is eligible to purchase the Tax Attributes. A purchaser must be engaged in business in the technology or biotechnology field. To that end, the Broker is currently marketing or will market the Tax Attributes to parties who had expressed interest in purchasing credits such as the Tax Attributes through the NOL Program.

19. Given the Broker’s marketing of the Tax Attributes through the NOL Program’s platform and the limited number of parties eligible to purchase the Tax Attributes, the Debtors believe that proceeding as a private sale (with the closing on the sale of the Tax Attributes to occur in December 2021)—as opposed to engaging in a potentially lengthy auction process—represents the best opportunity to maximize the value of the Tax Attributes. The Debtors believe that their estates and creditors will benefit from the approval of the Sale via the Procedures set forth herein

without the added resources, delay, energy, and expenses associated with an auction process. Moreover, the Debtors' estates will benefit by closing the Sale as soon as possible to avoid any potential decay in the value of the Tax Attributes.

20. As the Purchase Price must be at least 80% of the face amount of the Tax Attributes, and potentially as high as 93.5% of the face amount of the Tax Attributes, the Debtors believe that a sale through the NOL Program will represent the highest and best offer for the Tax Attributes. Accordingly, the Debtors submit that proceeding by private sale is warranted under the circumstances and will maximize the value realized by the Debtors' estates for the Tax Attributes for the benefit of all stakeholders.

B. Any Purchaser's Consideration for the Tax Attributes is Fair and Reasonable

21. The Debtors expect that, given the strict requirements of the consideration for the Tax Attributes, the chosen Purchaser will provide fair and reasonable consideration for the Tax Attributes. As discussed above, the Tax Attributes are being or will be marketed by the Debtors (through the Broker) in an appropriate manner given the nature of the Tax Attributes and the circumstances of the Chapter 11 Cases. Moreover, given the Debtors' and any Purchaser's limited ability to negotiate the fixed terms of the Purchase Agreement due to the NJEDA's requirements, the Debtors, with the assistance of the Broker, anticipate choosing an offer that provides the highest purchase price for the Tax Attributes. Accordingly, the Debtors anticipate that the Purchase Price will be the result of good-faith, arms'-length negotiations. In consideration of the foregoing, as the Debtors will not likely receive less than 93.5% of the face value of the Tax Attributes, the Debtors believe that the Purchase Price will provide fair and reasonable value for the Tax Attributes.

22. Additionally, the Commission owing to the Broker in connection with the sale of the Tax Attributes is fair and reasonable, and necessary for maximizing the value of the Tax Attributes for the benefit of the Debtors' creditors and interested parties.

C. Adequate and Reasonable Notice of Sale Has Been Provided

23. Generally, Bankruptcy Rules 2002(a)(2) and 2002(1) require that a minimum of twenty-one (21) days' notice of proposed sales of property outside the ordinary course of business be provided by mail to "the debtor, the trustee, all creditors and indenture trustees" and any committee appointed under section 1102 of the Bankruptcy Code. Fed. R. Bankr. P. 2002(a), (i). Pursuant to Bankruptcy Rule 2002(i), however, courts may limit notice of asset sales outside of the ordinary course of a debtor's business, even without a prior showing of cause, to the United States Trustee, any official committee appointed under section 1102 of the Bankruptcy Code and parties who have requested notice pursuant to Bankruptcy Rule 2002.

24. The "notice" required by Bankruptcy Code section 363(b)(1) is "such notice as is appropriate in the particular circumstances." 11 U.S.C. § 102(1)(A). Bankruptcy courts have recognized that, when determining whether notice is appropriate under the circumstances for purposes of Bankruptcy Code section 102(1)(A), they are "guided by fundamental notions of procedural due process." *In re Lomas Fin. Corp.*, 212 B.R. 46,54 (Bankr. D. Del. 1997). Due process "requires that any notice is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); *In re Grand Union Co.*, 204 B.R. 864, 871 (Bankr. D. Del. 1997). In sum, if basic due process is afforded to interested parties and an appropriate cause for limited notice is established, a court may determine that limited notice of an asset sale is appropriate.

25. The Debtors seek the approval of the Procedures to maximize the net value realized from the sale of the Tax Attributes. These Procedures will accommodate the smooth and timely consummation of the Sale. Under the circumstances, the usual process of obtaining Court approval of the proposed Sale subject to the Procedures would: (a) impose unnecessary administrative burdens on the Court and use valuable time at omnibus hearings; and (b) potentially hinder the Debtors' ability to take advantage of the NOL Program's 2021 program year that is available only for a limited time. Therefore, the Debtors propose to streamline the process as described herein.

26. The Debtors will provide notice of the proposed Sale to all parties in interest, as set forth in the Procedures and the applicable Bankruptcy Rules. *See* Fed. R. Bankr. P. 2002(c)(1) (stating that the notice must contain "the terms and conditions of any private sale and the time fixed for filing objections."); *see also Del. & Hudson Ry.*, 124 B.R. at 180 (stating that the disclosures necessary in such a sale notice need only include the terms of the sale and the reasons why such a sale is in the best interests of the estate and do not need to include the functional equivalent of a disclosure statement). Moreover, the Debtors will serve this Motion and any Sale Notice on all known parties that have indicated an interest in purchasing the Tax Attributes. If any interested party desires to submit a competing offer for the Tax Attributes, such offer shall be submitted to the Debtors prior to the deadline to object to this Motion.

27. For the foregoing reasons, the Debtors submit that (a) sufficient cause exists to implement the modified notice provisions proposed herein, and (b) these modified notice procedures will make the sale process as efficient as possible, while preserving fully the rights of Interested Parties.

28. The Debtors also believe that limiting service of the Sale Notice to the Interested Parties is justified under the circumstances. The Interested Parties represent the key parties in

interest who should receive notice of the Sale. In particular, the Sale Notice is proposed to be served on the primary parties representing the interests of the unsecured creditors of the Debtors' estates—the Committee and the U.S. Trustee. Under the circumstances, the Debtors believe that this manner of notice is appropriate and fully preserves the necessary due process rights.

D. Approval of the Sale without a Hearing

29. The sale of property outside of the ordinary course of business may occur only "after notice and a hearing." 11 U.S.C. §§ 363(b)(1). Such sales are authorized without an actual hearing, however, if no party in interest timely requests such a hearing. 11 U.S.C. § 102(1)(B)(i) (notwithstanding any statutory requirement for "notice and a hearing," the Bankruptcy Code "authorizes an act without an actual hearing if such notice is given properly and if such a hearing is not requested timely by a party in interest"). Moreover, as described above, due process is satisfied if parties in interest are given "an opportunity to present their objections." *Mullane*, 339 U.S. at 314.

30. The Debtors believe that the Procedures comport with the hearing requirements of the Bankruptcy Code and due process by providing an opportunity for Interested Parties to present objections and request a hearing on the proposed Sale. Under these circumstances, the proposed Sale may be approved without a hearing if no Interested Party, after being presented with the opportunity to object and seek a determination of the Court, requests a hearing on the proposed Sale.

E. The Sale Should be Free and Clear of Liens, Claims, and Interests

31. The Sale also meets the requirements to be a sale free and clear of liens, claims, interests, and encumbrances. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances if either:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

32. As section 363(f) of the Bankruptcy Code is stated in the disjunctive, when proceeding pursuant to Section 363(b), it is only necessary to meet one of the five conditions of section 363(f). *See Citicorp Homeowners Servs., Inc. v. Elliot*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (stating that section 363(f) of the Bankruptcy Code is written in the disjunctive and holding that if any of the five conditions of section 363(f) are met, the trustee has the authority to conduct the sale free and clear of all liens). In addition, various bankruptcy courts have held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). *See, e.g., In re Trans World Airlines, Inc.*, 2001 WL 1820325, at *3, 6 (Bankr. D. Del. Mar. 27, 2001); *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987).

33. The Debtors can satisfy one or more of the conditions set forth in section 363(f). Considering that any objections to this Motion or the Sale (as described in a Sale Notice) must be resolved by consent of the objecting party or the Court, the Debtors expect that they can satisfy at least the second and fifth subsections of section 363(f).

F. The Purchaser Should be Entitled to the Protections Afforded by 11 U.S.C. § 363(m)

34. In connection with the Sale, the Purchaser should be afforded the protections provided by section 363(m) of the Bankruptcy Code to a good-faith purchaser. A good-faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *See Abbotts Dairies*, 788 F.2d at 147 (3d Cir. 1986). To constitute lack of good faith, a party's conduct in connection with the sale must usually amount to "fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders." *Id.* (citing *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978); *see also In re Bedford Springs Hotel, Inc.*, 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); *In re Perona Bros., Inc.*, 186 B.R. 833, 839 (D.N.J. 1995). Due to the absence of a bright line test for good faith, the determination is based on the facts of each case, concentrating on the "integrity of [an actor's] conduct during the sale proceedings." *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *Rock Indus.*, 572 F.2d at 1198).

35. The Debtors anticipate that, given the strict regulatory framework for the NOL Program within which the Sale will occur, the Debtors and any Purchaser will have acted in good faith in negotiating those terms of the Purchase Agreement that can be negotiated. Additionally, given the rigid form of the Purchase Agreement, the Debtors anticipate that there will be no evidence of fraud or collusion in its terms, and the Purchaser will not and cannot be an insider or affiliate of the Debtors. As previously discussed, the Purchase Agreement will be the culmination of meaningful negotiations conducted on an arm's-length, good-faith basis in which the parties were ably represented by sophisticated advisors.

REQUEST FOR WAIVER OF STAY

36. To implement the foregoing immediately, the Debtors seek a waiver of the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

37. Promptly closing the Sale upon expiration of the Sale Objection Deadline is of critical importance to the Purchaser and to the Debtors' efforts to preserve and maximize the value of their estates through, among other things, minimizing the risk of decay of the Tax Attributes. Accordingly, the Debtors request that the Court waive the 14-day stay period under Bankruptcy Rule 6004(h).

NOTICE

38. Notice of this Motion has been provided to (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) the NJEDA; (iv) counsel for the First Lien Agent for the Debtors' prepetition secured lenders; (v) counsel for the Second Lien Agent for the Debtors' prepetition secured lenders; (vi) counsel for the DIP Agents; (vii) the Indenture Trustee for the Debtors' Series D zero-coupon Convertible Senior Notes due 2023; and (viii) all parties who, as of the filing of this Motion, have requested notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully submit that (a) entry of the Proposed Order (i) approving the Procedures, (ii) authorizing the Debtors' participation in the NOL Program, and (iii) the Debtors' use of the Broker; and (b) upon submission of a Sale Notice and expiration of the Sale Objection Deadline and/or resolution of any Sale Objection, entry of the Proposed Sale Order are in the best interest of the Debtors, their estates, their creditors, and all other parties in interest.

Dated: November 9, 2021
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

S. Alexander Faris

Michael R. Nestor (No. 3526)

Matthew B. Lunn (No. 4119)

Shane M. Reil (No. 6195)

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Counsel to the Debtors and Debtors in Possession

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

In re:

TELIGENT, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 21-11332 (BLS)

(Jointly Administered)

Objection Deadline:
November 23, 2021 at 4:00 p.m. (ET)

Hearing Date:
November 30, 2021 at 11:00 a.m. (ET)

NOTICE OF MOTION

TO: (I) THE U.S. TRUSTEE; (II) COUNSEL TO THE COMMITTEE; (III) THE NJEDA; (IV) COUNSEL FOR THE FIRST LIEN AGENT FOR THE DEBTORS' PREPETITION SECURED LENDERS; (V) COUNSEL FOR THE SECOND LIEN AGENT FOR THE DEBTORS' PREPETITION SECURED LENDERS; (VI) COUNSEL FOR THE DIP AGENTS; (VII) THE INDENTURE TRUSTEE FOR THE DEBTORS' SERIES D ZERO-COUPON CONVERTIBLE SENIOR NOTES DUE 2023; AND (VIII) ALL PARTIES WHO, AS OF THE FILING OF THIS MOTION, HAVE REQUESTED NOTICE IN THE CHAPTER 11 CASES PURSUANT TO BANKRUPTCY RULE 2002.

PLEASE TAKE NOTICE that the above-captioned affiliated debtors and debtors in possession (collectively, the "Debtors") have filed the attached *Debtors' Motion for (A) Entry of an Order Approving Procedures for the Private Sale of Certain Tax Attributes Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (B) Entry of an Order Approving the Sale, and (C) Granting Related Relief* (the "Motion").

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **November 23, 2021 at 4:00 p.m. (ET)** (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of any objection upon the undersigned proposed counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON **NOVEMBER 30, 2021 AT 11:00 A.M. (ET)** BEFORE THE HONORABLE BRENDAN LINEHAN SHANNON IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 6TH FLOOR, COURTROOM NO. 1, WILMINGTON, DELAWARE 19801.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Teligent, Inc. (5758); Igen, Inc. (7443); Teligent Pharma, Inc. (1639); and TELIP LLC (8395). The Debtors' corporate headquarters is located at 33 Wood Avenue, 7th Floor, Iselin, New Jersey 08830.

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

Dated: November 9, 2021
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ S. Alexander Faris

Michael R. Nestor (No. 3526)

Matthew B. Lunn (No. 4119)

Shane M. Reil (No. 6195)

S. Alexander Faris (No. 6278)

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Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Proposed Order

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

In re:

TELIGENT, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 21-11332 (BLS)

Ref: Docket No. ____

**ORDER APPROVING PROCEDURES PURSUANT TO BANKRUPTCY CODE
SECTIONS 105(A) AND 363 AND FEDERAL RULE OF BANKRUPTCY PROCEDURE
6004, FOR THE SALE OF TAX ATTRIBUTES FREE AND CLEAR OF LIENS,
CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS**

Upon the *Debtors' Motion for (A) Entry of an Order Approving Procedures for the Private Sale of Certain Tax Attributes Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (B) Entry of an Order Approving the Sale, and (C) Granting Related Relief* (the "Motion");² and it appearing that the Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding within the meaning of 28 U.S.C. § 157; and it appearing that venue of this proceeding and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of this Motion having been given; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and their estates and creditors; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT

1. The Motion is GRANTED as set forth herein.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Teligent, Inc. (5758); Igen, Inc. (7443); Teligent Pharma, Inc. (1639); and TELIP LLC (8395). The Debtors' corporate headquarters is located at 33 Wood Avenue, 7th Floor, Iselin, New Jersey 08830.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

2. The Debtors are authorized, but not required, under section 363(b) of the Bankruptcy Code, to participate in the NOL Program and sell the Tax Attributes in accordance with the following procedures:

- a. Upon selection of a Purchaser and execution of a Purchase Agreement, the Debtors will file and serve a notice (the “Sale Notice”) of Sale by e-mail, if possible, and hand delivery or overnight mail on the following parties or their counsel, if known: (i) the U.S. Trustee; (ii) counsel for the Committee; (iii) the NJEDA; (iv) counsel for the First Lien Agent for the Debtors’ prepetition secured lenders; (v) counsel for the Second Lien Agent for the Debtors’ prepetition secured lenders; (vi) counsel for the DIP Agents; (vii) the Indenture Trustee for the Debtors’ Series D zero-coupon Convertible Senior Notes due 2023; and (viii) all parties who, as of the filing of this Motion, have requested notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002 (collectively, the “Interested Parties”).
- b. The Sale Notice will include the following information with respect to the Sale:
 - i. a description of the Tax Attributes that are the subject of the Sale;
 - ii. the identity of the non-debtor party or parties to the Sale and any relationship of the non-debtor party or parties with the Debtors;
 - iii. the identity of any parties known to the Debtors to hold liens on or other interests in the assets and a statement indicating that all such liens or interests are capable of monetary satisfaction;
 - iv. the principal economic terms and conditions of the Sale; and
 - v. instructions consistent with the terms described below regarding the procedures to assert objections to the Sale.
- c. The deadline for filing objections to the Sale (a “Sale Objection”) shall be five (5) days after service of the Sale Notice at 4:00 p.m. (prevailing Eastern Time) (the “Sale Objection Deadline”). A Sale Objection will be considered timely only if it is filed with the Court and actually received by the following parties (collectively, the “Objection Notice Parties”) on or before the Sale Objection Deadline: (i) proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael R. Nestor, Esq. (mnestor@ycst.com) and Matthew B. Lunn, Esq. (mlunn@ycst.com); (ii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Richard L. Schepacarter, Esq. (richard.schepacarter@usdoj.gov); (iii) counsel for the First Lien Agent for the Debtors’ prepetition secured lenders, (a) Latham & Watkins LLP, 355 South Grand Avenue, Suite 100, Los Angeles, CA 90071, Attn: Ted A. Dillman, Esq. (ted.dillman@lw.com) and Jason R. Bosworth, Esq. (Jason.bosworth@lw.com),

and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney, Esq. (rdehney@morrisonichols.com); (iv) counsel for the Second Lien Agent for the Debtors' prepetition secured lenders, (a) Morgan, Lewis & Bockius LLP, 101 Park Avenue, New York, NY 10178, Attn: Frederick F. Eisenbiegler, Esq. (frederick.eisenbiegler@morganlewis.com) and Kurt A. Mayr, Esq. (kurt.mayr@morganlewis.com), and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, P.O. Box 1347, Wilmington, DE 19899-1347, Attn: Robert J. Dehney, Esq. (rdehney@morrisonichols.com); (v) counsel to the Indenture Trustee for the Debtors' Series D zero coupon Convertible Senior Notes due 2023, Grushko & Mittman, P.C., 515 Rockaway Avenue, Valley Stream, NY 11581, Attn: Edward M. Grushko, Esq. (Ed@grushkomittman.com); and (vi) proposed counsel to the Committee, (a) Saul Ewing Arnstein & Lehr LLP, 1201 North Market Street, Suite 2300, P.O. Box 1266, Wilmington, DE 19899, Attn: Mark Minuti, Esq. (mark.minuti@saul.com), Lucian B. Murley, Esq. (luke.murley@saul.com), and Monique B. DiSabatino, Esq. (monique.disabatino@saul.com), and (b) Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654, Attn: Catherine L. Steege, Esq. (csteegen@jenner.com), Melissa M. Root, Esq. (mroot@jenner.com), Landon S. Raiford, Esq. (lraiford@jenner.com), and William A. Williams, Esq. (wwilliams@jenner.com).

- d. To the extent a competing bid is received for the purchase of the Tax Attributes after service of the Sale Notice that, in the Debtors' business judgment and discretion, materially exceeds the value of the consideration described in the Sale Notice, then the Debtors may file and serve an amended Sale Notice for the Sale of the Tax Attributes to the subsequent bidder. If an amended or revised Sale Notice is required (an "Amended Sale Notice"), the Sale Objection Deadline will be extended for an additional five (5) days, the specific date of which will be set forth in the Amended Sale Notice (the "Extended Sale Objection Deadline").
- e. If no Sale Objection is received prior to the expiration of the Sale Objection Deadline or, if applicable, the Extended Sale Objection Deadline, the Debtors shall submit a proposed order approving the Sale under certification of counsel (the "Proposed Sale Order"), a form of which is attached to the Motion as Exhibit B. The Sale will be deemed final and fully authorized by the Court upon the entry of the Proposed Sale Order without further notice or a hearing. Upon entry of the Proposed Sale Order, the Debtors may immediately consummate the sale of the Tax Attributes identified in the Sale Notice and take any actions that are reasonable and necessary to close the transaction and obtain the sale proceeds, including, but not limited to, paying the Commission to the Broker.
- f. If a Sale Objection is timely filed and received and cannot be resolved consensually, then the Tax Attributes will not be sold or transferred except upon order of the Court, after notice and a hearing, or resolution of the Sale Objection.
- g. The Sale of the Tax Attributes shall be free and clear of all liens, claims and encumbrances (collectively, "Interests") pursuant to Bankruptcy Code section

363(f), with any such Interests attaching to the net sale proceeds (to the extent the underlying security agreement provides for the continuation of such Interests and the holder of the Interest has not agreed otherwise) with the same force, validity, priority, perfection, and effect as such Interests had on the asset immediately prior to the sale. If a holder of an Interest receives a Sale Notice and does not object within the prescribed time period, such holder will be deemed to have consented to the Sale.

3. The Sale of the Tax Attributes made in accordance with the Procedures herein may be by private sale and on the terms specified in the Purchase Agreement attached hereto as Exhibit 1.

4. Any sale of the Tax Attributes pursuant to the Procedures and in accordance with this Order shall be free and clear of all Interests pursuant to section 363(f) of the Bankruptcy Code, with any such Interests attaching to the net sale proceeds (to the extent the underlying security agreement provides for the continuation of such Interests and the holder of the Interest has not agreed otherwise) with the same force, validity, priority, perfection, and effect as such Interests had on the asset immediately prior to the sale. If a holder of an Interest in the Tax Attributes did not timely object to the relief requested in the Motion, and, as applicable, does not object to the proposed Sale of the Tax Attributes in accordance with the Procedures, such holder shall be deemed to have consented to any sale of the Tax Attributes pursuant to the Procedures.

5. The Sale of the Tax Attributes in accordance with the Procedures shall be deemed to be an arms'-length transaction entitled to the protections of section 363(m) of the Bankruptcy Code.

6. The Purchaser shall take the Tax Attributes sold by the Debtors pursuant to the authority granted in this Order "as is" and "where is" without any representations or warranties from the Debtors as to quality or fitness for either their intended purpose or any particular purpose.

7. Each and every federal, state and local government agency or department is hereby authorized to accept any and all documents and instruments necessary or appropriate to

consummate the disposition of Tax Attributes. The New Jersey Department of the Treasury – Division of Taxation (or any other applicable governmental agency) is hereby authorized to accept and include a certified copy of this Order along with any other appropriate conveyance documents used to record and index the transfer of any Tax Attributes in the appropriate public records.

8. The Debtors are authorized to utilize the Broker in connection with the Sale of the Tax Attributes, and to pay, without further Court approval, the Commission owing to the Broker in connection with the sale of the Tax Attributes pursuant to this Order, *provided that* the Commission is consistent with the Debtors' and the Broker's historical terms.

9. Nothing in this Order shall prevent the Debtors, in their discretion, from seeking Court approval of the Sale upon notice and a hearing or, if necessary to comply with a condition on a sale or transfer imposed by a purchaser, to submit a separate order to the Court under certification of counsel to be entered without need for a hearing on the matter.

10. The fourteen (14) day stay imposed by Bankruptcy Rule 6004(h) is hereby waived with respect to the relief granted pursuant to this Order and the Sale conducted in accordance with this Order, and the Debtors may close the Sale as set forth herein without reference to such stay.

11. The Debtors and their respective officers, employees, and agents are authorized and empowered to perform all obligations, take all actions, and execute such documents as may be necessary to carry out the relief granted herein or to effectuate the disposition of the Tax Attributes.

12. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

EXHIBIT 1

Purchase Agreement

AGREEMENT

Technology Business Tax Certificate Transfer Program

This Agreement (hereinafter "Agreement"), made as of the Effective Date, by and between _____, ("Selling Company"), a company organized under the laws of the State of _____, having its principal offices at _____ and _____ ("Buying Company"), a company organized under the laws of the State of _____, or a national association chartered under the laws of the United States, having its principal offices at _____, the above entities being hereinafter referred to as the "Parties".

WITNESSETH:

WHEREAS, in order for society to appreciate the anticipated potential rewards from emerging technology and biotechnology research, private industry must have access to sufficient financial resources to conduct research and transfer research discoveries into viable commercial products; and

WHEREAS, pursuant to P.L. 1997, c.334 as amended, the State of New Jersey created the New Jersey Emerging Technology and Biotechnology Financial Assistance Program (the "Program") to provide additional funds to New or Expanding emerging Technology and Biotechnology Companies (as hereinafter defined) by allowing said companies with unused Net Operating Loss ("NOL") Carryover and/or Unused Research and Development ("R & D") Tax Credits to surrender those tax benefits for use by other corporation business taxpayers in exchange for private financial assistance; and

WHEREAS, the Division of Taxation has established the amount of tax benefits that Selling Company can transfer (sell) over State Fiscal Year _____ to be \$_____ (final allocation of tax benefits or total authorized); of which the Seller chooses to surrender \$_____ ("Surrendered Tax Benefits" or grand total benefit sold) to the Buyer.

NOW, therefore, in consideration of the mutual promises and covenants made herein, the Parties agree as follows:

ARTICLE I

1.01 Definitions.

“Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by the Selling Company. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to Section 1563 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 1563 or the entity is an organization in a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 414.

“Affiliated Business” means a taxpayer receiving the benefits for which the same entity directly or indirectly owns or controls 5% or more of the voting rights of any kind or 5% or more of the value of all classes of both the taxpayer and the corporation surrendering the benefits.

“Allowable Expenditures” means costs incurred in connection with the operation of the new or expanding emerging technology or biotechnology business in the State, including, but not limited to, the expenses of fixed assets, such as the construction, acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, and research and development expenditures and any other expenses determined by the NJEDA to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program.

“Biotechnology” means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge.

“Biotechnology Business” or **“Biotechnology Company”** means an emerging corporation that has a headquarters or base of operations located in New Jersey that owns, has filed for, or has a license to use protected, proprietary intellectual property; and that is engaged in the research, development, production, or provision of Biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes.

"Certificate" means the certificate issued by the Division relating to the Unused NOL Carryover and/or Unused R & D Credits of the Selling Company.

"Date of Closing" means the date on which the Certificate is exchanged for private financial assistance. For purposes of illustration, the date on which the Seller is in receipt of compensation as set forth in Article II, Section 2.01 hereof.

"Division" means the Division of Taxation.

"Effective Date" means the date last written below representing the date of execution of this Agreement by the respective Parties.

"Employer Reporting Forms" means Forms NJ-927 and WR-30 as filed through the State's Department of Treasury website.

"Face Value" means the Surrendered Tax Benefit.

"Full-Time Employee" means a person, whose primary office is in New Jersey and who spends at least 80% of his or her time in New Jersey, employed by a New or Expanding emerging Technology or Biotechnology Company on a permanent or indefinite basis for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq., or who is a partner of a New or Expanding emerging Technology or Biotechnology Company who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq., or who is employed under a formal written agreement with an institution of higher education whereby the institution's students are employed by the technology or biotechnology company on a permanent basis within a single position and in compliance with all other requirements of this definition. To qualify as a "Full-Time Employee," an employee shall also receive from the New or Expanding emerging Technology or Biotechnology Company health benefits under a group health plan as defined under section 14 of P.L.1997, c.146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L.1992, c.162 (N.J.S.A. 17B:27A17), or a policy or contract of health insurance covering more than one person issued pursuant to N.J.S.A.

17B:27-26 et seq. "Full-Time Employee" shall not include any person who works as an independent contractor or on a consulting basis for the New or Expanding emerging Technology or Biotechnology Company; or any person who works as an intern, as a temporary employee, or in a temporary position.

"New or Expanding" means a Technology or Biotechnology Company that (1) on June 30 of the year in which the company files an application for surrender of unused but otherwise allowable tax benefits under P.L.1997, c.334 (N.J.S.A. 34:1B-7.42a) and on the Date of Closing, has fewer than 225 employees in the United States of America; (2) on June 30 of the year in which the company files such an application, has at least one Full-Time Employee working in this State if the company has been incorporated for less than three years, has at least five Full-Time Employees working in this State if the company has been incorporated for more than three years but less than five years, and has at least 10 Full-Time Employees working in this State if the company has been incorporated for more than five years; and (3) on the Date of Closing, the company has the requisite number of Full-Time Employees in New Jersey that were required on June 30 as set forth in part (2) of this definition.

In calculating the number of employees under this definition, employees of all affiliates and subsidiaries as shown on its consolidated financial statements, employees of any company that owns or controls at least 50 percent of the applicant, as well as the employees of any consolidated group of affiliated corporations as filed for Federal income tax purposes shall be included.

"NJEDA" means the New Jersey Economic Development Authority, established pursuant to section 4 of P.L. 1974, c. 80 (C. 34:1B-4 et seq.), as amended and supplemented.

"Seller's Closing Certificate" means the certificate signed by an authorized officer of the Selling Company **dated the Date of Closing** and satisfactory to the NJEDA that states, among other matters, that as of the date of the Seller's Closing Certificate (Date of Closing) the Selling Company is operating as a New or Expanding emerging Biotechnology or Technology Business and has no current intention to cease operating as a New or Expanding emerging Biotechnology or Technology Business. The Seller's Closing Certificate must be received by the NJEDA for the Certificate to be valid.

"Selling Business Application" or **"Selling Company Application"** means the application submitted on behalf of the Selling Business in order to participate in the Program for the applicable State Fiscal Year.

Rev. 10-22-21

“State Fiscal Year” means for a particular year, the period of time which ends on June 30th of that year and begins on the previous July 1, or as may be amended by Executive Order.

“Tax Clearance Certificate” means a current New Jersey Business Assistance Tax Clearance Certificate, not more than 180 days old.

“Technology Business” or “Technology Company” means an emerging corporation that has a headquarters or base of operations located in New Jersey, that owns, has filed or has a license to use protected, proprietary intellectual property whose primary business is the provision of a scientific process, product, or service and that employs some combination of the following: highly educated or trained managers and workers, or both, employed in New Jersey who use sophisticated scientific research service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service. Examples of fields of active engagement satisfying this definition include: the designing and developing of computing hardware and software; the research, development, production, or provisions of materials with engineered properties created through the company’s development of specialized processing and synthesis technology; and the research, development, production or provision of technology involving microelectronics, semiconductors, electronic equipment and instrumentation, radio frequency, microwave and millimeter electronics, and optical and optic related electrical devices, or data and digital communications and imaging devices.

“Unused NOL Carryover” means Unused Net Operating Loss Carryover, pursuant to N.J.S.A. 54:10A-4 (k)(6)(B), of the Selling Company.

“Unused R & D Credits” means unused amounts of research and development tax credits, pursuant to N.J.S.A. 54:10A-5.24 (1)(b), of the Selling Company.

ARTICLE II

Section 2.01 Compensation. Subject to the conditions set forth in Section 2.02 hereof, within ten (10) business days of Selling Company notifying Buying Company that the NJEDA has received a Certificate from the Division (“Seller Notice”), Buying Company agrees to purchase the Certificate for a purchase price in the aggregate amount of \$_____ (gross amount of sale) for the transfer of tax benefits in the amount of the Surrendered Tax Benefit for the years and amounts more fully set forth in the Selling Business Tax Benefit Identification Form, attached. The ten (10) business day period associated with Seller’s Notice may be extended by written agreement

between the Parties, along with the prior written consent of the NJEDA; and in no event shall said extension exceed twenty (20) business days.

Section 2.02 Conditions to Purchase. Buying Company's obligation to purchase is conditioned upon:

- a) preliminary approval by NJEDA of Selling Company's Application for transfer of tax benefits for private financial assistance;
- b) approval by the NJEDA of this Agreement, the Buying Business Information Sheet, the Selling Business Tax Benefit Identification Form, the Private Financial Assistance Form and if the Selling Company sold tax benefits in a prior year, a Spending Certification;
- c) a final determination by the Division that the amount of the Certificate is equal to the Surrendered Tax Benefit as evidenced by issuance of the Certificate to the NJEDA;
- d) a current Tax Clearance Certificate for the Seller and Buyer not more than 180 days old. **It remains the sole responsibility of the Seller and Buyer to renew the Tax Clearance Certificate and ensure continued Tax Clearance.** To apply to receive a Tax Clearance Certificate, the Parties must complete and submit the online application for Business Assistance Tax Clearance ("Tax Clearance Application") by visiting the State of New Jersey's Premier Business Services (PBS) portal at: https://www16.state.nj.us/NJ_PREMIER_EBIZ/jsp/home.jsp. **Questions regarding Business Assistance Tax Clearance may be emailed to: BusinessAssistanceTC.Taxation@treas.nj.gov.**
- e) the execution of the Seller's Closing Certificate, in a form satisfactory to the NJEDA, and dated as of the Date of Closing; and
- f) the Selling Company named in this Agreement agrees not to sell any Certificate in connection with the Technology Business Tax Certificate Transfer Program to an Affiliated Business.

Section 2.03 Conditions to Validity of Certificate. The Buying Company acknowledges that the Certificate shall not be valid, and the Buying Company shall not utilize the Certificate, unless and until the Buying Company provides or causes to be provided to NJEDA the following:

- a) An original fully executed Seller's Closing Certificate dated the Date of Closing;
- b) A copy of the fully executed Certificate; and
- c) A completed and executed NOL Employee Closing Certification Log dated the Date of Closing and showing the minimum number of Full-Time Employees required by the Technology Business Tax Certificate Transfer Program.

ARTICLE III

Section 3.01 Covenants of the Selling Company. The Selling Company covenants:

- a) it shall maintain a headquarters or a base of operations in the State during the five years following the Date of Closing.
- b) annually for the First Quarter (Q1) of the five (5) years subsequent the Date of Closing, it shall provide to the NJEDA the Employer Reporting Forms via NOL@njeda.com, subject: Q1 Reporting.
- c) the Selling Company shall expend the proceeds of this purchase for Allowable Expenditures. All construction is subject to the NJEDA's prevailing wage and affirmative action requirements as well as the Contractor's Registration Act ("Act"), effective April 1, 2020, which provides any and all construction contracts awarded in New Jersey that require payment of prevailing wage must also provide proof of valid Contractor Registration Certification ("CRC"). The Act will not require contracts that were awarded prior to April 1, 2020 to provide proof of CRC. Effective May 1, 2019, the Act also requires that all contractors participate in a registered apprenticeship program. In addition, the general contractor must include said language in all subcontracts. Regulations, forms, guidance documents are available at www.njeda.com/affirmativeaction.
- d) if any representation made by Selling Company in this Agreement is willfully false or materially misleading or if Selling Company breaches the covenants set forth in Paragraph 3.01 a), b), or c) the Selling Company, only, shall be subject to the recapture of up to the Face Value of the tax benefits.

Section 3.02 Covenants of the Buying Company. The Buying Company covenants:

- a) it shall not assign, sell or transfer the Certificate to any Affiliated Business of Selling Company.
- b) if any representation made by Buying Company in this Agreement is willfully false or materially misleading or if Buying Company breaches the covenant set forth in Paragraph 3.02(a), the transfer of tax benefits contemplated by this Agreement shall be null and void.

Section 3.03 Representation by Selling Company.

- a) the Selling Company represents to Buying Company, NJEDA and the Division that Selling Company is not an Affiliated Business of Buying Company.
- b) the Selling Company represents that it is not in default on any State loan or loan guarantee.

Section 3.04 Representation by Buying Company. The Buying Company represents to Selling Company, NJEDA and the Division that Buying Company is not an Affiliated Business of Selling Company.

ARTICLE IV

Section 4.01 Non-assignability. The Buying Company may not assign or transfer the Certificate in any manner.

ARTICLE V

Section 5.01 Third Party Beneficiary. The NJEDA shall be a third-party beneficiary to this Agreement, with the authority to enforce the provisions hereof and to declare a default hereunder.

ARTICLE VI

Section 6.01 Default. The occurrence of one or more of the following events shall constitute an event of default:

- a) failure by the Selling Company to comply with any covenant set forth under this Agreement.
- b) a declaration of default under any existing or new financial assistance or incentive provided by the NJEDA to the Selling Company and/or any of its Affiliates.

Section 6.02 Remedies upon Default. Upon the existence of any events of default, the Buying Party or the NJEDA, as third-party beneficiary to this Agreement, may take any action legally available to it. Pursuant to N.J.A.C. 19:31-12.8, if the Selling Company fails to use the private financial assistance received for the surrender of tax benefits for Allowable Expenditures or fails to maintain a headquarters or a base of operation in the State during the five years following the Date of Closing, the Selling Company is subject to the recapture of up to the Face Value of the tax benefits.

Section 6.03 Forbearance Not a Waiver. No act of forbearance or failure to insist on the prompt performance of the obligations pursuant to this Agreement, either expressed or implied, shall be construed as a waiver of any rights hereunder. In the event that any provision of this Agreement should be breached and the breach may thereafter be waived, such waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach.

ARTICLE VII

Section 7.01 Indemnification. Selling Company covenants and agrees to indemnify and hold harmless the NJEDA and the State of New Jersey and their respective members, agents, officers, employees and servants from all losses, claims, damages, liabilities, and costs whatsoever (including all costs, expenses and reasonable counsel fees incurred in investigating and defending such losses and claims, etc.), brought by any person or entity, and caused by, related to, arising or purportedly arising out of, or from any loss, damage or injury resulting from the expenditure of the proceeds received pursuant to this Agreement or from the performance by the Parties hereto

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of the obligations set forth herein. The provisions of this Paragraph shall survive termination of this Agreement.

ARTICLE VIII

Section 8.01 Governing Law. This Agreement shall be governed by the laws of the State of New Jersey. Any and all claims made or to be made against the NJEDA based in tort law for damages shall be governed by and subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. Any and all claims made or to be made against the NJEDA based in contract law for damages shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

Section 8.02 Forum and Venue. All actions related to the matters which are the subject of this Agreement shall be forumed and venued in the court of competent jurisdiction in the County of Mercer, State of New Jersey.

Section 8.03 Jury Waiver. Selling Company waives any right to trial by jury on any claim, demand, action or cause of action arising under this Agreement or the transactions related hereto, in each case whether sounding in contract or tort or otherwise. Selling Company agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury, and that any party to this Agreement may file an original counterpart or a copy of this section with any court as written evidence of the consent of Selling Company to the waiver of its right to trial by jury. Selling Company acknowledges that it has had the opportunity to consult with counsel regarding this section, that it fully understands its terms, content and effect, and that it voluntarily and knowingly agrees to the terms of this section.

Section 8.04 Entire Agreement. This Agreement, the Buying Business Information Sheet, the Selling Business Tax Benefit Identification Form, the Private Financial Form, the Seller's Closing Certificate, the application forms of the Selling Company and any documents referred to herein, constitute the complete understanding of the Parties and merge and supersede any and all other discussions, agreements and understandings, oral or written, between the Parties with respect to the subject matter of this Agreement.

Section 8.05 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid pursuant to applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without

invalidating the remainder of such provisions of this Agreement, unless Buying Company shall in its sole and absolute discretion deem the invalidated provision essential to the accomplishment of the public purposes served by this Agreement, in which case Buying Company has the right to terminate this Agreement and all benefits provided to Selling Company hereunder upon the giving of sixty (60) days prior notice as set forth in Paragraph 8.05 hereof.

Section 8.06 Notices. All notices, consents, demands, requests and other communications which may be or are required to be given pursuant to any term of this Agreement shall be in writing and shall be deemed duly given when personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as each party to this Agreement may hereafter designate in a written notice to the other party transmitted in accordance with this provision.

Selling Company Address:

Buying Company Address:

Section 8.07 Amendments or Modifications. This Agreement may only be amended or modified in a writing executed by both Parties, for good cause shown. Such amendments or modifications shall become effective only upon execution of same by both Parties and approval of the amendment or modification by the NJEDA and the Division.

Section 8.08 Headings. Section headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement.

Section 8.09 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.10 This Agreement may be executed and delivered by telecopier, e-mail, PDF or other facsimile transmission all with the same force and effect as if the same were a fully executed and delivered original manual counterpart. Electronic signature of this Agreement shall be deemed to be valid execution and delivery as though an original ink. The Parties explicitly consent to the electronic delivery of the terms of the transaction evidenced by this Agreement and affirm that

their electronic signatures indicate a present intent to be bound by the electronic signatures and the terms of the Agreement. The electronic signature can be done either by ADOBE Acrobat or any other similar signature software that can be used for electronic signatures or by printing, manually signing, and scanning.

Section 8.11 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers duly authorized as of the date and year last written below.

SELLING COMPANY:

By: _____

NAME: _____

TITLE: _____

DATE: _____

BUYING COMPANY:

By: _____

NAME: _____

TITLE: _____

DATE: _____

EXHIBIT B

Proposed Sale Order

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

In re:

TELIGENT, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 21-11332 (BLS)

Ref: Docket No. ____

**ORDER (I) AUTHORIZING THE PRIVATE SALE OF CERTAIN TAX
ATTRIBUTES FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES,
AND OTHER INTERESTS; (II) APPROVING THE PURCHASE
AGREEMENT; AND (III) GRANTING RELATED RELIEF**

Upon consideration of the *Notice of Sale of Tax Attributes* [D.I. [●]] (the “Sale Notice”), attached hereto as Exhibit 1, and the *Certification of Counsel* (the “COC”) with respect to the sale of certain Tax Attributes; and the Court having found, based on the statements made in the COC, that the sale of the Tax Attributes was conducted in conformity with the procedures set forth in the *Order Approving Procedures Pursuant to Bankruptcy Code Sections 105(a) and 363 and Federal Rule of Bankruptcy Procedure 6004, for the Sale of Tax Attributes Free and Clear of Liens, Claims, Encumbrances, and Other Interests* (the “Procedures Order”);² and it appearing that due and sufficient notice of the Sale having been provided to all parties in interest; and it further appearing that no other or further notice or hearing is required; and this Court having reviewed and considered the COC, the Sale Notice, the Purchase Agreement, and any objections thereto; and it appearing that the relief requested in the COC is in the best interest of the Debtors’ estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause therefor,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Teligent, Inc. (5758); Igen, Inc. (7443); Teligent Pharma, Inc. (1639); and TELIP LLC (8395). The Debtors’ corporate headquarters is located at 33 Wood Avenue, 7th Floor, Iselin, New Jersey 08830.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Procedures Order.

THE COURT HEREBY FINDS THAT:³

Jurisdiction, Final Order, and Statutory Predicates

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief granted herein are sections 105(a) and 363(b) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 9014, and Local Rule 6004-1.

B. To maximize the value of the Tax Attributes while avoiding unnecessary delay and potential decay in the value of the Tax Attributes, it is essential that the Sale of the Tax Attributes occur within the time constraints set forth in the Purchase Agreement. Time is of the essence in consummating the Sale. Therefore, notwithstanding Bankruptcy Rule 6004(h), this Court finds that there is no just reason for delay in the implementation of this Order, and that waiver of any applicable waiting period is appropriate.

C. The Tax Attributes constitute property of the estate of Debtor Teligent, Inc. (“Seller”), and title thereto is vested in the Seller’s estate within the meaning of section 541(a) of the Bankruptcy Code.

D. On [●], 2021, this Court entered the *Order Approving Procedures Pursuant to Bankruptcy Code Sections 105(a) and 363 and Federal Rule of Bankruptcy Procedure 6004, for the Sale of Tax Attributes Free and Clear of Liens, Claims, Encumbrances, and Other Interests* [D.I. [●]] authorizing the Sale of the Tax Attributes via the Procedures set forth therein.

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate pursuant to Rule 7052 of the Bankruptcy Code.

Notice of Hearing

E. As evidenced by the affidavits of service previously filed with this Court and the record herein, and based on the representations of counsel, due, proper, timely, adequate, and sufficient notice of the Sale Notice and the Sale were provided as set forth in the Procedures. Such notice constitutes good and sufficient notice of the Sale Notice and the Sale, and no other or further notice of the Sale is required.

F. Notice has been provided to, and a reasonable opportunity to object or to be heard regarding the Sale has been afforded to all interested persons and entities, including, among others: (i) the U.S. Trustee; (ii) the Purchaser; (iii) the Committee; (iv) the NJEDA; (v) counsel for the First Lien Agent for the Debtors' prepetition secured lenders; (vi) counsel for the Second Lien Agent for the Debtors' prepetition secured lenders; (vii) counsel for the DIP Agents; (viii) the Indenture Trustee for the Debtors' Series D zero-coupon Convertible Senior Notes due 2023; and (ix) all parties who, as of the filing of this Motion, have requested notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002.

Sound Business Judgment

G. The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the COC and the Motion regarding the Sale, the approval of the Purchase Agreement, and all other matters related to the Sale. Such business reasons include, but are not limited to, the facts that (i) given the Debtors' and the Purchaser's limited ability to negotiate the terms of the Purchase Agreement, the Purchaser has provided the highest consideration for the Tax Attributes, (ii) no other person or entity or group of persons or entities has offered to purchase the Tax Attributes for greater economic value to the Debtors' estates than the Purchaser, and (iii) the Sale pursuant to the terms of the Purchase Agreement presents the best opportunity to realize the

value of the Tax Attributes. For these reasons, the relief provided for herein is within the reasonable business judgment of the Debtors, and is in the best interests of the Debtors, their estates and creditors, and other parties in interest.

H. The Debtors have demonstrated a good, sufficient, and sound business purpose, and justification and compelling circumstances, for entry into the Purchase Agreement and the consummation of the Sale pursuant to section 363(b) of the Bankruptcy Code, in that the consummation of the Sale to the Purchaser as of the Date of Closing is necessary and appropriate to maximize the value to the Debtors' estates and, thereby, is in the best interests of the Debtors, their estates, their creditors, and other parties in interest.

Good Faith of Purchaser

I. Under the NOL Program and New Jersey law, the Purchaser is not an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code. The Purchase Agreement has been negotiated, proposed, and entered into by the Seller and the Purchaser without collusion, in good faith, and from arm's length bargaining positions, and is substantively and procedurally fair to all parties. The Purchaser is, therefore, a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, therefore, entitled to the protections and immunities afforded thereby. Neither the Debtors nor the Purchaser has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or cause the application of, or implicate, section 363(n) of the Bankruptcy Code to the Purchase Agreement, or to otherwise prevent the consummation of the Sale. In the absence of a stay pending appeal, the Purchaser is acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the transactions set forth in the Purchase Agreement at any time after entry of this Order.

Highest and Best Offer

J. The offer of the Purchaser, upon the terms and conditions set forth in the Purchase Agreement: (i) are the highest or otherwise best offer received by the Debtors with respect to the Tax Attributes; (ii) are fair and reasonable; (iii) are in the best interest of the Debtors, their estates, and their creditors; and (iv) constitute full, fair, and adequate consideration and reasonably equivalent value for the Tax Attributes under the Bankruptcy Code and under the laws of the United States, any state, territory, or possession.

No Fraudulent Transfer

K. Except as expressly set forth in the Purchase Agreement, the Purchaser shall not have any liability or obligations for any lien, claim, encumbrance, or interest, or other obligation of or against the Debtors, related to the Tax Attributes by reason of the transfer of the Tax Attributes to the Purchaser. The Purchaser shall not be deemed, as a result of any action taken in connection with the purchase of the Tax Attributes to: (i) be a successor (or other such similarly situated party) to the Debtors; or (ii) have, *de facto* or otherwise, merged with or into the Debtors. The Purchaser is not acquiring or assuming any liability, warranty, or other obligation of the Debtors, except as expressly provided for under the Purchase Agreement.

Validity and Free and Clear Nature of Transfers

L. The transfer of the Tax Attributes to the Purchaser pursuant to the Purchase Agreement will be, as of the Closing, a legal, valid, and effective transfer of good and marketable title of the Tax Attributes, and will vest the Purchaser with all right, title, and interest of the Seller to the Tax Attributes, free and clear of all liens, claims, encumbrances, and interests of any kind or nature, on an “as is, where is” basis, as set forth in the Purchase Agreement, arising or relating thereto at any time prior to the Closing, except as otherwise provided for under the Purchase

Agreement, because one or more of the standards set forth in section 363(f) of the Bankruptcy Code have been satisfied.

M. The Seller may sell the Tax Attributes free and clear of all liens, claims, encumbrances, and interests, except as otherwise provided for under the Purchase Agreement, because, in each case, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. Those non-Debtor parties with interests in the Tax Attributes which did not object, or which withdrew their objections, to the Sale or the Motion are deemed to have consented to the Sale pursuant to sections 363(f)(2) and 365 of the Bankruptcy Code. Those non-Debtor parties with interests in the Tax Attributes which did object fall within one or more of the other subsections of sections 363(f) and 365 of the Bankruptcy Code, and such objections are expressly overruled. Accordingly, all persons having such liens, claims, encumbrances, and interests of any kind or nature whatsoever against or in any of the Tax Attributes, except as otherwise provided for under the Purchase Agreement, shall be forever barred, estopped, and permanently enjoined from pursuing or asserting such liens, claims, encumbrances, and interests against the Purchaser or any of its respective assets, property, successors, or assigns.

N. Except as otherwise provided for under the Purchase Agreement, the transfer of the Tax Attributes to the Purchaser will not subject the Purchaser to any liability for claims against the Debtors by reason of such transfers under the laws of the United States, any state, territory, or possession thereof.

O. The Debtors have demonstrated (i) good, sufficient, and sound business purposes and justifications and (ii) compelling circumstances for the Sale pursuant to section 363(b) of the Bankruptcy Code in that, among other things, absent the Sale the value of the Debtors' estates would be harmed.

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

General Provisions

1. The Motion is hereby GRANTED as set forth herein.
2. Any and all objections to the proposed sale of the Tax Attributes pursuant to the terms of the Purchase Agreement that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled on the merits.

Approval of the Purchase Agreement

3. The Purchase Agreement and the transactions contemplated thereby shall be, and hereby are, approved.
4. The consideration to be provided by the Purchaser for the Tax Attributes under the Purchase Agreement is fair and reasonable and shall be deemed for all purposes to constitute value under the Bankruptcy Code or any other applicable law.
5. Pursuant to sections 363(b) and (f) of the Bankruptcy Code, the Debtors are authorized and empowered to take any and all actions necessary or appropriate to: (a) consummate the Sale of the Tax Attributes to the Purchaser pursuant to, and in accordance with, the terms and conditions of the Purchase Agreement; (b) close the Sale as contemplated in the Purchase Agreement and this Order and to pay, without further Order of this Court, all costs due and owing by the Debtors relating to the Sale, including the Commission owing to the Broker; and (c) execute and deliver, perform under, consummate, implement, and close fully the Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Sale, all without further order of this Court.

Transfer of the Tax Attributes

6. The Debtors are authorized to sell the Tax Attributes to the Purchaser upon the terms and conditions set forth in the Purchase Agreement and, upon consummation of the transaction contemplated by the Purchase Agreement, the Tax Attributes shall be transferred to the Purchaser as provided for under the Purchase Agreement and free and clear of any liens, claims, encumbrances, and interests (collectively, the “Interests”) on the Tax Attributes other than any permitted exceptions provided for in the Purchase Agreement; provided, that any such Interests on the Tax Attributes shall attach to the proceeds of the Sale with the same priority, validity, force and effect as they attached to the Tax Attributes immediately before the closing date of the sale (such closing, the “Closing” and such date, the “Closing Date”).

7. The Purchaser shall close on the Sale of the Tax Attributes on or before the Closing Date, in accordance with the terms and conditions of the Purchase Agreement.

8. The transfer of the Tax Attributes to the Purchaser pursuant to the Purchase Agreement constitutes a legal, valid, and effective transfer of good and marketable title of the Tax Attributes, and vests, or will vest, the Purchaser with all right, title, and interest to the Tax Attributes, free and clear of all interests, except as otherwise expressly stated as obligations of the Purchaser under the Purchase Agreement. All entities holding interests or claims of any kind or nature whatsoever against the Debtors or the Tax Attributes are hereby and forever barred and estopped from asserting against the Purchaser, its successors or assigns, its property, or the Tax Attributes any claim, interest or liability existing, accrued, or arising prior to the Closing.

9. On the Closing Date, and subject to the terms and conditions of the Purchase Agreement, this Order shall be construed and shall constitute for any and all purposes a full and complete assignment, conveyance, and transfer of the Tax Attributes or a bill of sale transferring

good and marketable title of the Tax Attributes to Purchaser. This Order is and shall be effective as a determination that, on the Closing Date, all Interests of any kind or nature whatsoever existing as to the Tax Attributes prior to the Closing Date, other than any permitted exceptions provided for in the Purchase Agreement, or as otherwise provided in this Order, shall have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been affected. This Order is and shall be binding upon and govern the acts of all persons, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement. A certified copy of this Order may be: (a) filed with the appropriate clerk; (b) recorded with the recorder; or (c) filed or recorded with any other governmental agency to act to cancel any Interests against the Tax Attributes, other than any permitted exceptions provided for in the Purchase Agreement.

10. If any person or entity which has filed statements or other documents or agreements evidencing Interests on or in all or any portion of the Tax Attributes (other than with respect to any permitted exceptions provided for in the Purchase Agreement) has not delivered to the Debtors

prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all Interests which such person or entity has or may assert with respect to all or a portion of the Tax Attributes (the “Release Documents”), the Debtors and the Purchaser are authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Tax Attributes; provided that, notwithstanding the foregoing, the provisions of this Order authorizing the transfer of the Tax Attributes free and clear of all Interests (except only for any permitted exceptions provided for in the Purchase Agreement) shall be self-executing, and it shall not be, or be deemed, necessary for any person or entity to execute or file releases, termination statements, assignments, consents, or other instruments in order for the provisions of this Order to be implemented.

11. Except with respect to any permitted exceptions set forth in the Purchase Agreement, or as otherwise permitted by the Purchase Agreement or this Order, all persons and entities, including, without limitation, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, litigation claimants, and other creditors, holding interests of any kind or nature whatsoever against, or in, all or any portion of the Tax Attributes, arising under, out of, in connection with, or in any way relating to, the Debtors, the Tax Attributes, the operation of the Debtors’ business prior to the Closing Date, or the transfer of the Tax Attributes to Purchaser, are hereby forever barred, estopped, and permanently enjoined from asserting against Purchaser, or any of its affiliates, successors, or assigns, or their property or the Tax Attributes, such persons’ or entities’ interests in and to the Tax Attributes, including, without limitation, the following actions against the Purchaser or its affiliates, or their successors, assets, or properties: (a) commencing or continuing in any manner

any action or other proceeding; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or other order; (c) creating, perfecting, or enforcing any lien or other claim; (d) asserting any set off, right of subrogation, or recoupment of any kind; or (e) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Order or any other order of this Court, or the agreements or actions contemplated or taken in respect thereof.

Additional Provisions

12. Pursuant to section 363(m) of the Bankruptcy Code, upon the Closing Date, the Purchaser shall be deemed to have purchased the Tax Attributes in “good faith.”

13. The Debtors are authorized to take such actions as are necessary to implement the terms of this Order.

14. Notwithstanding the provisions of Bankruptcy Rule 6004 or otherwise, this Order shall be effective and enforceable immediately upon entry, and the 14-day stay provided in such rules is hereby expressly waived and shall not apply.

15. The terms and provisions of this Order shall be binding in all respects upon the Debtors, their estates, all creditors, officers, directors, advisors, members, managers, and all holders of equity in the Debtors, all holders of any claim(s) (whether known or unknown) against the Debtors, any holders of liens, claims, encumbrances, or interest against or on all or any portion of the Tax Attributes, the Purchaser, and all successors and assigns of the Purchaser, and any trustees, if any, subsequently appointed in the Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code of the Chapter 11 Cases.

16. Nothing contained in any chapter 11 plan confirmed in the Chapter 11 Cases, an order confirming a chapter 11 plan in these Chapter 11 Cases, any order approving the wind down

or dismissal of the Chapter 11 Cases, or any order entered upon the conversion of the Chapter 11 Cases to one or more cases under chapter 7 of the Bankruptcy Code or otherwise shall conflict with or derogate from the provisions of the Purchase Agreement or this Order. In the event there is a conflict between the terms of any subsequent chapter 11 plan or any order to be entered in the Chapter 11 Cases (including any order entered after conversion of the Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code), the terms of this Order shall control.

17. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by such parties, and in accordance with the terms thereof, without further order of the Court, provided that such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates.

18. This Court shall retain jurisdiction over the parties for the purpose of enforcing the terms and provisions of this Order.

EXHIBIT 1

Sale Notice

[Intentionally omitted]